



# AGENDA

April 24, 2024  
10:30am

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**Board of Supervisors Meeting**  
**Agenda**  
**April 24, 2024**  
**10:30 a.m.**

- 1. CALL TO ORDER**
- 2. OPENING INVOCATION**
- 3. PLEDGE OF ALLEGIANCE**
- 4. SAFETY MINUTE**
- 5. PUBLIC COMMENT PERIOD**
- 6. CONSENT AGENDA**
  - 6.1** March 27, 2024 Meeting Minutes – *Page 4*
  - 6.2** Second Amendment to the Amended and Restated Labor Services Agreement - *Page 40*
  - 6.3** Renaming of the Fire Department from the Reedy Creek Fire Department to the District Fire Department – *Page 43*
- 7. REPORTS**
  - 7.1 Management Report**
    - Excellence Award
      - Nancy McLean – Fleet
- 8. GENERAL BUSINESS**
  - 8.1** Contract change order to #C006110 for Project U chilled water service installation in the amount of \$2,150,000 with Southland Construction Inc., with a utility customer reimbursement of \$1,918,002.72, for a net cost to the District of \$231,997.28 – *Page 44*
  - 8.2** Contract for network security and video upgrades for utility infrastructure with Alert Security Inc. in the amount of \$699,648.17 – *Page 50*
  - 8.3** Award of three-year contract for compostable waste stream transportation and disposal services to CompostUSA of Sumter County LLC in the amount of \$19,278,591 – *Page 51*
  - 8.4** Award of three-year contract for single-stream recycling services with Recycling Services of Florida Inc. in the amount of \$1,170,765 – *Page 83*

- 8.5** Award of contract to replace the Anoxic Lift Pump #1 at the District's Water Resource Recovery Facility to Evoqua Water Technologies LLC in the amount of \$1,227,017 – *Page 116*
- 8.6** Award of contract for Epcot Energy Plant Boiler #1 replacement and low temperature hot water valve automation with Harper Limbach LLC in the amount of \$1,969,290, plus \$363,585 in allowances for a total of \$2,363,148 – *Page 202*
- 8.7** Award of contract for sediment removal from Biological Nutrient Removal Train #3 with Handex Consulting and Remediation LLC in the amount of \$909,792 – *Page 303*
- 8.8** Award of contract for the Epcot Resorts Boulevard Phase II area development installation of landscaping plants, trees and shrubs and irrigation with Cepra Landscape LLC in the amount of \$420,821.92 – *Page 343*
- 8.9** Twenty-year contract for the purchase of 74.5 megawatt alternating current of solar energy and environmental attributes from Bronson Solar LLC – *Page 450*

**9. OTHER BUSINESS**

- 9.1** FY2023 Financial Statement presentation – *Page 566*
- 9.2** FY2024 Budget Amendment for Carryforward of FY2023 funds – *Page 669*

**10. ADJOURN**

**APPEALS:** All persons are advised that, if they decide to appeal any decision made at a Board of Supervisors hearing, they will need a verbatim transcript of the record of the proceedings. It is the responsibility of every party-in-interest to arrange for a transcript of the proceedings, which must include the verbatim testimony and evidence upon which the appeal is made.

**AMERICANS WITH DISABILITIES ACT:** The Central Florida Tourism Oversight District is committed to reasonably accommodating the needs of anyone with disabilities who wishes to attend or participate in public meetings. Anyone with a disability who requires a reasonable accommodation should contact the Clerk of the Board, by telephone at (407) 934-7480 or via email (currently at [DistrictClerk@oversightdistrict.org](mailto:DistrictClerk@oversightdistrict.org)), no less than one business day (i.e. Monday through Friday, excluding legal holidays) in advance of the applicable meeting to ensure that the District has sufficient time to accommodate the request.

**In The Matter Of:**  
*Central Florida Tourism Oversight District*

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*Board of Supervisors Meeting*  
*March 27, 2024*

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*Legal Realtime Reporting*  
*P.O Box 533082*  
*Orlando, Florida 32853- 3082*

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**Min-U-Script® with Word Index**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

BOARD OF SUPERVISORS MEETING

\* \* \* \* \*

LOCATION: Central Florida Tourism Oversight  
District  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

DATE TAKEN: March 27, 2024

TIME: 9:30 a.m. - 10:15 a.m.

REPORTED BY: SANDRA D. BROWN, FPR,  
Court Reporter and Notary Public  
State of Florida at Large

**PRESENT:**

**BOARD MEMBERS:** Charbel Barakat, Vice Chairman; Brian Aungst, Jr.; Ron Peri; Bridget Ziegler; Craig Mateer

**SPEAKERS:** Reverend Dr. Robert M. Spooney, Mt. Zion Missionary Baptist Church, Orlando, Florida; Tyler Spies, Safety Coordinator; Stephanie Kopelousos; Paul Huck, Esquire

**CFTOD STAFF:** Paula Hoisington, Deputy District Administrator of Administration; Mike Crikis, Deputy District Administrator of Operations; Daniel Langley, Acting Counsel for CFTOD; Kurt Ardaman, Acting Counsel for CFTOD; Tyler Spies, Safety Coordinator; Eric Ferrari, Acting Fire Chief; Alycia Mills, Executive Assistant; Matthew Oberly, External Affairs Director; Rocky Haag, External Affairs Coordinator; Tanya Naylor, Director of Security and Emergency Management; Ron Zupa, IT Service Delivery Manager; Samarth Thomas, Systems Administrator; Katherine Luetzow, Planning & Engineering Manager; Michele Dicus, Human Resources Director; Tiffany Kimball, Contracting Officer; Yenni Hernandez, Chief Information Officer; Susan Higginbotham, Director of Finance; Joey Rodriguez, Chief Building Inspector and Interim Building Official; Christine Ferraro, Director - RCES; Ella Hickey, Building & Safety; Jason Herrick, Director of Public Works and Utilities Advisor; Roger Smith, Assistant Chief of Operations - Fire Department; Wendy Duncan, Manager - Laboratory Operations; Douglas Henley, Director of Facilities; Craig Sandt, Principal Construction Manager, Facilities

## P R O C E E D I N G S

\* \* \* \* \*

1  
2  
3 VICE CHAIR BARAKAT: All right. I've got  
4 9:30. We'll go ahead and call this meeting to  
5 order.

6 Before we get to this day's business, we'll  
7 start, as we always do, with an opening invocation.  
8 We are joined today by Reverend Dr. Robert M.  
9 Spooney, ordained over 19 years ago. Dr. Spooney  
10 has since been emboldened to daily action through  
11 service motivated by divinely prescribed  
12 commitments to his faith and invigorated to a  
13 pursuit of social justice for all.

14 He is the pastor of Mt. Zion Missionary  
15 Baptist Institutional Church in Orlando, Florida.  
16 Mt. Zion is the oldest African-American church in  
17 Orlando. He also serves as president of the  
18 Congress of Christian Education of the West Coast  
19 Baptist Association, Florida General Baptist  
20 Convention, and he's the former president of the  
21 African-American Chamber of Commerce of Central  
22 Florida. Reverend Spooney.

23 REVEREND SPOONEY: Good morning.

24 THE BOARD: Good morning.

25 REVEREND SPOONEY: To God be the Glory for the

1 things he has done, and he continues to do great  
2 things in our lives. It is indeed a pleasure to be  
3 here this morning with the Central Florida Tourism  
4 Oversight District.

5 Before I begin our prayer, there's a -- there  
6 is a scripture in Proverbs 11:3. It tells us that,  
7 The integrity of the upright will guide them, but  
8 the perversity of the unfaithful will destroy them.  
9 Integrity is a powerful word, and those who are  
10 guided by it are powerful witnesses for the Lord  
11 because they base their lives on truth. As you  
12 prepare for your meeting today, it is my prayer  
13 that the spirit of integrity will continue to  
14 permeate among you.

15 Let us pray. To the all wise God, the God of  
16 Abraham and Isaac and Jacob. Today, Lord, we come  
17 into agreement concerning this meeting today. We  
18 ask, Lord, that you continue to bless the state of  
19 Florida and our nation. We thank you in advance  
20 that today's meeting will be productive, and we  
21 pray that you will help the participants to stay on  
22 track and keep focused on the agenda. Bring to  
23 their minds holistic solutions to the problems that  
24 they may face. Help each one present make a  
25 contribution that will be value -- be of value, be



1 of worth to the process of this meeting.

2 We thank you this morning for the liberty to  
3 discuss issues openly and freely without strife or  
4 anger. Help everyone in here to speak their minds  
5 without fear or ridicule or fear of sarcasm.

6 Thank you, God, that they will have  
7 understanding in their hearts toward one another  
8 and toward any item or issue that may be discussed  
9 on this day. Help the participants to consider all  
10 of the facts, come to a definitive plan of action  
11 concerning whatever direction is needed.

12 We also ask in the name of Jesus that you help  
13 the participants not to over analyze or to be hasty  
14 or to move quickly, but rather to respond  
15 effectively and efficiently toward any problem.

16 God, we're asking that you help them to  
17 operate and flow together as a team on this day,  
18 and that what is done will be pleasing to you and  
19 will benefit all of the residents of Central  
20 Florida.

21 This is our prayer this morning. We make it  
22 in the name of your son, who said, If I be lifted  
23 up, I will draw all men unto me. I pray in the  
24 name of Jesus, Amen.

25 ATTENDEES: Amen.

1           VICE CHAIR BARAKAT: Thank you, Reverend Dr.  
2           Spooney. And I'd also like to just acknowledge  
3           happy -- or a blessed Holy Week to all those who  
4           celebrate and Happy Easter ahead.

5           So with that, why don't we all rise and please  
6           join me in the Pledge of Allegiance.

7           ATTENDEES: I pledge allegiance to the flag of  
8           the United States of America, and to the Republic,  
9           for which it stands, one nation, under God,  
10          indivisible, with liberty and justice for all.

11          VICE CHAIR BARAKAT: Very good. Now we will  
12          have our safety minute, which I believe -- I'm told  
13          Eddie is not here today and will be presented by  
14          Tyler Spies. Thank you, Tyler.

15          MR. SPIES: Good morning. Thank you, members  
16          of the Board, for the opportunity to review our  
17          safety procedures with our visitors here today. In  
18          the event of an evacuation, you'll notice two  
19          double doors towards the front of the board room.  
20          If you exit via the right side, that will take you  
21          to the front parking lot where you came in. And if  
22          you exit via the left side, that will take you to  
23          the back of the building at which point you can  
24          make your way to the front.

25          Our employees are instructed to meet at both

1 ends of the parking lot where you will see them  
2 wearing a reflective vest. At that point, we ask  
3 you to be patient for emergency services to arrive  
4 and instruct us further.

5 In addition, for your health and safety, we do  
6 have a first-aid kit and AED towards the front by  
7 security that we will approach and use if  
8 necessary. Thank you very much and enjoy the  
9 meeting.

10 VICE CHAIR BARAKAT: Thank you, Tyler. Next  
11 is -- we come to the public comment period. As I  
12 understand it -- well, I'll just -- I'll recite,  
13 general reminder this is a time for public  
14 comments, not a question-and-answer period for the  
15 Board. It's important for us to receive public  
16 comments so that we can enact the will of the  
17 people of Florida. We would ask anyone making a  
18 public comment to introduce themselves and any  
19 affiliations they may have, but I am told that no  
20 one has signed up for public comment today. I  
21 think that's a -- that's a first, so let's just  
22 bask in that silence for a moment.

23 Okay. Now we'll get -- before we get to the  
24 business -- the business before the Board today, I  
25 just want to take a moment. Obviously, there's

1           been some changes, and I want to take a moment to  
2           acknowledge those changes.

3                     First of all, I sit here, you know, acting as  
4           Chair of this meeting today in absence of the  
5           Chair. I'd like to acknowledge the departure of  
6           Chairman Martin Garcia and District Administrator  
7           Glen Gilzean. I want to acknowledge, certainly for  
8           myself, and the rest of the Board and the employees  
9           of the District, just a tremendous thank you to  
10          their contributions over the last year. I think  
11          the -- their efforts made, their tireless efforts,  
12          led to great strides in terms of accountability and  
13          transparency, and a new era in this district.

14                    I'm proud of the work they did. I'm sure  
15          they're very proud of the work they did, and we  
16          wouldn't be here today without their tireless  
17          efforts. So great thanks to Chairman Garcia and  
18          former District Administrator Gilzean.

19                    With that, I would also like to welcome --  
20          it's a new day. I'd like to welcome, to my left,  
21          new board member, Craig Mateer. Welcome, Craig.

22                    MR. MATEER: Thank you.

23                    (Applause.)

24                    VICE CHAIR BARAKAT: Now the business before  
25          the Board. First item of business is our meeting

1 minutes. Is there a motion to approve the minutes  
2 from the last board meeting?

3 MR. AUNGST: So moved.

4 MS. ZIEGLER: Second.

5 VICE CHAIR BARAKAT: Thank you for that motion  
6 and the second. All those in favor, say "yay;" all  
7 opposed, say "nay."

8 THE BOARD: Aye.

9 VICE CHAIR BARAKAT: All right. Let the  
10 record reflect that the minutes are approved  
11 unanimously. Thank you.

12 Our next item of business is our management  
13 report presented by Paula Hoisington, Deputy  
14 District Administrator. Paula.

15 MS. HOISINGTON: Thank you, Mr. Vice Chairman,  
16 members of the Board, esteemed colleagues, and  
17 distinguished guests. As you're aware, the  
18 District put forth a focus of prioritizing doing  
19 business with local vendors. Those efforts were  
20 met, we're proud of them, and as of today, we've  
21 saved over \$6 million.

22 Since the policy was introduced, the District  
23 has been awarded -- has awarded \$87 million in  
24 contracts. In March alone, I'm proud to say,  
25 through the efforts of our procurement and

1 contracting department, we have awarded  
2 \$1.5 million through the Buy Local efforts.

3 Our contracting and procurement department  
4 continues to work rigorously to ensure that those  
5 businesses that want to do business with the  
6 District, to let them know the District is open.

7 Also, since our last meeting, under the  
8 leadership of our new chief, Ferrari, he and his  
9 leadership team have sworn in 23 new fire  
10 department recruits. For the first time in  
11 history, Chief Ferrari can stand and say all of his  
12 frontline leaders are in place. With that --

13 (Applause.)

14 MS. HOISINGTON: With that, Mr. Chairman, that  
15 concludes the management report.

16 VICE CHAIR BARAKAT: Very good. Paula, thank  
17 you so much and special thanks to you for all your  
18 efforts over the last year, too. Thank you for all  
19 that.

20 So very good. Now we move on to new business.  
21 And for new business, first item of business today,  
22 we have consideration of the request from Stephanie  
23 Kopelousos to serve as District Administrator.

24 Stephanie comes to the District with a  
25 distinguished career of public service to our

1 state. She previously served as Secretary of  
2 Transportation. Of immediate relevance to our  
3 District, she also served as the manager of Clay  
4 County.

5 She has a reputation for being experienced,  
6 honorable in public service, and an honest broker.  
7 At this time -- and I would just like to say I've  
8 had the pleasure of getting to know Stephanie a  
9 little bit over the last few weeks, and sterling  
10 human being to match her sterling reputation. So,  
11 at this time, I would like to offer Stephanie the  
12 opportunity to offer comments to the Board and the  
13 public.

14 MS. KOPELOUSOS: First of all, thank you.  
15 Thanks for letting me be here today. I'm honored  
16 to be considered for this position. I'm also  
17 grateful that the Governor thought enough of me to  
18 recommend me for this position.

19 I think you've seen my resume. I do have  
20 local government experience. I hope that will be  
21 key and helpful. I do appreciate each of you  
22 taking my call over the past couple of weeks to  
23 talk about what the needs are for the District but  
24 also what your expectations are for the district  
25 administrator and believe that I am able to meet

1           those needs.

2                   My background in infrastructure, emergency  
3 services, planning, dealt with budgets quite a bit.  
4 I think that's all helpful in succeeding in this  
5 position. But I think two key things that are part  
6 of my core are my work ethic and the ability to  
7 build coalitions, and I hope I can bring those to  
8 this District and that you'll give me that  
9 opportunity.

10                   It's clear -- I've met some of the team, some  
11 of your team, and they are clearly the magic behind  
12 the magic. Clearly, they're a professional group  
13 that do the work, get it done, and do it behind the  
14 scenes and would be honored to serve with them and  
15 represent you in this District.

16                   I will make a commitment to you today that if  
17 chosen, I will foster collaboration, I'll drive  
18 innovation, and, most importantly, just really  
19 ensure that we are the premiere tourism destination  
20 in the country. So thank you for this opportunity.

21                   VICE CHAIR BARAKAT: Thank you, Stephanie. At  
22 this point -- and I know you've been involved in  
23 negotiations and discussions with the key -- with  
24 the District counsel, so I believe -- well, I guess  
25 in terms of considering, we have an official



1 proposal and an agreement in hand to bring you  
2 onboard. But before we move to that, I guess  
3 maybe -- should we have a moment for comment from  
4 the Board members, or -- I'll ask counsel.

5 MR. LANGLEY: It's proper for the Board to  
6 comment, but if you are seeking advice, I mean, one  
7 way we could do this is I can give you a proposed  
8 motion for you to consider, or you can go ahead and  
9 have your comments and see how you'd like to  
10 proceed.

11 VICE CHAIR BARAKAT: Supervisor Aungst.

12 MR. AUNGST: Mr. Chair, it's been my pleasure,  
13 as well, to get to know Stephanie over the last  
14 couple of weeks. She's probably spent more time on  
15 the phone with me than she would like, but that  
16 will probably stop as soon as you get started and  
17 hit the ground running.

18 In looking at how privileged we are to have  
19 Stephanie as a candidate, I am going to venture to  
20 guess that Secretary Kopelousos is the only person  
21 in the history of Florida to have served as both  
22 the Secretary of the Florida Department of  
23 Transportation, and for eight years, very  
24 successfully, as a county manager.

25 And when you're looking at central casting for

1 this very, very unique general purpose government,  
2 special district, which is unlike any other special  
3 district in the country, those two skill sets,  
4 being able to deliver on massive infrastructure  
5 projects while also managing a general purpose  
6 government, and ensuring that the District, our  
7 constituents, and the people of Central Florida  
8 have the resources and the infrastructure they need  
9 to be successful, which is our most important job,  
10 I couldn't have asked for a better candidate.

11 So Stephanie has my full support, and I'm  
12 prepared to make a motion that we appoint Stephanie  
13 Kopelousos as the District Administrator for CFTOD  
14 on the same terms that Mr. Gilzean's contract  
15 entailed.

16 VICE CHAIR BARAKAT: Okay.

17 MR. ARDAMAN: That will be effective  
18 immediately; is that your motion --

19 MR. PERI: I'd like to second that motion.

20 MR. AUNGST: Yes, sir.

21 VICE CHAIR BARAKAT: Well, I just -- before we  
22 move to that, I just want to make sure everybody  
23 has a chance to make a comment on the record. I  
24 might have something to say, as well, but Ron?

25 MR. PERI: Yeah. Is this on? Oh, yeah, there

1 we go.

2 Yeah, I've spoken with Stephanie. Given her  
3 background, her -- the ease of being able to  
4 communicate, and her accomplishments in the past, I  
5 cannot imagine anybody who would fit this position  
6 better at this point. So I think it's -- we should  
7 proceed as rapidly as possible to have her join us.

8 VICE CHAIR BARAKAT: Okay. Bridget.

9 MS. ZIEGLER: Thank you. Supervisor Aungst,  
10 so eloquently -- I'd like to echo much of what you  
11 said. Secretary Kopelousos not only has a very  
12 distinguished history, background, and is very  
13 capable, but I really appreciate how you noted the  
14 magic behind the magic and the amazing staff that  
15 you'll be taking on. This past year has been  
16 incredibly unique, and coming in on a really  
17 special -- a really great landing. As we turn the  
18 page to the next chapter, I can't think of anyone  
19 more apt for this role and really appreciate your  
20 willingness to step into that role, so you have my  
21 full support, as well.

22 VICE CHAIR BARAKAT: Thank you. Craig.

23 MR. MATEER: I'm just excited to have  
24 Stephanie.

25 VICE CHAIR BARAKAT: Thank you. What I'll add

1 is -- I don't know that I can really add to any of  
2 those comments other than to say that, Stephanie,  
3 it's been an honor to get to know you. On paper,  
4 it was abundantly clear from the beginning that you  
5 were perfectly suited for this role.

6 In speaking with you, it's become even more  
7 abundantly clear, not only does Stephanie have the  
8 experience to kind of hit the ground running right  
9 away, but in terms of her communication style, in  
10 terms of her relationships, in terms of her ability  
11 to function, both in sort of the public sector  
12 needs and the private sector needs that this unique  
13 role is going to require, I can't think of anybody  
14 else who could possibly fulfill those requirements  
15 nearly as well. So with that, I'm tremendously  
16 supportive, and I look forward to -- I look forward  
17 to working with you, Stephanie.

18 So with that, I guess I will -- I'll let --  
19 Supervisor Aungst, why don't you go ahead and  
20 repeat your motion, and we'll take it from there.

21 MR. AUNGST: Thank you, Mr. Chair. I move to  
22 appoint Stephanie Kopelousos as the District  
23 Administrator for the Central Florida Tourism  
24 Oversight District on the same terms and conditions  
25 of the employment of our prior administrator,

1 Mr. Gilzean, effective immediately.

2 VICE CHAIR BARAKAT: Is there a second?

3 MR. PERI: Second.

4 VICE CHAIR BARAKAT: So seconded. Is that --  
5 are we --

6 MR. ARDAMAN: Mr. Chairman --

7 VICE CHAIR BARAKAT: Yes.

8 MR. ARDAMAN: -- presumably, then, we would  
9 provide the contract for execution by both  
10 Ms. Kopelousos and the Vice Chair within the next  
11 week for full execution, although, pursuant to the  
12 motion, it would be effective -- her appointment  
13 would be effective upon approval of this motion.

14 VICE CHAIR BARAKAT: Okay. Supervisor Aungst,  
15 will you accept that friendly amendment to your --

16 MR. AUNGST: Absolutely, yes.

17 VICE CHAIR BARAKAT: Okay. Thank you. So  
18 with that, we will move forward on the -- on the  
19 resolution. All those in favor, say "yay."

20 THE BOARD: Yay.

21 VICE CHAIR BARAKAT: Any opposed? Hearing  
22 none, let the record show that the vote is  
23 unanimous, so congratulations.

24 (Applause.)

25 VICE CHAIR BARAKAT: All right. Now, then --

1 let's see. Okay. Unfinished business. I don't  
2 believe there's any. Other business, none. At  
3 this time, I believe the Board will enter into  
4 executive session with our attorneys to discuss  
5 ongoing litigation. We will return, so stay tuned.  
6 We will return here before closing out the meeting.  
7 The estimated length of the executive session is 45  
8 minutes. I believe we may have some comments from  
9 our -- our general counsel.

10 MR. LANGLEY: Yes, thank you. Pursuant to the  
11 agenda item, the acting general counsel is  
12 requesting the Board to have a closed-door  
13 attorney/client executive session. We did, in the  
14 agenda, specify the people that will attend, but  
15 there will be additional people based on the new  
16 appointment and the new -- the two new  
17 appointments.

18 In addition to the existing Board members that  
19 were mentioned, new board member, Craig Mateer,  
20 will also sit in the executive session, and our new  
21 District Administrator, Stephanie Kopelousos, will  
22 also be in attendance.

23 Further, I will be there, so will Kurt  
24 Ardaman; our litigation counsel, Paul Huck, Jason  
25 Gonzalez, and I don't believe David Thompson is

1 here today, so he will not be with us.

2 We'll be in the green room, we'll exit  
3 shortly. Everything will be transcribed in that  
4 room, and then we'll come back in this session and  
5 reopen to the public at that time.

6 VICE CHAIR BARAKAT: Okay. Thank you,  
7 Mr. Langley. With that, we will now close our  
8 public meeting and move into executive session.

9 (Board of Supervisors Meeting recessed for the  
10 non-public portion of the meeting, which is in a  
11 separate confidential transcript.)

12 (After which, Board of Supervisors Meeting  
13 resumed as follows:)

14 VICE CHAIR BARAKAT: All right. Was that the  
15 fastest 45 minutes you've seen? Yeah, talk about  
16 magic. All right. We will now reopen the public  
17 meeting and close the executive session. I --  
18 we -- I'd like to announce that we have received a  
19 settlement agreement regarding the significant  
20 litigation involving the District and Walt Disney  
21 Parks and Resorts, U.S., Inc. And we would like  
22 to -- having discussed that in executive session,  
23 we would like to -- I'd like to entertain a motion  
24 to add this item to the agenda.

25 MR. AUNGST: Mr. Chairman, I move to add

1 consideration of a settlement agreement between the  
2 Central Florida Tourism Oversight District and Walt  
3 Disney Parks and Resorts U.S., Incorporated, to  
4 today's agenda.

5 MS. ZIEGLER: Second.

6 VICE CHAIR BARAKAT: Thank you for that motion  
7 and for the second. All those in favor, say "aye."

8 THE BOARD: Aye.

9 VICE CHAIR BARAKAT: All those opposed?  
10 Hearing none, let the record show we're unanimously  
11 in support of the -- of that -- adding the motion.

12 Can our counsel please outline the primary  
13 points of the settlement agreement for  
14 consideration for the Board? Mr. Huck.

15 MR. HUCK: Good morning, and it's a pleasure  
16 to be here this morning. I just want to take this  
17 opportunity to go through -- each of you had the  
18 opportunity to see the -- thank you -- the  
19 settlement agreement that was provided or offered  
20 to us from Walt Disney. And I just want to take  
21 the opportunity to walk you through in a bullet  
22 point fashion the overview of the main points of  
23 that settlement agreement.

24 So, first, Disney stipulates that the  
25 development agreement and the restrictive covenants



1 shall be considered null and void. And as the  
2 District knows, those are the two agreements that  
3 are the subject of the state court lawsuit that the  
4 District brought seeking declaratory relief against  
5 Disney. Relatedly, Disney also agrees not to  
6 contest the District's determination that the 2032  
7 Comprehensive Plan, and the amendments to the  
8 District's Land Development Regulations, that were  
9 adopted in January of last year pursuant to that  
10 2032 Comp Plan, are null and void.

11 What that means is that the operative  
12 comprehensive plan in place would be the 2020  
13 Comprehensive Plan. Also, under the proposed  
14 settlement, the District would resolve to review,  
15 evaluate, and amend the 2020 Comprehensive Plan,  
16 and that's actually pursuant to the statutory duty  
17 that the District has to do that.

18 And as part of that process, the District  
19 would consult with Disney, and with all appropriate  
20 parties, in its review and evaluation of the comp  
21 plan.

22 Also as part of the settlement, the District  
23 and Disney would agree to dismiss the claims and  
24 the counter-claims in that pending state court  
25 lawsuit with prejudice.

1           In addition, as you're aware, there's a  
2           separate state court litigation involving the  
3           public records. And under the proposed settlement  
4           from Walt Disney, Disney would dismiss that case  
5           with prejudice and withdraw its pending public  
6           records request to the District.

7           In addition, the Labor Services Agreement  
8           between the District and the Reedy Creek Energy  
9           Services would be amended so that the term would  
10          expire in 2028, rather than 2032. And, in  
11          addition, the automatic renewal terms in that  
12          agreement would be deleted from it.

13          Also pursuant to the settlement proposal from  
14          Disney, the District would agree that Disney owns  
15          and that the District would not impede the use of  
16          certain long-term mitigation credits that are  
17          created by eight permits. Those eight permits are  
18          issued by three different agencies: The South  
19          Florida Water Management District, the Army Corps  
20          of Engineers, and the Florida Game and Fresh Water  
21          Commission. The District staff and outside  
22          consultants have confirmed that although the  
23          District is named along with Disney on some of  
24          those permits, Disney paid for and owns the credits  
25          that are created by those permits.

1           As you're also aware, there's a third piece of  
2 litigation. It's the Federal court litigation that  
3 Disney filed against the District, the Governor,  
4 and the Secretary of Economic Opportunity. The  
5 District -- that case, we prevailed at the trial  
6 court. That case is on appeal now to the 11th  
7 Circuit Court of Appeals. And so regarding that  
8 Federal court litigation, Disney would seek, and  
9 the District would not oppose, permission from the  
10 11th Circuit to defer -- to defer briefing on the  
11 appeal pending negotiation of a new development  
12 agreement.

13           In addition, District -- the District and  
14 Disney each agree not to contest the actions of the  
15 District prior to February 27, 2023, when the  
16 District's governance was reformed. There are two  
17 important exceptions to that. Obviously, anything  
18 that is specifically provided for by the settlement  
19 agreement as null and void would remain null and  
20 void. That would include the development  
21 agreement, the restrictive covenants, and the 2032  
22 Comp Plan.

23           And the other important exception is that if  
24 that Federal court case ever starts up again,  
25 anything that would be necessary for the District

1 to defend itself in that lawsuit would also not be  
2 subject to that agreement not to contest any prior  
3 actions by the District.

4 And, finally, as is typical of most settlement  
5 agreements, under this the parties would exchange  
6 mutual releases. And that is the sum and substance  
7 of the agreement that we received from Disney.

8 Thank you.

9 VICE CHAIR BARAKAT: Thank you, Mr. Huck.  
10 Very much appreciated. Before we get into Board  
11 comments, are there any comments to this  
12 development from the -- from the public? Okay.  
13 Hearing none, thank you, that will close the public  
14 comment.

15 I guess I'll start with a comment of my own.  
16 I'm very much pleased by this development. You  
17 know, we -- the Central Florida Tourism Oversight  
18 District was created to bring public accountability  
19 and transparency to one of Florida's most important  
20 destinations. We're proud of the landmark work the  
21 District has done, and look forward to what lies  
22 ahead.

23 I think with this settlement, which is  
24 complete and significant, we are eager to work with  
25 Disney. I'm certainly eager to work with Disney

1 and all other businesses to make the country's  
2 tourism destination famous for a second reason,  
3 which is good government.

4 I'd like to thank -- publicly thank the  
5 District's general counsel for their Herculean  
6 efforts on this front, as well as -- as well as our  
7 outside counsel. It was a year of very hard work  
8 to get to this point, and we couldn't have gotten  
9 here without you, so thank you, first of all, to  
10 you-all.

11 And then thank you -- and I thanked them  
12 previously, but, you know, I'll thank the departed  
13 Chair, Mr. Garcia, for his efforts, which were  
14 significant, as well, on that front, and I'm sure  
15 we couldn't have gotten here without him -- his  
16 leadership on that front, as well.

17 Finally, I'd just like to thank the employees  
18 of the District for -- in light of this uncertainty  
19 with all this, even in the face of this litigation  
20 and other uncertainty, the District staff, you-all  
21 have remained professional and on task and helped  
22 the District continue to function at the top level  
23 like it's always been and will continue to be.

24 And I know it hasn't been easy, and I'm  
25 personally grateful to each and every one of you.

1 And I'll have a chance to thank you personally at  
2 some point, as well, but please consider my thanks  
3 in this public forum.

4 So with that all being said, I am very much  
5 welcoming of this settlement agreement. Do any  
6 other Board members have any comments?

7 MR. AUNGST: Mr. Chair, I move approval of the  
8 settlement agreement.

9 MS. ZIEGLER: Second.

10 VICE CHAIR BARAKAT: Okay. So seconded.

11 MR. ARDAMAN: Mr. Chairman.

12 VICE CHAIR BARAKAT: Yes, sir.

13 MR. ARDAMAN: And authorizing the Vice Chair  
14 to execute the settlement agreement and take any  
15 other actions necessary to implement same?

16 MR. AUNGST: Yes, sir.

17 MR. ARDAMAN: Thank you.

18 VICE CHAIR BARAKAT: Okay. So there's a  
19 second -- I heard a second?

20 MS. ZIEGLER: That's correct.

21 VICE CHAIR BARAKAT: Bridget, thank you. All  
22 those in favor, say "aye."

23 THE BOARD: Aye.

24 VICE CHAIR BARAKAT: Any opposed? Hearing  
25 none, let the record show the Board is unanimously

1 in support of the settlement agreement.

2 (Applause.)

3 VICE CHAIR BARAKAT: I don't know that we've  
4 had this much spontaneous applause.

5 MS. ZIEGLER: I know.

6 VICE CHAIR BARAKAT: I'm not sure -- I'm not  
7 sure what to do now, folks. I guess we get on --  
8 get on with the business of this District. Praise  
9 the Lord and pass the ammunition. Without any  
10 other agenda items, this concludes our meeting.  
11 The meeting is adjourned. Thank you.

12 (Time ended 10:15 a.m.)

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C E R T I F I C A T E

STATE OF FLORIDA  
COUNTY OF ORANGE

I, SANDRA D. BROWN, Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 28th day of March, 2024.

*Sandra D. Brown*

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SANDRA D. BROWN  
FLORIDA PROFESSIONAL REPORTER



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<p><b>security (1)</b> 7:7</p> <p><b>seek (1)</b> 23:8</p> <p><b>seeking (2)</b> 13:6;21:4</p> <p><b>separate (2)</b> 19:11;22:2</p> <p><b>serve (2)</b> 10:23;12:14</p> <p><b>served (3)</b> 11:1,3;13:21</p> <p><b>serves (1)</b> 3:17</p> <p><b>service (3)</b> 3:11;10:25;11:6</p> <p><b>services (4)</b> 7:3;12:3;22:7,9</p> <p><b>session (8)</b> 18:4,7,13,20;19:4,8,17,22</p> <p><b>sets (1)</b> 14:3</p> <p><b>settlement (16)</b> 19:19;20:1,13,19,23;21:14,22;22:3,13;23:18;24:4,23;26:5,8,14;27:1</p> <p><b>shall (1)</b> 21:1</p> <p><b>shortly (1)</b> 19:3</p> <p><b>show (3)</b> 17:22;20:10;26:25</p> <p><b>side (2)</b> 6:20,22</p> <p><b>signed (1)</b> 7:20</p> <p><b>significant (3)</b> 19:19;24:24;25:14</p> <p><b>silence (1)</b> 7:22</p> <p><b>sit (2)</b> 8:3;18:20</p> <p><b>skill (1)</b> 14:3</p> <p><b>social (1)</b> 3:13</p> <p><b>solutions (1)</b> 4:23</p> <p><b>son (1)</b> 5:22</p> <p><b>soon (1)</b> 13:16</p> <p><b>sort (1)</b> 16:11</p> <p><b>South (1)</b> 22:18</p> <p><b>speak (1)</b> 5:4</p> <p><b>speaking (1)</b> 16:6</p> <p><b>special (4)</b></p>	<p>10:17;14:2,2;15:17</p> <p><b>specifically (1)</b> 23:18</p> <p><b>specify (1)</b> 18:14</p> <p><b>spent (1)</b> 13:14</p> <p><b>Spies (2)</b> 6:14,15</p> <p><b>spirit (1)</b> 4:13</p> <p><b>spoken (1)</b> 15:2</p> <p><b>spontaneous (1)</b> 27:4</p> <p><b>Spooney (6)</b> 3:9,9,22,23,25;6:2</p> <p><b>staff (3)</b> 15:14;22:21;25:20</p> <p><b>stand (1)</b> 10:11</p> <p><b>stands (1)</b> 6:9</p> <p><b>start (2)</b> 3:7;24:15</p> <p><b>started (1)</b> 13:16</p> <p><b>starts (1)</b> 23:24</p> <p><b>state (5)</b> 4:18;11:1;21:3,24;22:2</p> <p><b>States (1)</b> 6:8</p> <p><b>statutory (1)</b> 21:16</p> <p><b>stay (2)</b> 4:21;18:5</p> <p><b>step (1)</b> 15:20</p> <p><b>Stephanie (16)</b> 10:22,24;11:8,11;12:21;13:13,19;14:11,12;15:2,24;16:2,7,17,22;18:21</p> <p><b>sterling (2)</b> 11:9,10</p> <p><b>stipulates (1)</b> 20:24</p> <p><b>stop (1)</b> 13:16</p> <p><b>strides (1)</b> 8:12</p> <p><b>strife (1)</b> 5:3</p> <p><b>style (1)</b> 16:9</p> <p><b>subject (2)</b> 21:3;24:2</p> <p><b>substance (1)</b> 24:6</p> <p><b>succeeding (1)</b> 12:4</p>	<p><b>successful (1)</b> 14:9</p> <p><b>successfully (1)</b> 13:24</p> <p><b>suited (1)</b> 16:5</p> <p><b>sum (1)</b> 24:6</p> <p><b>Supervisor (4)</b> 13:11;15:9;16:19;17:14</p> <p><b>Supervisors (2)</b> 19:9,12</p> <p><b>support (4)</b> 14:11;15:21;20:11;27:1</p> <p><b>supportive (1)</b> 16:16</p> <p><b>sure (5)</b> 8:14;14:22;25:14;27:6,7</p> <p><b>sworn (1)</b> 10:9</p>	<p><b>told (2)</b> 6:12;7:19</p> <p><b>top (1)</b> 25:22</p> <p><b>Tourism (6)</b> 4:3;12:19;16:23;20:2;24:17;25:2</p> <p><b>toward (3)</b> 5:7,8,15</p> <p><b>towards (2)</b> 6:19;7:6</p> <p><b>track (1)</b> 4:22</p> <p><b>transcribed (1)</b> 19:3</p> <p><b>transcript (1)</b> 19:11</p> <p><b>transparency (2)</b> 8:13;24:19</p> <p><b>Transportation (2)</b> 11:2;13:23</p> <p><b>tremendous (1)</b> 8:9</p> <p><b>tremendously (1)</b> 16:15</p> <p><b>trial (1)</b> 23:5</p> <p><b>truth (1)</b> 4:11</p> <p><b>tuned (1)</b> 18:5</p> <p><b>turn (1)</b> 15:17</p> <p><b>two (6)</b> 6:18;12:5;14:3;18:16;21:2;23:16</p> <p><b>Tyler (3)</b> 6:14,14;7:10</p> <p><b>typical (1)</b> 24:4</p>	<p>5:23</p> <p><b>up (3)</b> 5:23;7:20;23:24</p> <p><b>upon (1)</b> 17:13</p> <p><b>upright (1)</b> 4:7</p> <p><b>use (2)</b> 7:7;22:15</p>
<b>V</b>				
<p><b>value (2)</b> 4:25,25</p> <p><b>vendors (1)</b> 9:19</p> <p><b>venture (1)</b> 13:19</p> <p><b>vest (1)</b> 7:2</p> <p><b>via (2)</b> 6:20,22</p> <p><b>VICE (37)</b> 3:3;6:1,11;7:10;8:24;9:5,9,15;10:16;12:21;13:11;14:16,21;15:8,22,25;17:2,4,7,10,14,17,21,25;19:6,14;20:6,9;24:9;26:10,12,13,18,21,24;27:3,6</p> <p><b>visitors (1)</b> 6:17</p> <p><b>void (4)</b> 21:1,10;23:19,20</p> <p><b>vote (1)</b> 17:22</p>				
<b>W</b>				
<p><b>walk (1)</b> 20:21</p> <p><b>Walt (4)</b> 19:20;20:2,20;22:4</p> <p><b>Water (2)</b> 22:19,20</p> <p><b>way (2)</b> 6:24;13:7</p> <p><b>wearing (1)</b> 7:2</p> <p><b>Week (2)</b> 6:3;17:11</p> <p><b>weeks (3)</b> 11:9,22;13:14</p> <p><b>welcome (3)</b> 8:19,20,21</p> <p><b>welcoming (1)</b> 26:5</p> <p><b>West (1)</b> 3:18</p> <p><b>willingness (1)</b> 15:20</p> <p><b>wise (1)</b></p>				

<p>4:15 <b>withdraw (1)</b> 22:5 <b>within (1)</b> 17:10 <b>without (6)</b> 5:3,5;8:16;25:9,15; 27:9 <b>witnesses (1)</b> 4:10 <b>word (1)</b> 4:9 <b>work (9)</b> 8:14,15;10:4;12:6, 13;24:20,24,25;25:7 <b>working (1)</b> 16:17 <b>worth (1)</b> 5:1</p>	<p>10:9 <b>27 (1)</b> 23:15</p>			
	<b>4</b>			
	<p><b>45 (2)</b> 18:7;19:15</p>			
	<b>9</b>			
	<p><b>9:30 (1)</b> 3:4</p>			
<b>Y</b>				
<p><b>yay (3)</b> 9:6;17:19,20 <b>year (5)</b> 8:10;10:18;15:15; 21:9;25:7 <b>years (2)</b> 3:9;13:23 <b>you-all (2)</b> 25:10,20</p>				
<b>Z</b>				
<p><b>ZIEGLER (6)</b> 9:4;15:9;20:5;26:9, 20;27:5 <b>Zion (2)</b> 3:14,16</p>				
<b>1</b>				
<p><b>10:15 (1)</b> 27:12 <b>11:3 (1)</b> 4:6 <b>11th (2)</b> 23:6,10 <b>19 (1)</b> 3:9</p>				
<b>2</b>				
<p><b>2020 (2)</b> 21:12,15 <b>2023 (1)</b> 23:15 <b>2028 (1)</b> 22:10 <b>2032 (4)</b> 21:6,10;22:10; 23:21 <b>23 (1)</b></p>				

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 6.2**

**Board Meeting Date: 04/24/2024**

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Subject: Second Amendment to Amended and Restated Labor

Agreement Presented By: Dan Langley, Esquire

Department: Administration

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**STAFF RECOMMENDATION (Motion Ready):** Approve Agenda Item #6.2 Second Amendment to the Amended and Restated Labor Services Agreement

**RELEVANT STRATEGIC GOALS:** Operational Excellence

**PROOF OF PUBLICATION:** N/A

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**BACKGROUND:** The Amended and Restated Labor Services Agreement (“Agreement”) between the District and Reedy Creek Energy Services was executed on February 22, 2023 with a term ending on December 31, 2032, and with two automatic 10-year renewal periods.

On March 27, 2024, the Board of Supervisors approved a Settlement Agreement with Walt Disney World that, among other considerations, requires amendment of the Agreement to modify the term from December 31, 2032 to September 30, 2028, to delete the automatic renewal terms and otherwise conform with the terms of the Settlement Agreement.

**FINDINGS AND CONCLUSIONS:** This Second Amendment to the Amended and Restated Labor Services Agreement modifies the Agreement as set forth in the attached Second Amendment to Amended and Restated Labor Agreement. All other conditions remain in full force and effect.

**FISCAL IMPACT:** N/A

**PROCUREMENT REVIEW:** N/A

**LEGAL REVIEW:** The District Counsel has reviewed and approved of the agreement for form and legality.

**ALTERNATIVE:** N/A

**SUPPORT MATERIALS:** Second Amendment



**SECOND AMENDMENT TO AMENDED AND RESTATED  
LABOR SERVICES AGREEMENT**

**THIS SECOND AMENDMENT TO AMENDED AND RESTATED LABOR SERVICES AGREEMENT** (the “Second Amendment”) is made by **CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**, a public corporation and public body corporate and politic of the State of Florida f/k/a Reedy Creek Improvement District, whose address is 1900 Hotel Plaza Blvd., Lake Buena Vista, Florida 32830 (the “District”), and **REEDY CREEK ENERGY SERVICES** (“RCES”), whose mailing address is 1375 Buena Vista Drive, Lake Buena Vista, Florida 32830.

**RECITALS:**

**WHEREAS**, RCES and Reedy Creek Improvement District entered into an Amended and Restated Labor Services Agreement on February 8, 2023, and a First Amendment to Amended and Restated Labor Services Agreement on February 22, 2023 (collectively, the “Labor Services Agreement”); and

**WHEREAS**, pursuant to the March 27, 2024 Settlement Agreement (“Settlement Agreement”) between the District and Walt Disney Park and Resorts U.S., Inc. (“Walt Disney”), the parties agreed that Walt Disney would cause RCES (a wholly-owned, indirect subsidiary of The Walt Disney Company) to enter into an amendment to the Labor Services Agreement concerning certain matters.

**NOW, THEREFORE**, pursuant to the terms of the Settlement Agreement and the consideration thereunder, the District and RCES agree that the foregoing Recitals are true and correct and are hereby incorporated by this reference and that the Labor Services Agreement is hereby amended as follows:

1. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Labor Services Agreement unless the context clearly requires otherwise.
2. The Fourth Whereas clause of the Labor Services Agreement is deleted and all references to the Comprehensive Plan as defined by such Whereas clause are deleted from the Labor Services Agreement.
3. The last 3 sentences of Section 2 of the Labor Services Agreement are hereby deleted in their entirety.
4. The Expiration Date in Section 3.1 of the Labor Services Agreement is and shall be September 30, 2028.
5. Section 3.2 of the Labor Services Agreement is deleted in its entirety.
6. Section 3.4 of the Labor Services Agreement is amended to replace “October 1, 2032” with “September 30, 2028.”

7. Section 11.2 Notice Addresses is hereby amended to change the District's addresses for notices to:

District: Central Florida Tourism Oversight District  
Attention: District Administrator  
1900 Hotel Plaza Blvd.  
Lake Buena Vista, Florida 32830-0170

With a copy to: Fishback Dominick LLP  
Attn: CFTOD General Counsel  
1947 Lee Road  
Winter Park, Florida 32789

8. Except as amended herein, the Labor Services Agreement remains effective.

**IN WITNESS WHEREOF**, this Second Amendment has been executed as of the day and year first above written.

**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**, a public  
corporation and public body corporate  
and politic of the State of Florida.

By: \_\_\_\_\_  
Charbel Barakat, Vice Chairman of  
the Board of Supervisors

**REEDY CREEK ENERGY SERVICES**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BOARD OF SUPERVISORS REPORT 6.3

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Board Meeting Date: 04/24/2024

Subject: District Fire Department Name Change

Presented By: Chief Eric Ferrari

Department: District Fire Department

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**STAFF RECOMMENDATION (Motion Ready):** Approve Agenda Item #6.3 renaming the Reedy Creek Fire Department to the District Fire Department.

**RELEVANT STRATEGIC GOALS:** Operational Excellence

**PROOF OF PUBLICATION:** N/A

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**BACKGROUND:** In order to align with the District's new name and branding, the Reedy Creek Improvement District Fire Department will be renamed the District Fire Department.

**FINDINGS AND CONCLUSIONS:** This name was selected from a list of three options by a vote of the personnel in the Fire Department. As part of the renaming, the Fire Department logo has also been redesigned as noted below.



**FISCAL IMPACT:** Costs associated with the name change and rebranding will be covered by budgeted operating costs for overall rebranding in fiscal year 2024.

**PROCUREMENT REVIEW:** N/A

**LEGAL REVIEW:** N/A

**ALTERNATIVE:** N/A

**SUPPORT MATERIALS:** N/A

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BOARD OF SUPERVISORS REPORT 8.1

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Board Meeting Date: 04/24/2024

Subject: Change Order to Contract# C006110 - Project U Chilled Water Construction Services

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

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**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.1 contract change order to #C006110 for Project U chilled water service installation in the amount of \$2,150,000 with Southland Construction Inc., with a utility customer reimbursement of \$1,918,002.72, for a net cost to the District of \$231,997.28

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**RELEVANT STRATEGIC GOALS:** Quality of Place

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**PROOF OF PUBLICATION:** N/A

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### **BACKGROUND:**

The proposed agreement is in response to a customer's Utility Service Request (USR) for chilled water utility service at Project U located along Floridian Way. The total hard and soft costs to provide chilled water service is estimated to be \$2,476,788.89. In accordance with the District's Conditioned Water Service Rules and Regulations, the customer shall provide a total contribution-in-aid-of-construction of \$2,217,686.29, and of that amount \$1,918,002.72 on this contract. The net investment by the District on this contract is \$231,997.28, and on the total project \$259,102.60. This amount represents two (2) years in anticipated revenue from sales of chilled water to Project U.

Staff recommends a change order to Contract #C006110, executed in March 2023, between the District and Southland Construction for construction of World Drive North Phase III. Garney Construction is a subcontractor working for Southland Construction responsible for the mechanical utility system work scope, including chilled water piping. Garney is mobilized and working in the vicinity of Project U. Utilizing Garney for construction services associated with chilled water service to Project U is efficient and ensures seamless coordination between the required chilled water pipe relocations for the roadway project and the new customer connections to this new chilled water pipe. Garney's proposal cost for this work is \$2,150,000, which was reviewed and further negotiated by the District's Construction Manager.

### Expanded Details of Project U Utility Service Requests:

In January 2022, Walt Disney Imagineering (WDI) submitted an initial USR for Project U located at Magic Kingdom West. The USR included requests for electric, domestic (potable) water, sanitary sewer (wastewater), reclaimed water, natural gas, chilled water, solid waste, and recycling services. Updated/revised requests were subsequently submitted to provide additional information necessary to respond to the USR.

In October 2022, the District responded to the USR (assigned #9408) providing details for each utility service requested regarding the ability to provide service, the conditions for service, and the requirements for any contribution-in-aid-of-construction (CIAC) from the customer. To provide the requested services, the District would need to design and construct extensions to existing facilities for electric, potable water, wastewater and reclaimed water. However, additional information would be needed to continue with the necessary designs and determine the appropriate CIACs.

Project U's request for chilled water service was specifically addressed in the District's USR response. Project U is within the limits of the World Drive North – Phase 3 roadway project. The District chilled water system has the capacity to supply the project, but chilled water was not available until the proposed District infrastructure, to be constructed adjacent to the project site as part of the World Drive North (WDN) Phase 3 roadway project, was constructed and commissioned.

The District received sufficient information to design the chilled water service to Project U in late 2022. This was after utility relocation designs were complete and the World Drive North – Phase 3 project was bid.

JCB Construction was retained for construction of the potable water, wastewater, and reclaimed water extensions and Carter Electric for the electric utility extensions.

### **FINDINGS AND CONCLUSIONS:**

Design of the necessary extensions to the chilled water facilities is now complete and the subcontractor (Garney Construction) working on the chilled water infrastructure for WDN Phase 3 has provided a price to install the necessary extensions in conjunction with the roadway work.

The extension includes:

- Installation of 12-inch diameter chilled water supply and return pipelines, via a jack and bore operation under the new roadway typical section using the casing pipes.
- Installation of a BTU meter assembly with all valves and accessories to facilitate the connection of temporary chillers to the supply and return pipelines.

The scope of work for the chilled water service includes, but is not limited to the following:

- Excavation, Trenching, Shoring, Backfill and Compaction of Chilled Water Piping
- Installation of Chilled Water carrier within Jack and Bore casing
- Misc. Concrete and Metals
- Hydrotesting and Flushing of Chilled Water piping
- Dewatering
- Instrumentations and Controls
- Electrical
- Bond
- Maintenance of Traffic

### **FISCAL IMPACT:**

Funding of \$231,997.28 is from the fiscal year 2025 Utility Capital Planned Work budget. The customer is paying the balance of all remaining costs for this construction.

### **PROCUREMENT REVIEW:**

This change order will be reviewed and approved for compliance with the District's procurement policies.

### **LEGAL REVIEW:**

This agenda item will be reviewed by the District's General Counsel.

### **SUPPORT MATERIALS:**

Garney Cost Proposal- Chilled Water



**Central Florida Tourism Oversight District**  
**Notices: 10450 Turkey Lake Road, Box # 690519**  
**Orlando, Florida 32869**

**LUMP SUM AGREEMENT CHANGE ORDER**

PROJECT: **WORLD DRIVE NORTH PHASE III**

EFFECTIVE DATE: \_\_\_\_\_

CONTRACTOR:

CONTRACT NO.: **C006110**

Southland Construction, Inc.  
 172 West Fourth Street  
 Apopka, Florida 32703

CHANGE ORDER NO.: **4**

The Owner and the Contractor hereby agree to this Change Order for all labor, services, materials, equipment and other items or things to be furnished, provided or performed, and all other obligations, terms and conditions, as described in Exhibit A hereto, all of which shall become part of the Work.

1.	Original Contract Sum	\$74,253,965.00
2.	Total net change by previous Change Orders	(\$4,987,189.69)
3.	Contract Sum prior to this Change Order	\$69,266,755.31
4.	Contract Sum will be adjusted with this Change Order	<b><u>\$2,150,000.00</u></b>
5.	Adjusted Contract Sum including this Change Order	\$71,416,775.31
6.	Original Contract Time	May 6, 2025
7.	Contract Time prior to this Change Order	May 6, 2025
8.	Adjustment in Contract Time by this Change Order	<b><u>0 days</u></b>
9.	Adjusted Contract Time including this Change Order	May 6, 2025

Any funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor to be first applied to the payment of Subcontractors, laborers and materialmen, and other costs of construction, pursuant to law.

The total amount of this Change Order is fair, reasonable and mutually agreeable, and includes all applicable taxes, insurance, bond or corporate guarantee, delivery, supervision, overhead, profit, labor, labor impact, materials, changes, cardinal change, delays, acceleration, inefficiency and cumulative impact, or any claims, lawsuits, actions or causes of action therefor, and the Contractor hereby waives, releases and forever discharges any and all claims, lawsuits, actions or causes of action for such items associated with or related to the Work covered by this Change Order. Without limitation on the foregoing, the parties hereto specifically acknowledge that it is their intent to hereby waive, release and forever discharge any and all cardinal change or cumulative impact claims, whether known or unknown, whether in law or in equity, whether contingent or non-contingent, and whether past, present or future, arising out of or in connection with this Change Order and all previous Change Orders.

This Change Order represents the entire and integrated agreement between the parties, and supersedes all prior negotiations and qualifications, for this change in scope; but this Change Order and the Work contemplated herein is, except as otherwise specifically provided herein, subject to all the terms and conditions of the Contract including, without limitation, those concerning payment.

OWNER:  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT** (f/k/a Reedy Creek Improvement District)

CONTRACTOR:  
**SOUTHLAND CONSTRUCTION, INC.**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

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

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

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EXHIBIT A

Item	Description	Value
1	General Conditions	\$150,000.00
2	Concrete	\$48,000.00
3	Chilled Water Piping, Fittings and Valves	\$1,722,000.00
4	Instrumentation	\$50,000.00
5	Electrical	\$70,000.00
6	Testing and Flushing	\$110,000.00
<b>TOTAL LUMP SUM AMOUNT OF THIS CHANGE ORDER</b>		<b>\$2,150,000.00</b>

Contractor shall provide all equipment, labor, materials and management for installation or provision of the following:

- Excavation, Trenching, Shoring, Backfill and Compaction of Chilled Water Piping
- Installation of Chilled Water carrier within Jack and Bore casing
- Misc. Concrete and Metals
- Hydrotesting and Flushing of Chilled Water piping
  - To be performed in conjunction with current WDN Ph3 project flushing
- Instrumentations and Controls
- Electrical
- Bond

Exclusions:

- Site Fencing
- Jack and Bores/Casing Installation
- Material Testing and Welding Inspection
- Dewatering
- Maintenance of Traffic
- Import Earthwork Material
- Survey/Layout/As-Builts



March 27<sup>th</sup>, 2024

Tom Crittenden - Project Manager  
Southland Construction, Inc.  
172 West Fourth Street  
Apopka, FL 32703  
[tomc@southlandconstruction.com](mailto:tomc@southlandconstruction.com)

**Subject:** 2384 – World Drive North Phase 3  
Project U Scope of Work

Garney Scope as quoted to include Equipment, Labor, Material and Management for installation of the following:

- Excavation, Trenching, Shoring, Backfill and Compaction of Chilled Water Piping
- Installation of Chilled Water carrier within Jack and Bore casing
- Misc. Concrete and Metals
- Hydrotesting and Flushing of Chilled Water piping
  - To be performed in conjunction with current WDN Ph3 project flushing
- Instrumentations and Controls
- Electrical
- Bond

This scope does not include pricing for the following and is excluded from our scope:

- Site Fencing
- Jack and Bores/Casing Installation
- Material Testing and Welding Inspection
- Dewatering
- Maintenance of Traffic
- Import Earthwork Material
- Survey/Layout/As-Builts

This work is based on a Standard 5 day – 10hr/day work week. After hours or weekend work is not included.

This quote is based on drawing sets:

- Polynesian Resort – Project U – Chilled Water Service, Bid Submission 07/07/2023
  - Pricing does NOT include performing work in accordance with document specified Phasing

Proposal is based on completing work in a continuous manner without delays beyond our control. We are unaware of any restrictions that may affect the ability to complete this work in a continuous



manner. Any additional costs arising from delays or restrictions shall be considered compensable and shall be submitted per the procedures outlined in the General Conditions of the Agreement.

Pricing is based on work beginning at completion of Jack and Bore casing installation.

Overtime inspection fees are excluded from this proposal.

Market pricing and lead time conditions are volatile. Material pricing in this proposal is based on today's quotes but are susceptible to increase or surcharge at time of delivery. Garney will cover up to a 10% increase in material cost.

Proposal based upon a mutually agreeable schedule between General Contractor and Garney.

Proposal based upon retainage being release approximately 30 days after performance testing is completed and accepted.

This pricing is good for 90 calendar days from today.

Bollards revised per email from Tom Crittenden

Our price to complete the above scope as listed is as follows:

- General Conditions - \$150,000.00
- Concrete - \$48,000.00
- Chilled Water Piping, Fittings and Valves - \$1,722,000.00
- Instrumentation - \$50,000.00
- Electrical - \$70,000.00
- Maintenance Of Traffic – N/A
- Testing and Flushing - \$110,000.00

**Total - \$2,150,000.00**

If you have any questions, please contact me at 321-438-7652.

Sincerely,

GARNEY COMPANIES, INC.

Patrick Kelly, Project Manager

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BOARD OF SUPERVISORS REPORT 8.2

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Board Meeting Date: 04/24/2024

Subject: Contract for Network Security and Video Upgrades for Utility Infrastructure

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

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**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.2 contract for network security and video upgrades for utility infrastructure with Alert Security Inc. in the amount of \$699,648.17

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**RELEVANT STRATEGIC GOALS:** Operational Excellence

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**PROOF OF PUBLICATION:** N/A

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### **BACKGROUND:**

The United States Department of Energy noted an increase in physical attacks on electric substations and utility infrastructure. In conjunction with the Cybersecurity and Infrastructure Security Agency, they recommended installation of physical security measures to detect unauthorized intrusion and provide local or remote intruder alerts and notifications.

### **FINDINGS AND CONCLUSIONS:**

Staff conducted a thorough analysis of CFTOD utility infrastructure to determine additional security monitoring needed to ensure all critical infrastructure equipment are monitored.

Design of the necessary surveillance equipment, as well as additional equipment required for installation is complete.

A benchmark analysis was conducted comparing equipment prices to three additional companies and found Alert Security Inc. d/b/a Signature Systems of Florida to be competitively priced.

### **FISCAL IMPACT:**

Funding in the amount of \$699,648.17 is from the FY2024 Utility Planned Work budget.

### **PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

### **LEGAL REVIEW:**

This agenda item will be reviewed by the District's General Counsel.

### **SUPPORT MATERIALS:**

Location, equipment, and configuration are exempt from disclosure.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 8.3**

**Board Meeting Date: 04/24/2024**

Subject: Award of Bid # C006520 Compostable Waste Stream Transportation and Disposal Services

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.3 award of a three-year contract for compostable waste stream transportation and disposal services to CompostUSA of Sumter County, LLC in the amount of \$19,278,591

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** Bid released to the public: January 22, 2024

**BACKGROUND:**

The Utilities Department handles large quantities of numerous waste streams that can be beneficially reused through a composting process. These waste streams include biosolids from the wastewater treatment process, yard waste, manure, and food waste/compostable material.

These waste streams can be composted and then used in agricultural and horticultural applications as a soil amendment and soil media due to their improved physical, chemical, and biological properties. This conservation effort diverts approximately 70,000 tons per year of waste products from being disposed of in landfills.

The food waste/compostable material waste stream (approximately 18,000 tons per year) consists of post-consumer food waste and compostable dinnerware items collected from customers throughout the District. Due to the post-consumer nature of this waste stream, it includes unauthorized or inorganic materials that can negatively impact the composting process and/or the quality of the finished compost.

To address the impacts of unacceptable material the invitation to bid was issued with a base bid that included the cost of decontamination in the unit price. Bidders were also invited to bid on an alternative that excluded the cost of decontamination in the unit price, but included a line item for a one-time lump-sum fee for all decontamination over the contract period.

**FINDINGS AND CONCLUSIONS:**

On January 22, 2024, Invitation to Bid # C006520 was released to vendors for compostable waste stream transportation and disposal services for a three-year period. One (1) bid were received as follows:

Vendor's Legal Name	Location	Bid Amounts
CompostUSA of Sumter County, LLC	Okahumpka, Florida	Base Bid: \$19,864,791 Alternate Bid: \$19,278,591

CompostUSA of Sumter County, LLC was the lowest responsive and responsible bidder.

The base bid included a unit price for food waste/compostable material (including all costs for decontamination) of \$128.75 per ton.

The alternate bid included a unit price for food waste/compostable material (excluding all costs for

decontamination) of \$89.30 per ton, but included a one-time lump sum fee of \$1,780,800 for decontamination.

When assessed over the contract period, the alternate bid was determined to be less costly for the District by \$586,200.

The Utilities Department is requesting approval of Contract # C006520 with CompostUSA of Sumter County, LLC for compostable waste stream transportation and disposal services. Staff recommends approving the contract for the period of **May 01, 2024** through **April 30, 2027** with the below rate schedule.

RATE SCHEDULE					
Item	Description	UoM	Est Qty	Unit Price	Annual Total
1	Biosolids Transportation & Disposal	TONS	32,000	\$79.90	\$2,556,800
2	Yard Waste/Wood Transportation & Disposal	TONS	18,000	\$56.50	\$1,017,000
3	Manure/Bedding Transportation & Disposal	TONS	4,500	\$44.25	\$199,125
4	Operation of Yard Waste Facility	MONTH	12	\$22,806.00	\$273,672
6	Food Waste/Compostable Material Transportation & Disposal Excluding Costs for Decontamination	TONS	20,000	\$89.30	\$1,786,000
<b>ANNUAL SUBTOTAL</b>					<b>\$5,832,597</b>
<b>CONTRACT TOTAL FOR 3-YEARS (05/01/24-04/30/27)</b>					<b>\$17,497,791</b>
7	Decontamination of Food Waste/Compostable Material Waste Stream, includes cost of new equipment and support structures <i>(One-time LS cost for the decontamination process for contract term.)</i>	LS	1	\$1,780,800.00	\$1,780,800
<b>GRAND TOTAL (NOT-TO-EXCEED AMOUNT)</b>					<b>\$19,278,591</b>

**FISCAL IMPACT:**

Funding for this purchase will be budgeted as follows:

Estimated Fiscal Impact				
Accounting Line	FY24	FY25	FY26	FY27
333-108-5307012 (wastewater)	\$ 1,278,400	\$ 2,556,800	\$ 2,556,800	\$ 1,278,400
335-107-5307012 (solid waste)	\$ 1,637,898	\$ 3,275,797	\$ 3,275,797	\$ 1,637,899
One-Time, Lump-Sum, Expense Payment (724E001)	\$ 1,780,800	-	-	-
<b>ESTIMATED TOTAL</b>	<b>\$ 4,697,098</b>	<b>\$ 5,832,597</b>	<b>\$ 5,832,597</b>	<b>\$ 2,916,299</b>

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

CompostUSA of Sumter County, LLC

Contract

TRANSPORTATION & DISPOSAL SERVICES FOR COMPOSTABLE WASTE STREAMS AGREEMENT

THIS AGREEMENT, is made effective as of April 24, 2024 by and between **Central Florida Tourism Oversight District** (herein referred to as the (“Owner,” “District” or “CFTOD”), whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, and **Compost USA of Sumter County, LLC**, (herein referred to as the (“Contractor”), whose mailing address is 1650 CR 470 W., Okahumpka, Florida 34762.

W I T N E S S E T H

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid (“ITB”) No. C006520 on January 22, 2024 for Compostable Waste Stream Transportation and Disposal Service;

WHEREAS, one (1) bidder responded, and Compost USA of Sumter County, LLC was the responsive and responsible bidder. The Contractor was subsequently selected as the intended awardee for these services; and

WHEREAS, Owner desires to employ the services of Contractor for a period beginning May 1, 2024 and ending April 30, 2027, or as otherwise modified as set forth in this Agreement, to perform the hereinafter described Services, and Contractor desires to be so employed.

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations contained in this Agreement, the parties agree as follows:

1. DEFINITIONS.

a. Agreement. The Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only as set forth below in Article 6.

b. Services. The term “Services” as used in this Agreement shall be construed to include all Services set forth in Exhibit A, all obligations of Contractor under this Agreement and where any Changed Service Authorizations have been issued pursuant to Article 6 of this Agreement, the changed Services set forth therein.

2. SCOPE OF SERVICES.

A description of the nature, scope and schedule of Services to be performed by Contractor under this Agreement in accordance with the Exhibits outlined in the Article 22 - Contract Documents.

3. BASIS FOR COMPENSATION AND PAYMENTS.

Not to Exceed (“NTE”) Amount

a. Owner shall pay to Contractor, for its Services and in consideration of the terms and conditions of this Agreement, an amount for time reasonably and properly incurred by Contractor in performance of its Services based upon the rates shown on the below Rate Schedule incorporated herein by reference. However, in no event shall the NTE amount exceed **NINETEEN MILLION, TWO HUNDRED SEVENTY-EIGHT THOUSAND, FIVE HUNDRED NINETY-ONE AND ZERO ONE-HUNDREDTHS DOLLARS (\$19,278,591.00)**; and the Reimbursable Expenses shall in no event exceed **(N/A)**.

<b>RATE SCHEDULE</b>					
<b>Item</b>	<b>Description</b>	<b>UoM</b>	<b>Est Qty</b>	<b>Unit Price</b>	<b>Annual Total</b>
1	Biosolids Transportation & Disposal	TONS	32,000	\$79.90	\$2,556,800
2	Yard Waste/Wood Transportation & Disposal	TONS	18,000	\$56.50	\$1,017,000
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4	Operation of Yard Waste Facility	MONTH	12	\$22,806.00	\$273,672
6	Food Waste/Compostable Material Transportation & Disposal Excluding Costs for Decontamination	TONS	20,000	\$89.30	\$1,786,000
<b>ANNUAL SUBTOTAL</b>					<b>\$5,832,597</b>
<b>CONTRACT TOTAL FOR 3-YEARS (05/01/24-04/30/27)</b>					<b>\$17,497,791</b>
7	Decontamination of Food Waste/Compostable Material Waste Stream, includes cost of new equipment and support structures (One-time LS cost for the decontamination process for contract term.)	LS	1	\$1,780,800.00	\$1,780,800
<b>GRAND TOTAL (NOT-TO-EXCEED AMOUNT)</b>					<b>\$19,278,591</b>

b. Payments shall be made monthly for Services plus Reimbursable Expenses incurred. Contractor shall invoice Owner, in the form required by Owner, on the first day of each calendar month for Services rendered during the preceding month plus Reimbursable Expenses incurred.

c. Reimbursable Expenses shall include only the actual and necessary costs and expenses, without markup, reasonably and properly incurred by Contractor in connection with the Services rendered under this Agreement. Direct expenses are determined and pre-approved by Owner.

d. Contractor shall provide any and all backup required by Owner in connection with time spent and Reimbursable Expenses incurred.

e. Owner shall pay each invoiced amount (or uncontested portion thereof) on or about the thirtieth day following receipt of each invoice.

f. All invoices should reference the contract number and be submitted to the following address:

**Central Florida Tourism Oversight District**  
**C/O: Reedy Creek Energy Services – Utilities Division**  
**Attention: Accounts Payable**  
**P.O. Box 690519**  
**Orlando, Florida 32869**  
**All invoices shall be sent to [wdw.rces.billing@disney.com](mailto:wdw.rces.billing@disney.com)**

g. Contractor shall be compensated for any Additional Services based upon the Rate Schedule; such amounts to be invoiced and paid in accordance with the terms of Paragraphs b, c, d, and e herein; provided, however, that Contractor shall not be entitled to compensation for Additional Services unless Contractor has obtained prior written authorization of Owner to perform the same.

h. Owner retains the right to reduce any portion of Contractor's Services at any time.

4. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

Contractor hereby represents to Owner that: (a) it has the experience and skill to perform the Services as set forth in this Agreement; (b) that it shall comply with all applicable federal, state, and local laws, rules, codes, and orders of any public, quasi-public or other government authority; (c) it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed under this Agreement; (d) it has by careful examination satisfied itself as to: (i) the nature, location and character of the general area in which the Services are to be performed including, without limitation, the surface conditions of the land and all structures and obstructions thereon, both natural and manmade, the surface water conditions of the general area and, to the extent pertinent, all other conditions; and (ii) all other matters or things which could in any manner affect the performance of the Services.

5. INSURANCE; INDEMNIFICATION.

a. The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:

- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with minimum combined single limits for bodily injury and property damage of \$1,000,000 per occurrence;
- ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with minimum combined single limits of \$1,000,000 per occurrence;

- iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence;
- iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i, ii, and iii. above in an amount of at least \$1,000,000 per occurrence;
- v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be at least \$4 million.
- viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.
- ix. Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

b. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.

c. CANCELLATION. All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.

d. ADDITIONAL INSUREDS. Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.

e. WAIVERS. The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.

f. CLAIMS. The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.



g. **INDEMNIFICATION.** The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by the negligence, recklessness or intentional wrongful misconduct (which includes, without limitation, any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to perform and complete the Work in strict compliance with the Contract Documents, unless such failure has been specifically waived by the Owner in writing upon final acceptance of the Work) of the Contractor or any persons employed or utilized by the Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

6. **MODIFICATIONS, ADDITIONS, OR DELETIONS TO THE SERVICES.**

a. A Changed Service Authorization shall be a writing by the Owner that shall consist of additions, deletions, or other modifications to the Agreement agreed to by the Contractor.

b. The Owner may, from time to time, without affecting the validity of the Agreement, or any term or condition thereof, issue Changed Service Authorizations which may identify additional or revised Scope of Services, or other written instructions and orders, which shall be governed by the provisions of the Agreement. The Contractor shall comply with all such orders and instructions issued by the Owner. Upon receipt of any such Changed Service Authorization, the Contractor shall promptly proceed with the Changed Service Authorization, and the resultant decrease or increase in the amount to be paid the Contractor, if any, shall be governed by the provisions of Article 3 in this Agreement.

7. **PROTECTION OF PERSONS AND PROPERTY.**

a. The Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Services, and shall provide all protection to prevent injury to all persons involved in any way in the Services and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby.

b. All Services, whether performed by the Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, and all applicable equipment, machinery, materials, tools and like items used in the Services, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

c. The Contractor shall at all times keep the general area in which the Services are to be performed clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by performance of the Services, and shall continuously throughout performance of the Services remove and dispose of all such materials. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the general area in which the Services are to be performed clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor.

8. **BOOKS AND RECORDS.**

Contractor shall maintain comprehensive books and records relating to any Services performed under this Agreement, which shall be retained by Contractor for a period of at least four (4) years from and after the completion of such Services. Owner, or its authorized representatives, shall have the right to audit such books and records at all reasonable times upon prior notice to Contractor. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

9. PROMOTION/CONFIDENTIALITY.

The Contractor, by virtue of this Agreement, shall acquire no right to use, and shall not use, the name of the Owner or the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any related, affiliated or subsidiary companies: in any advertising, publicity or promotion; to express or imply any endorsement of the Contractor's Work or services; or in any other manner whatsoever (whether or not similar to the uses hereinabove specifically prohibited). Contractor may, during the course of its engagement hereunder, have access to and acquire knowledge regarding plans, concepts, designs, materials, data, systems and other information of or with respect to Owner or Owner's Representative, or any subsidiaries or affiliated companies thereof, which may not be accessible or known to the general public ("Confidential Information"). Confidential Information that is specific as to techniques, equipment, processes, products, concepts or designs, etc. shall not be deemed to be within the knowledge of the general public merely because it is embraced by general disclosures in the public domain. Any knowledge acquired by Contractor from such Confidential Information or otherwise through its engagement hereunder shall not be used, published or divulged by Contractor to any other person, firm or corporation, or used in any advertising or promotion regarding Contractor or its services, or in any other manner or connection whatsoever without first having obtained the written permission of Owner, which permission Owner may withhold in its sole discretion. Contractor specifically agrees that the foregoing confidentiality obligation applies to, but is not limited to, any information disclosed to Contractor in any document provided to Contractor pursuant to or in connection with this Agreement, including but not limited to, a Request for Proposal, Request for Estimate, Request for Quotation or Invitation to Bid, except to the extent Contractor must disclose such information to compile and prepare its proposed price for work or services performed hereunder. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

10. ASSIGNMENT.

This Agreement is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type including, without limitation, transfer of stock in Contractor, without the prior written consent of Owner, which consent Owner may withhold in its sole discretion. Owner retains the right to assign all or any portion of this Agreement at any time. Upon such assignment, and provided the Assignee shall, in writing, assume Owner's obligations under this Agreement, Owner shall be automatically released and discharged from any and all of its obligations under this Agreement, and Contractor shall thenceforth look solely to the Assignee for performance of Owner's obligations under this Agreement.

11. SUSPENSION OR TERMINATION.

Anything in this Agreement to the contrary notwithstanding, Owner shall, in its sole discretion and with or without cause, have the right to suspend or terminate this Agreement upon seven (7) days prior written notice to Contractor. In the event of termination, Owner's sole obligation and liability to Contractor, if any, shall be to pay to Contractor that portion of the amount earned by it, plus any earned amounts for extra Services performed pursuant to Articles 3 and 6, through the date of termination.

12. SUBCONTRACTORS.

If the Contractor desires to employ Subcontractors in connection with the performance of its Services under this Agreement:

a. Nothing contained in the Agreement shall create any contractual relationship between the Owner and any Subcontractor. However, it is acknowledged that the Owner is an intended third-party beneficiary of the obligations of the Subcontractors related to the Services.

b. Contractor shall coordinate the services of any Subcontractors, and remain fully responsible under the terms of this Agreement, Contractor shall be and remain responsible for the quality, timeliness and the coordination of all Services furnished by the Contractor or its Subcontractors.

c. All subcontracts shall be in writing. Each subcontract shall contain a reference to this Agreement and shall incorporate the terms and conditions of this Agreement to the full extent applicable to the portion

of the Services covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by such terms and conditions to the full extent applicable to its portion of the Services.

13. NOTICE.

a. Notices required or permitted to be given under this Agreement shall be in writing, may be delivered personally or by mail, telex, facsimile, cable, or courier service, and shall be deemed given when received by the addressee. Notices shall be addressed as follows:

If to Owner: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
10450 Turkey Lake Road, Box #690519  
Orlando, FL 32869  
Attention: Contracting Officer

If to Contractor: COMPOST USA OF SUMTER COUNTY, LLC  
1650 CR 470 W.  
Okahumpka, FL 34762  
Attention: Tony Simon

or to such other address as either party may direct by notice given to the other as hereinabove provided.

b. Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered under this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

14. OWNERSHIP OF WORK PRODUCT.

a. All drawings, data, ideas, concepts, molds, models, tooling, improvements, inventions, or other tangible or intangible work product in whole or in part conceived, produced, commissioned or acquired by Contractor hereunder ("Work Product") shall be and remain the sole and exclusive property of Owner when produced, whether or not fixed in a tangible medium of expression, except that Contractor may retain copies of such Work Product for its permanent reference, but shall not use such copies in any manner whatsoever without the express written consent of Owner and shall keep same confidential in accordance with the requirements of Article 9 entitled Promotion/Confidentiality. In the event of early termination of this Contract, in whole or in part, Contractor shall deliver to Owner all Work Product whether complete or not.

b. Without limiting the forgoing, Contractor agrees that any and all Work Product shall be deemed to be "works made for hire" for Owner as the author, creator, or inventor upon creation; provided, however, that in the event and to the extent that such Work Product is determined not to constitute "works made for hire" as a matter of law, Contractor hereby irrevocably assigns and transfers such property, and all right, title and interest therein, whether now known or hereafter existing including, but not limited to, patents and copyrights, to Owner and its successors and assigns. Contractor grants to Owner all rights including, without limitation, reproduction, manufacturing and moral rights, throughout the universe in perpetuity and in all languages and in any and all media whether now or hereafter known, with respect to such Work Product. Contractor acknowledges that Owner is the motivating force and factor, and for purposes of copyright or patent, has the right to such copyrightable or patentable Work Product produced by Contractor under this Contract. Contractor agrees to execute any and all documents and do such other acts as requested by Owner to further evidence any of the transfers, assignments and exploitation rights provided for herein.

15. LEGAL PROCEEDINGS.

a. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

b. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, the Contract Documents or the Work to be performed hereunder (a "Proceeding"), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

c. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

#### 16. MISCELLANEOUS PROVISIONS.

a. Any failure by Owner to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Owner may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

b. The acceptance of final payment under this Agreement, or the acceptance of final payment upon early termination hereof, shall constitute a full and complete release of Owner by Contractor from any and all claims, demands and causes of action whatsoever which Contractor may have against Owner in any way related to the subject matter of this Agreement and Contractor shall as a condition precedent to receipt of final payment from Owner, submit to the Owner a fully and properly executed General Release, in the form attached to this Agreement. Neither the Owner's review, approval or acceptance of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to Owner in accordance with law for all damages to Owner caused by the Contractor's performance of any of the Services furnished pursuant to this Agreement.

c. It is understood and agreed that Contractor is acting as an independent contractor in the performance of its Services hereunder, and nothing contained in this Agreement shall be deemed to create an agency relationship between Owner and Contractor.

d. The rights and remedies of Owner provided for under this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

#### 17. THE OWNER'S REPRESENTATIVES.

**Reedy Creek Energy Services**, whose designated representative is **Randall Sims**, and whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, shall act as the Owner's authorized representative (herein referred to as the "Owner's Representative"); provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.

Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

18. PUBLIC RECORDS.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX # 690519, ORLANDO, FLORIDA 32869.**

a. THE CONTRACTOR SHALL:

- i. Keep and maintain public records required by the public agency to perform the service.
- ii. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
- iv. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. REQUEST FOR RECORDS; NONCOMPLIANCE:

- i. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

ii. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

c. CIVIL ACTION:

i. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.

ii. A notice complies with subparagraph c.2. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

iii. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

19. NON-FUNDING.

In the event that budgeted funds for this Agreement are reduced, terminated, or otherwise become unavailable, Owner may terminate this Agreement upon written notice to Contractor without penalty to Owner. Owner shall be the final authority as to the availability of the funding.

20. E-VERIFY COMPLIANCE.

The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of this Section hereof, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

21. SCRUTINIZED COMPANIES.

a. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.

b. Specifically, by executing this Agreement, the Contractor certifies that it is **not** on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

c. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:

- i. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473 Florida Statutes; and/or
- ii. Engaged in business operations in Cuba or Syria.

d. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:

- i. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes, and/or
- ii. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.

e. If this Agreement is terminated by the Owner as provided in paragraph d above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.

f. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner’s termination.

g. Unless explicitly states in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

**22. CONTRACT DOCUMENTS.**

a. The Contract Documents which comprise the entire understanding between the Owner and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to the Agreement. Each Exhibit is incorporated herein by reference for all purposes.

- Exhibit A: Scope of Services (A-1 through A-4)
- Exhibit B: Special Contract Conditions (B-1 through B-15)

b. If there is a conflict between the terms of this Agreement and the Exhibits, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the Exhibits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

**OWNER**  
**CENTRAL FLORIDA TOURISM**  
**OVERSIGHT DISTRICT**

**CONTRACTOR**  
**COMPOST USA OF SUMTER COUNTY, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

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

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

**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006520**

Contractor shall provide all labor, material, equipment, supervision, transportation, tools, and all other things necessary to provide compostable waste stream transportation and disposal service as described below.

**SECTION 1. SCOPE OF SERVICES**

1.1 Contractor shall provide the following services:

- A. Perform services to transport and dispose of waste for off-site beneficial reuse, recycling and/or composting of wastewater biosolids, yard waste/wood, manure, food waste/compostable material (referred to individually as a “waste stream” or collectively as “waste streams”) produced at Central Florida Tourism Oversight District (“CFTOD”) to a Florida Department of Environmental Protection (“FDEP”) permitted/licensed contractor-owned composting facility in accordance with CFTOD’s FDEP operating permit. The Contractor will be responsible for furnishing trailers to receive waste streams from the District at designated locations and transporting to FDEP-permitted location no further than 75 miles away.
1. The Contractor to provide turn-key services that include transportation and disposal through off-site beneficial reuse, recycling and/or composting for all Waste Streams described herein.
  2. The Contractor is guaranteeing capacity at a FDEP-permitted facility for waste streams described within for the entire term of the contract.
  3. The Contractor’s required responsibilities include, but not limited to, the following:
    - a. Prepare and maintain an emergency preparedness and response plan.
    - b. Properly train all personnel and/or subcontractor personnel.
    - c. Maintain control of applicable documents and records.
    - d. Maintain and provide to CFTOD all applicable data and performance measures as requested.
    - e. Participate in corrective and preventative action plans.
    - f. Prepare and maintain all reporting required per FDEP operating permit.
  4. The Contractor shall provide hauling/transportation.
  5. Transportation Services will include the following:
    - a. Furnishing and placement/staging of trailers as required by CFTOD for waste materials.
    - b. Leak proof transport trailers will be equipped to provide top cover of trailers and all other Department of Transportation (“DOT”) regulatory requirements during hauling.
    - c. All vehicles and equipment meet DOT requirements for compliant transportation of waste streams.
    - d. All vehicles used by the Contractor shall clearly indicate name of company, vehicle number and a contact telephone number of the company office.
    - e. Utilize approved haul routes within the boundary of CFTOD.
    - f. Weighing of each load at the CFTOD site prior to departure.
    - g. Responsibility for any spillage, accidental or otherwise, which occurs off or on the CFTOD site including removal and sanitization with appropriate regulatory notification.
    - h. Provide adequate number of trailers compatible with existing CFTOD yard dog tractors for loading and staging activities.
  6. The Contractor shall maintain all governmental approvals and licenses required by Scope of Services as applicable to current law that may be amended in the future.
  7. The Contractor’s mode of conveyance and transport shall be acceptable to CFTOD. All trailers and tractor exteriors shall be clear of any Waste Streams prior to exiting facility.
  8. The Contractor shall provide the following hours and days for transportation services:
    - a. Biosolids: Monday-Saturday, 7:30 AM - 4:00 PM
    - b. Green Waste: Monday-Saturday, 7:30 AM - 4:00 PM
    - c. Manure: Everyday, 7:30 AM - 4:00 PM
    - d. Food Waste/Compostable Material: Everyday, 7:30 AM - 4:00 PM



**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006520**

9. The Contractor shall provide the District documentation prior to departure including:
  - a. CFTOD transport document number
  - b. Date and time of pick-up
  - c. Waste stream type
  - d. Weight of load
  - e. Driver's name
  - f. Truck & trailer number
  - g. All other information required by FDEP-operating permit
10. CFTOD shall reimburse Contractor for all penalties, assessments or fees incurred for Unacceptable Waste described herein.
11. The Contractor shall provide District the opportunity if desired to acquire finished product generated from waste streams collected as part of this contract.
12. DESCRIPTION OF WASTE STREAMS:\*
  - a. BIOSOLIDS:  
Biosolids means organic waste stream generated from the wastewater plant consisting of thickened activated sludge dewatered to greater than 14% Total Solids on a weekly average basis and will contain polymer used to aid in the thickening process. (30,000 tons in FY23)
  - b. YARD WASTE/WOOD  
Yard waste and wooden pallets generated within the District boundary, including organic materials consisting primarily of clippings from shrubs, brush, and tree branches. (15,300 tons in FY23)
  - c. MANURE/BEDDING  
Manure generated at Fort Wilderness and Disney's Animal Kingdom composed of mammal, aviary, and reptile manure encompassed by bedding materials consisting of straw and/or shavings. The Food Waste/Compostable Material and Manure Waste Streams will be blended by the District prior to loading into the Contractor's trailers. (4,125 tons in FY23)
  - d. FOOD WASTE/COMPOSTABLE MATERIAL  
Food waste generated within District boundary including segregated postconsumer food materials. Compostable material may include material from compost boxes within the District and/or compostable dinnerware items. The Food Waste/Compostable Material and Manure Waste Streams will be blended by the District prior to loading into the Contractor's trailers. (18,000 tons in FY23)
  - e. UNACCEPTABLE WASTE  
Unauthorized or inorganic materials included in Waste Streams that may negatively impact the composting process and/or quality of finished compost.

\*The quantities provided herein are previous volumes, and shall not be construed as guaranteed minimums. Contractor shall be compensated based on the actual volume processed.

- B. The full operation of CFTOD's Yard Waste Processing Facility is located in the South Service Area ("SSA"). This includes, but is not limited to, providing the labor and equipment required to transfer all incoming green waste and clean wood (pallets) into trailers for transport to the composting facility.
  1. Contractor shall provide all labor, materials, equipment, supervision, tools, and all other things necessary to perform turn-key services for all aspects of the transfer process of unground green waste and clean wood/pallet material received at the designated area. Process shall include, but not limited to, vehicle receiving/traffic control services, load inspections, staging, coordination of transportation, and loading of staged materials.
  2. The Contractor shall limit the processing activity within the designated area currently utilized by CFTOD. The site is to be operated in a clean, secure, and efficient manner.

**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006520**

3. CFTOD to designate Equipment Service Area for servicing equipment. The Contractor's designated Equipment Service Area will be kept clean and organized. All equipment maintenance shall be performed in a manner that prevents oils, fuel, lubricants, and other waste from contaminating the environment. The clean-up of all spills will be at the expense of the contractor and will be reported to CFTOD in a timely manner.

C. The decontamination of the food waste/compostable material and manure streams at the FDEP permitted/licensed composting facility. Currently, the food waste stream contains excessive amounts of inorganics necessitating a process for removal of the contamination from the compost material. Also, conceivably, the District may desire to provide compostable items co-mingled with post-consumer food waste to be composted. Typically, the compostable waste stream will contain inorganics which will necessitate the removal of contamination from the compost material.

The Contractor shall provide a robust and scalable method to effectively process CFTOD's current food waste streams utilizing the following process including described mechanical measures. The food waste streams will be received, blended, and placed in windrows for an initial active composting period of thirty (30) days. Compostable material shall be processed through shredding type of equipment (ie: Doppstadt Shedder) as needed to prepare compostable items for composting. After the initial active composting period, the material shall be screened by utilizing the Primary Screener equipment system (ie: Ecoverse Star Screener) then re-blended and placed in a windrow for another thirty (30) days of active composting.

At the end of the second thirty (30) day composting period, the end product shall be screened utilizing the Secondary Screener equipment system (ie: Ecosift Density Separator). Food waste and compostable materials are to be processed with this operational strategy and inorganic material removed from the waste streams shall be disposed of in a FDEP-permitted Class 1 landfill. The food waste and compostable material co-mingled with post-consumer food waste shall be composted on site per the Contractor's FDEP operating permit.

1. Contractor shall provide all labor, materials, equipment, supervision, tools, and all other things necessary to perform turn-key services for all aspects of the decontamination process of food waste and compostable material comingled with post-consumer food waste and manure received at the designated composting site. The decontamination process shall consist of a Primary Screener, Secondary Screener and Shredder type equipment systems including process supporting structures, mechanical integration, permitting, licenses, and all other necessary requirements for receiving and processing food and compostable material waste streams.
2. The Contractor shall guarantee capacity and capability to process food waste stream as currently blended with manure & bedding material and approved compostable items co-mingled with post-consumer food waste for the entire term of the contract.

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## **SECTION 2. SITE OPERATION**

- 2.1 Contractor shall receive and process all designated materials on site delivered from 7:00 AM to 4:00 PM, five (5) days per week, Monday through Friday except for the following holidays:
- A. New Year's Day
  - B. Martin Luther King Day
  - C. Presidents' Day
  - D. Memorial Day
  - E. Juneteenth
  - F. July 4th
  - G. Labor Day
  - H. Columbus Day
  - I. Veterans Day
  - J. Thanksgiving
  - K. Christmas

**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006520**

- 2.2 The Contractor will provide contact information to CFTOD for staff on site.
- 2.3 The Contractor will remove any unacceptable off-loaded materials and place in District-provided receptacle or at designated disposal location.
- 2.4 Pallets may be reused or recycled at the discretion of the Contractor.
- 2.5 The Contractor will process all designated materials on site to allow for a safe working environment.
- 2.6 The Contractor will coordinate the removal of staged materials in a timely manner.
- 2.7 Storm Debris: Processing of material generated by a hurricane, natural disaster or other event which produces unusually large quantities of green waste (collectively “Storm Debris”) may require extended operating schedule as deemed necessary by the District.

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### **SECTION 3. CONTRACTOR RESPONSIBILITIES**

- 3.1 Maintain all equipment in safe working condition. The Contractor shall repair or replace inoperable equipment with forty-eight (48) hours of failure.
- 3.2 Personnel operating equipment will meet company proficiency evaluation criteria.
- 3.3 On-site staff shall always be professional and CFTOD and/or its representatives have the right to reject any on-site personnel for any reason. Within forty-eight (48) hours of rejection, the Contractor shall provide replacement with personnel approved by CFTOD.
- 3.4 Maintain site in a safe and orderly fashion manner.
- 3.5 Develop, update, and maintain Project Site Specific Plan (“PSSP”) and a Hurricane Preparedness Plan.
- 3.6 Attend meetings as requested by the District.
- 3.7 Contractor’s responsibilities include, but not limited to, the following:
  - A. Prepare and maintain an emergency preparedness and response plan.
  - B. Properly train all personal and/or subcontractor personnel.
  - C. Communication with interested parties.
  - D. Maintain control of applicable documents and records.
  - E. Maintain and provide to District all applicable data and performance measures as requested.
  - F. Participation in corrective and preventative action plans.
- 3.8 The Contractor shall accept food waste stream and compostable items co-mingled with postconsumer food waste including a level of discernable contamination. The Contractor will employ identified measures for removal of described contamination.
- 3.9 The Contractor shall remove contamination from site and provide compliant end disposition at permitted landfill.
- 3.10 The Contractor shall process approved compostable items such as compostable food containers & utensils, compostable food packaging, and other approved compostable food waste related materials. Compostable material and the food waste stream can be co-mingled if CFTOD desires to do so.

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### **SECTION 4. OWNER RESPONSIBILITIES**

- 4.1 Maintain scale and weighing process for all materials.
- 4.2 Ensure offtake of discarded unacceptable materials in a timely manner.

**End of Exhibit A**

**Exhibit B**  
CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
SPECIAL CONTRACT CONDITIONS  
SEPTEMBER 2023 EDITION  
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(i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs

Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task

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planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for Reedy Creek Fire Department. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trash cans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trash cans must be provided for the disposable cups and/or bottles.

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Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

III. RESERVED.

IV. ASBESTOS/CADMIUM OR LEAD/CFCs

A. ASBESTOS

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (“ACM”) and/or Presumed Asbestos-Containing Materials (“PACM”), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

B. CADMIUM and/or LEAD

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification

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CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
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pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

C. CHLOROFLUOROCARBONS (“CFCs”)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (“CFCs”) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor’s work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner’s property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space (“PRCS”), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space (“PRCS”) entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor’s Project Specific Safety Plan (“PSSP”). In support of the Contractor’s preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner’s experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor’s personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner’s job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.

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Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such, despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.



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VII. ELECTRICAL SAFETY POLICY

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment ("PPE") and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6') of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing ("FRC").

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

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A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3'6") away from the exposed fixed energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

VIII. LOCK OUT / TAG OUT

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers

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Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

IX. FALL PROTECTION

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The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a “STOP WORK” condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards (“SRLs”) must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn’t feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer’s instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor’s qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System (“PFAS”), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25’).

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5’) or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40<sup>0</sup> require the use of fall protection.

Fall protection is required for work conducted six feet (6’) or more above water. Where fall protection completely prevents falling into the water, personal flotation devices (“PFDs”) are not required.

**X. AERIAL WORK PLATFORMS (“AWP”)**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner’s request. Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP’s that are not in proper operating condition shall be

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immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as “out of service” the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer’s capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline (“SRL”) of appropriate length (e.g. 3 feet). If the AWP is being used at heights of 18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

**XI. LADDERS**

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.
- f) Ropes/pulleys in good condition (extension ladders).

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Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

## XII. TRENCHING AND EXCAVATION

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade.

Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

## XIII. UTILITY LOCATES

*Routine Locate Tickets:*

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The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services ("RCES") between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida ("SSOCOF") by calling 811.

Call the Reedy Creek Energy Services ("RCES") Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services ("RCES") Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office.

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office.

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.

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Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

#### XIV. MOBILE CRANES

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (“NCCCO”).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water’s edge, Ground Bearing Pressures (“GBP”) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.



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Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing. Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems.

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (“PPE”) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

**Exhibit B**  
CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
SPECIAL CONTRACT CONDITIONS  
SEPTEMBER 2023 EDITION  
**Contract No. C006520**

Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.  
Remove keys from unattended vehicles.

Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

**XVI. DIVING OPERATIONS**

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection.
- f) Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces
- g) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- h) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

**XVII. RESERVED**

END OF SPECIAL CONTRACT CONDITIONS

**End of Exhibit B**

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 8.4**

**Board Meeting Date: 04/24/2024**

Subject: Award of Bid # C006486 Single-Stream Recycling Services

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.4 award of three-year contract for single-stream recycling services with Recycling Services of Florida Inc, in the amount of \$1,170,765

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** Bid released: January 25, 2024.

**BACKGROUND:**

The Utilities Department collects approximately 16,500 tons per year of mixed recycling, baled cardboard, and baled film from customers throughout the District. These materials are delivered to the Recovered Materials Processing Facility located in the South Service Area where it is loaded into trailers. A recycling contractor then transports the trailers to a facility for sorting and market sale.

Historically, the recycling contract included a rebate structure whereby the contractor and the District shared in the revenue generated from the recyclable material. To incentivize recycling contractors to maximize marketing effort and the sale of recyclable material, the solid waste industry has gone away from the rebate structure in favor of a single per ton cost that includes transportation, processing, and market sale. This is the approach that was taken for this solicitation.

**FINDINGS AND CONCLUSIONS:**

On January 25, 2024, Invitation to Bid (“ITB”) No. C006486 was released to vendors for transportation, delivery, sorting, and market sale of recyclable material for a 3-year period. Three (3) bids were received as follows:

Vendor’s Legal Name	Location	Bid Amount
Recycling Service of Florida, Inc.	Clearwater, FL	\$1,170,765
Republic Services of Florida, LP	Phoenix, AZ	\$1,237,500
Enviro-Management Partners, LLC	Tampa, FL	\$3,848,130

Recycling Services of Florida, Inc. was the lowest responsive and responsible bidder.

The Utilities Department is requesting approval of Contract# C006486 with Recycling Services of Florida, Inc. for Single-Stream Recycling Services. Staff recommends approving the contract for the period of **May 01, 2024** through **April 30, 2027**.

**FISCAL IMPACT:**

Funding for this purchase will be budgeted as follows:

Estimated Fiscal Impact				
Accounting Line	FY24	FY25	FY26	FY27
335-108-5307012 (solid waste)	\$162,606.25	\$390,255.00	\$390,255.00	\$227,648.75

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Recycling Services of Florida, Inc. Contract

Central Florida Tourism Oversight District  
 Bid Results for Project Single-Stream Recycling Annual Services (ITB# C006486)  
 Issued on 01/25/2024  
 Bid Due on February 20, 2024 2:00 PM (EST)

Line Totals (Unit Price \* Quantity)

Item Num	Section	Description	Reference	Unit of Measure	QTY	Recycling Services Of Florida, Inc. Clearwater, FL Pinellas County		Republic Services of Florida, Limited Partnership Phoenix, AZ Maricopa County		Enviro-Management Partners, LLC Tampa, FL Hillsborough County <b>(VETERAN SMALL BUSINESS)</b>	
						Unit Price	Extended Price	Unit Price	Extended Price	Unit Price	Extended Price
1	Section 1 - Recycling Collection, Transportation and Processing (YEARLY VOLUME)	Mixed Recycling (Including Glass and Baled Cardboard)	Includes disposal of contamination	Ton	16,500.00	23.65	\$390,225.00	\$25.00	\$412,500.00	\$77.74	\$1,282,710.00
<b>Total</b>							\$390,225.00		\$412,500.00		\$1,282,710.00
<b>3-YEAR Grand Total</b>							<b>\$1,170,675.00</b>		<b>\$1,237,500.00</b>		<b>\$3,848,130.00</b>



SINGLE-STREAM RECYCLING ANNUAL SERVICES AGREEMENT

THIS AGREEMENT, is made effective as of \_\_\_\_\_, by and between **Central Florida Tourism Oversight District** (herein referred to as the (“Owner”)), whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, and **Recycling Services of Florida, Inc.**, (herein referred to as the (“Contractor”)), whose mailing address is 3560 126th Avenue N, Clearwater, Florida 33762.

W I T N E S S E T H

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid (“ITB”) No. C006486 on January 25, 2024 for Single-Stream Recycling Annual Services;

WHEREAS, three (3) bidders responded, and Recycling Services of Florida, Inc. was the lowest responsive and responsible bidder. The Contractor was subsequently selected as the intended awardee for these services; and

WHEREAS, Owner desires to employ the services of Contractor for a period beginning **May 1, 2024** and ending **April 30, 2027**, or as otherwise modified as set forth in this Agreement, to perform the hereinafter described Services, and Contractor desires to be so employed. The Agreement may be renewed for up to one (1) additional three (3) year period upon mutual written agreement of both parties.

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations contained in this Agreement, the parties agree as follows:

1. DEFINITIONS.

a. Agreement. The Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only as set forth below in Article 6.

b. Services. The term “Services” as used in this Agreement shall be construed to include all Services set forth in Exhibit A, all obligations of Contractor under this Agreement and where any Changed Service Authorizations have been issued pursuant to Article 6 of this Agreement, the changed Services set forth therein.

2. SCOPE OF SERVICES.

A description of the nature, scope and schedule of Services to be performed by Contractor under this Agreement in accordance with the Exhibits outlined in the Article 22 - Contract Documents.

3. BASIS FOR COMPENSATION AND PAYMENTS.

Not to Exceed (“NTE”) Amount

a. Owner shall pay to Contractor, for its Services and in consideration of the terms and conditions of this Agreement, an amount for time reasonably and properly incurred by Contractor in performance of its Services based upon the rates shown on the below Rate Schedule incorporated herein by reference. However, in no event shall the NTE amount exceed **ONE MILLION, ONE HUNDRED SEVENTY THOUSAND, SIX HUNDRED SEVENTY-FIVE AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,170,675.00)**; and the Reimbursable Expenses shall in no event exceed **(N/A)**.

RATE SCHEDULE				
Description	UOM	Est. Qty	Unit Price	Annual Total
Recycling Collection, Transportation and Processing Mixed Recycling, Including Glass and Baled Cardboard <i>(includes disposal of contamination)</i>	TON	16,500	\$23.65	\$390,225.00
Annual Total:				\$390,225.00
<b>NOT-TO-EXCEED AMOUNT (3-Year Total):</b>				<b>\$1,170,675.00</b>



b. Payments shall be made monthly for Services plus Reimbursable Expenses incurred. Contractor shall invoice Owner, in the form required by Owner, on the first day of each calendar month for Services rendered during the preceding month plus Reimbursable Expenses incurred.

c. Reimbursable Expenses shall include only the actual and necessary costs and expenses, without markup, reasonably and properly incurred by Contractor in connection with the Services rendered under this Agreement. Direct expenses are determined and pre-approved by Owner.

d. Contractor shall provide any and all backup required by Owner in connection with time spent and Reimbursable Expenses incurred.

e. Owner shall pay each invoiced amount (or uncontested portion thereof) on or about the thirtieth day following receipt of each invoice.

f. All invoices should reference the contract number and be submitted to the following address:

**Central Florida Tourism Oversight District**  
**C/O: Reedy Creek Energy Services – Utilities Division**  
**Attention: Accounts Payable**  
**P.O. Box 690519**  
**Orlando, Florida 32869**

All invoices shall be sent to [wdw.rces.billing@disney.com](mailto:wdw.rces.billing@disney.com)

g. Contractor shall be compensated for any Additional Services based upon the Rate Schedule; such amounts to be invoiced and paid in accordance with the terms of Paragraphs b, c, d, and e herein; provided, however, that Contractor shall not be entitled to compensation for Additional Services unless Contractor has obtained prior written authorization of Owner to perform the same.

h. Owner retains the right to reduce any portion of Contractor's Services at any time.

#### 4. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

Contractor hereby represents to Owner that: (a) it has the experience and skill to perform the Services as set forth in this Agreement; (b) that it shall comply with all applicable federal, state, and local laws, rules, codes, and orders of any public, quasi-public or other government authority; (c) it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed under this Agreement; (d) it has by careful examination satisfied itself as to: (i) the nature, location and character of the general area in which the Services are to be performed including, without limitation, the surface conditions of the land and all structures and obstructions thereon, both natural and manmade, the surface water conditions of the general area and, to the extent pertinent, all other conditions; and (ii) all other matters or things which could in any manner affect the performance of the Services.

#### 5. INSURANCE; INDEMNIFICATION.

a. The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:

- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with minimum combined single limits for bodily injury and property damage of \$1,000,000 per occurrence;
- ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with minimum combined single limits of \$1,000,000 per occurrence;



- iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence;
- iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i, ii, and iii. above in an amount of at least \$1,000,000 per occurrence;
- v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be at least \$4 million.
- viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.
- ix. Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

b. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.

c. CANCELLATION. All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.

d. ADDITIONAL INSUREDS. Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.

e. WAIVERS. The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.

f. CLAIMS. The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.





g. **INDEMNIFICATION.** The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by the negligence, recklessness or intentional wrongful misconduct (which includes, without limitation, any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to perform and complete the Work in strict compliance with the Contract Documents, unless such failure has been specifically waived by the Owner in writing upon final acceptance of the Work) of the Contractor or any persons employed or utilized by the Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

6. **MODIFICATIONS, ADDITIONS, OR DELETIONS TO THE SERVICES.**

a. A Changed Service Authorization shall be a writing by the Owner that shall consist of additions, deletions, or other modifications to the Agreement agreed to by the Contractor.

b. The Owner may, from time to time, without affecting the validity of the Agreement, or any term or condition thereof, issue Changed Service Authorizations which may identify additional or revised Scope of Services, or other written instructions and orders, which shall be governed by the provisions of the Agreement. The Contractor shall comply with all such orders and instructions issued by the Owner. Upon receipt of any such Changed Service Authorization, the Contractor shall promptly proceed with the Changed Service Authorization, and the resultant decrease or increase in the amount to be paid the Contractor, if any, shall be governed by the provisions of Article 3 in this Agreement.

7. **PROTECTION OF PERSONS AND PROPERTY.**

a. The Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Services, and shall provide all protection to prevent injury to all persons involved in any way in the Services and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby.

b. All Services, whether performed by the Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, and all applicable equipment, machinery, materials, tools and like items used in the Services, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

c. The Contractor shall at all times keep the general area in which the Services are to be performed clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by performance of the Services, and shall continuously throughout performance of the Services remove and dispose of all such materials. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the general area in which the Services are to be performed clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor.

8. **BOOKS AND RECORDS.**

Contractor shall maintain comprehensive books and records relating to any Services performed under this Agreement, which shall be retained by Contractor for a period of at least four (4) years from and after the completion of such Services. Owner, or its authorized representatives, shall have the right to audit such books and records at all reasonable times upon prior notice to Contractor. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.



9. PROMOTION/CONFIDENTIALITY.

The Contractor, by virtue of this Agreement, shall acquire no right to use, and shall not use, the name of the Owner or the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any related, affiliated or subsidiary companies: in any advertising, publicity or promotion; to express or imply any endorsement of the Contractor's Work or services; or in any other manner whatsoever (whether or not similar to the uses hereinabove specifically prohibited). Contractor may, during the course of its engagement hereunder, have access to and acquire knowledge regarding plans, concepts, designs, materials, data, systems and other information of or with respect to Owner or Owner's Representative, or any subsidiaries or affiliated companies thereof, which may not be accessible or known to the general public ("Confidential Information"). Confidential Information that is specific as to techniques, equipment, processes, products, concepts or designs, etc. shall not be deemed to be within the knowledge of the general public merely because it is embraced by general disclosures in the public domain. Any knowledge acquired by Contractor from such Confidential Information or otherwise through its engagement hereunder shall not be used, published or divulged by Contractor to any other person, firm or corporation, or used in any advertising or promotion regarding Contractor or its services, or in any other manner or connection whatsoever without first having obtained the written permission of Owner, which permission Owner may withhold in its sole discretion. Contractor specifically agrees that the foregoing confidentiality obligation applies to, but is not limited to, any information disclosed to Contractor in any document provided to Contractor pursuant to or in connection with this Agreement, including but not limited to, a Request for Proposal, Request for Estimate, Request for Quotation or Invitation to Bid, except to the extent Contractor must disclose such information to compile and prepare its proposed price for work or services performed hereunder. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

10. ASSIGNMENT.

This Agreement is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type including, without limitation, transfer of stock in Contractor, without the prior written consent of Owner, which consent Owner may withhold in its sole discretion. Owner retains the right to assign all or any portion of this Agreement at any time. Upon such assignment, and provided the Assignee shall, in writing, assume Owner's obligations under this Agreement, Owner shall be automatically released and discharged from any and all of its obligations under this Agreement, and Contractor shall thenceforth look solely to the Assignee for performance of Owner's obligations under this Agreement.

11. SUSPENSION OR TERMINATION.

Anything in this Agreement to the contrary notwithstanding, Owner shall, in its sole discretion and with or without cause, have the right to suspend or terminate this Agreement upon seven (7) days prior written notice to Contractor. In the event of termination, Owner's sole obligation and liability to Contractor, if any, shall be to pay to Contractor that portion of the fee earned by it, plus any earned amounts for extra Services performed pursuant to Articles 3 and 6, through the date of termination.

12. SUBCONTRACTORS.

If the Contractor desires to employ Subcontractors in connection with the performance of its Services under this Agreement:

a. Nothing contained in the Agreement shall create any contractual relationship between the Owner and any Subcontractor. However, it is acknowledged that the Owner is an intended third-party beneficiary of the obligations of the Subcontractors related to the Services.

b. Contractor shall coordinate the services of any Subcontractors, and remain fully responsible under the terms of this Agreement, Contractor shall be and remain responsible for the quality, timeliness and the coordination of all Services furnished by the Contractor or its Subcontractors.

c. All subcontracts shall be in writing. Each subcontract shall contain a reference to this Agreement and shall incorporate the terms and conditions of this Agreement to the full extent applicable to the portion



of the Services covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by such terms and conditions to the full extent applicable to its portion of the Services.

13. NOTICE.

a. Notices required or permitted to be given under this Agreement shall be in writing, may be delivered personally or by mail, telex, facsimile, cable, or courier service, and shall be deemed given when received by the addressee. Notices shall be addressed as follows:

If to Owner: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
10450 Turkey Lake Road, Box #690519  
Orlando, FL 32869  
Attention: Contracting Officer

If to Contractor: RECYCLING SERVICES OF FLORIDA, INC.  
3560 126<sup>TH</sup> Avenue N  
Clearwater, FL 33762  
Attention: George Ward

or to such other address as either party may direct by notice given to the other as hereinabove provided.

b. Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered under this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

14. OWNERSHIP OF WORK PRODUCT.

a. All drawings, data, ideas, concepts, molds, models, tooling, improvements, inventions, or other tangible or intangible work product in whole or in part conceived, produced, commissioned or acquired by Contractor hereunder ("Work Product") shall be and remain the sole and exclusive property of Owner when produced, whether or not fixed in a tangible medium of expression, except that Contractor may retain copies of such Work Product for its permanent reference, but shall not use such copies in any manner whatsoever without the express written consent of Owner and shall keep same confidential in accordance with the requirements of Article 9 entitled Promotion/Confidentiality. In the event of early termination of this Contract, in whole or in part, Contractor shall deliver to Owner all Work Product whether complete or not.

b. Without limiting the forgoing, Contractor agrees that any and all Work Product shall be deemed to be "works made for hire" for Owner as the author, creator, or inventor upon creation; provided, however, that in the event and to the extent that such Work Product is determined not to constitute "works made for hire" as a matter of law, Contractor hereby irrevocably assigns and transfers such property, and all right, title and interest therein, whether now known or hereafter existing including, but not limited to, patents and copyrights, to Owner and its successors and assigns. Contractor grants to Owner all rights including, without limitation, reproduction, manufacturing and moral rights, throughout the universe in perpetuity and in all languages and in any and all media whether now or hereafter known, with respect to such Work Product. Contractor acknowledges that Owner is the motivating force and factor, and for purposes of copyright or patent, has the right to such copyrightable or patentable Work Product produced by Contractor under this Contract. Contractor agrees to execute any and all documents and do such other acts as requested by Owner to further evidence any of the transfers, assignments and exploitation rights provided for herein.

15. LEGAL PROCEEDINGS.

a. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.



b. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, the Contract Documents or the Work to be performed hereunder (a "Proceeding"), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

c. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

#### 16. MISCELLANEOUS PROVISIONS.

a. Any failure by Owner to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Owner may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

b. The acceptance of final payment under this Agreement, or the acceptance of final payment upon early termination hereof, shall constitute a full and complete release of Owner by Contractor from any and all claims, demands and causes of action whatsoever which Contractor may have against Owner in any way related to the subject matter of this Agreement and Contractor shall as a condition precedent to receipt of final payment from Owner, submit to the Owner a fully and properly executed General Release, in the form attached to this Agreement. Neither the Owner's review, approval or acceptance of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to Owner in accordance with law for all damages to Owner caused by the Contractor's performance of any of the Services furnished pursuant to this Agreement.

c. It is understood and agreed that Contractor is acting as an independent contractor in the performance of its Services hereunder, and nothing contained in this Agreement shall be deemed to create an agency relationship between Owner and Contractor.

d. The rights and remedies of Owner provided for under this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

#### 17. THE OWNER'S REPRESENTATIVES.

**Reedy Creek Energy Services**, whose designated representative is **Melisa Johnson**, and whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, shall act as the Owner's authorized representative (herein referred to as the "Owner's Representative"); provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.



Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

18. PUBLIC RECORDS.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX # 690519, ORLANDO, FLORIDA 32869.**

- a. THE CONTRACTOR SHALL:
- i. Keep and maintain public records required by the public agency to perform the service.
  - ii. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
  - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
  - iv. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.
- b. REQUEST FOR RECORDS; NONCOMPLIANCE:
- i. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.



- ii. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

c. **CIVIL ACTION:**

- i. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
  - 1. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
  - 2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
- ii. A notice complies with subparagraph c.2. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- iii. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

19. NON-FUNDING.

In the event that budgeted funds for this Agreement are reduced, terminated, or otherwise become unavailable, Owner may terminate this Agreement upon written notice to Contractor without penalty to Owner. Owner shall be the final authority as to the availability of the funding.

20. E-VERIFY COMPLIANCE.

The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of this Section hereof, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

21. SCRUTINIZED COMPANIES.

a. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.

b. Specifically, by executing this Agreement, the Contractor certifies that it is **not** on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.



c. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:

- i. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473 Florida Statutes; and/or
- ii. Engaged in business operations in Cuba or Syria.

d. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:

- i. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes, and/or
- ii. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.

e. If this Agreement is terminated by the Owner as provided in paragraph d above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.

f. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner’s termination.

g. Unless explicitly states in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

**22. CONTRACT DOCUMENTS.**

a. The Contract Documents which comprise the entire understanding between the Owner and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to the Agreement. Each Exhibit is incorporated herein by reference for all purposes.

- Exhibit A: Scope of Services (A-1 through A-5)
- Exhibit B: Special Contract Conditions (B-1 through B-15)

b. If there is a conflict between the terms of this Agreement and the Exhibits, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the Exhibits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

OWNER

CONTRACTOR

**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**

**RECYCLING SERVICES OF FLORIDA, INC.**

Signature: \_\_\_\_\_

Signature: George Ward

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

Print Name: George ward

Title: Board Chairman

Title: Manager

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

Date: March 12, 2024

**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006486**

Contractor shall provide all labor, material, equipment, supervision, transportation, tools, and all other things necessary for the transportation, processing, marketing, and sale of single-stream recyclables for the Central Florida Tourism Oversight District.

### SECTION 1. GENERAL

1.1 The prime goal of the Contractor is to process as much as possible of the single-stream collection into recyclable material. As an incentive, the Contractor will be allowed to keep all revenue they may receive through the sale of these sorted materials. The Contractor will be required to provide comprehensive reporting of the volume and type of materials they were able to deliver into the recycle stream.

### SECTION 2. BACKGROUND

2.1 The Owner currently collects and processes recyclables seven (7) days a week for transfer and recycling from within the boundary of the Owner. The Owner collects single-stream “mixed” recyclables (mixed paper, cardboard, steel cans, HDPE natural, HDPE color, PET, mixed plastic, aluminum, and mixed glass), loose cardboard, baled cardboard, and baled plastic film. The Owner currently delivers daily the loose and baled recyclables to its recovered materials processing facility (“RMPF”) located at 2200 Recycle Way, Lake Buena Vista, Florida 32830. As such, the Owner is requesting proposals for Contractors to haul, process, and market the materials. Photos of the RMPF material staging and loading area are included in Figure 2.1.

Figure 2-1 Photos of the RMPF Area



Trailer Staged for Loading Loose Mixed Materials



Trailers Staged at Dock for Bales

2.2 Tonnage from recent years is provided as Table 2-1.\*

Table 2-1 Recycling Tonnages

Material Stream	2019	2020 <sup>[1]</sup>	2021 <sup>[1]</sup>	2022
Mixed Recycling	4,548	3,269	3,379	6,119
Cardboard Bales <sup>[2]</sup>	9,862	5,927	5,924	9,918
Loose Cardboard	183	322	663	475
<b>Total</b>	<b>14,593</b>	<b>9,518</b>	<b>9,966</b>	<b>16,512</b>

<sup>[1]</sup> Atypical operations during Covid-19 pandemic

<sup>[2]</sup> Baled plastic film minimal and included in Cardboard Bales

2.2.1 Loose cardboard is collected and weighed. However, it is then loaded with mixed recycling for hauling purposes.

2.2.2 Baled plastic film volume equates to approximately one (1) truckload per month.

*\*The recycling tonnages provided herein are previous material volumes and shall not be construed as guaranteed minimums. Contractor shall be paid based on the actual quantity of tons processed.*



**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006486**

2.3 The average number of loads per week is provided in Table 2-2. The number of loads varies seasonally with peak weeks defined as:

- Spring Break
- Easter – both the week before and after
- Summer – June to August
- Thanksgiving
- Christmas
- New Year's Eve

**Table 2-2 Average Recycling Transfer Loads per Week**

Material Stream	2019	2020	2021	2022
Mixed Recycling <sup>(1)</sup>	15	10	12	18
Cardboard Bales	8	5	5	8
<b>Total</b>	<b>23</b>	<b>15</b>	<b>17</b>	<b>26</b>

<sup>(1)</sup> Loose cardboard shipped with Mixed Recycling

2.4 Recent composition of the single-stream materials as reported by the current contractor is shown in Table 2-3. Results of an independent composition study conducted on the mixed recycling stream during FY22 is shown in Table 2-4.

**Table 2-3 Composition of Materials Summer 2023**

Material	Composition
Mixed Paper	2.0%
OCC-Cardboard	8.4%
Steel Cans	4.8%
HDPE Natural	4.9%
HDPE Color	0.9%
PET	10.0%
Mixed Plastic (3 - 7)	6.1%
Aluminum	1.3%
Mixed Glass	14.5%
Waste (Fixed)	47.1%
	<b>100.0%</b>

**Table 2-4 Composition from On Site Study FY22**

Material	Composition
Recyclable Paper	5.0%
OCC-Cardboard	1.0%
Metal Beverage Cans	4.0%
Plastics 1&2	31.0%
Plastic 3-7	5.0%
Recyclable Soft Plastic	1.0%
Recyclable Glass	12.0%
Contamination	41.0%
	<b>100.0%</b>

**Exhibit A**  
**SCOPE OF SERVICES**  
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2.5 It is the intent of the Owner to:

- Maximize the diversion of clean recyclable materials from the Owner's waste stream via legitimate recycling markets.
- Minimize the residual material disposed in landfills and waste-to-energy facilities after processing.

### **SECTION 3. REQUIREMENTS**

#### **3.1 Owner Responsibilities**

##### **3.1.1 Contract Manager:**

Owner shall designate an individual to represent it in all matters relating to the implementation of the Services Agreement. Refer to Section 17: Owner's Representatives in the Agreement.

##### **3.1.2 Collection Operations:**

Owner shall deliver, or direct and cause to deliver to the RMPF, located at 2350 Recycle Way, Lake Buena Vista, Florida 32830, recyclables collected within its boundary. Hours of pick up at the facility are 7:00 AM through 2:00 PM. Contractor must coordinate with the RCES Heavy Equipment Operator for escort to the scale.

##### **3.1.3 Loading:**

Owner shall load the Contractor-provided trailers with recyclables at RMPF. Owner shall use reasonable efforts to maximize the weight of Contractor's trailers. Net load weights of single-stream (with loose cardboard mixed in) average 6-7.5 tons, though can vary due to densities of customer material streams. Loads of baled cardboard average 22-23 tons.

##### **3.1.4 Owner Communications:**

Owner expects regular (daily) pickup of materials from the RMPF. Owner will contact Contractor's Service Manager or other designee to communicate shortage of empty trailers, or other transportation issues/complaints that arise.

#### **3.2 Contractor Responsibilities**

The Contractor shall provide all labor, materials, equipment, supervision, dispatch, and all other things necessary to transport single-stream recycling, baled and palleted materials from Owner's RMPF to the designated processing location. Contractor shall ensure the RMPF does not fill up with recyclable materials (single-stream or baled materials.)

Contractor shall comply with all applicable laws, rules, regulations, ordinances, and permits in connection with its transport, processing, and or marketing of the recycling.

##### **3.2.1 Equipment:**

All vehicles and other equipment shall be kept in good repair, appearance, and in a clean and sanitary condition to prevent odors, vectors, or nuisance conditions. Owner retains the right to review the color and signage of Contractor's equipment used under this Agreement and can reject same at Owner's sole discretion. Trailers receiving single-stream/mixed material shall have leakproof seals, which shall be maintained by the Contractor to ensure that there is no leakage during transport. Each vehicle (tractor and trailer) shall have clearly visible on each side the vehicle number along with the identity and telephone number of the Contractor. Contractor shall replace the trucks and trailers as necessary to ensure that they can provide reliable service.

##### **3.2.2 Trailer Staging:**

Contractor shall provide a minimum of three (3) top loading 50-53' transfer trailers to be staged for receipt and transport of loose recyclable materials.

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Contractor shall also provide a minimum of two (2) 50-53' box trailers to stage at the dock for Owner to load with baled cardboard and baled plastic film.

If additional trailers are necessary, the Owner may request additional trailers, which must be delivered within twenty-four (24) hours or less.

3.2.3 Routing:

All inbound and outbound transport vehicles shall access the RMPF via any route that Contractor desires provided that such route does not negatively impact or distract or otherwise cause inconvenience to the guests at the parks as determined by the Owner. Routes shall be mutually agreed upon by Owner and Contractor prior to execution of this Agreement. Subsequently, any request by the Contractor for alternate routes must be reviewed and approved by the Owner. If special events, emergency circumstances, or construction projects result in the need for re-routing, the Owner will notify the Contractor of alternate routes.

Absent properly signed detour routes, the Contractor will be advised by the Owner of such instances at least 72 hours in advance.

3.2.4 Material Transport:

Contractor shall transport and deliver the recyclables to a recovery facility or mill as appropriate.

- Contractor will transport loose recyclables at least six (6) days per week (Monday through Saturday) from the RMPF and exchange or return the empty trailers.
- A load-specific release (tracking) number will be provided by the Contractor which will be assigned to that individual load and will appear on all relative documentation including the driver name and trailer number. For all baled materials, a Bill of Lading number, and destination will also be provided.
- All trailers transporting baled materials will be weighed at Owner's scale before the load is released.
- Recycling belongs to the Owner while on Owner RMPF property. Once the Contractor has weighed the trailer load on the outbound scale and exited Owner transfer station scale property, title to the recycling passes to the Contractor. Any spillage that occurs after departure from Owner transfer station scale property to include within Owner boundaries will be the responsibility of the Contractor.

3.2.5 Material Processing and Marketing:

Contractor shall sort the materials as required, broker and sell the recovered materials to the marketplace.

- Contractor shall maintain and provide verification of its Recovered Materials Dealer Certification Form from the Florida Department of Environmental Protection throughout the term of this contract. If Contractor does not currently have the certification, once awarded the contract Contractor would be required to obtain the Recovered Materials Dealer Certification and provide to Owner.
- Contractor shall weigh all trucks that enter the designated facility. The facility must have a certified scale that is tested and certified at least annually by a company registered with the Florida Department of Agricultural and Consumer Affairs. Certificate must be always maintained and available upon request.
- Owner or its designee shall have the right to inspect the receipt, separation, processing, loading, storage, and shipment process at the designated facility.
- Contractor shall have a backup plan in place in case the designated facility is unable to accept recyclables for any reason.

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Contractor is solely responsible for the transportation and disposal of all non-recycled contamination and residue materials, inclusive of all associated costs. Contamination and residue must be disposed of at a legally permitted and licensed facility.

3.2.6 Reporting Requirements:

- The Contractor shall provide a monthly activity report for the number of loads transported to each MRF or mill, with load release/Bill of Lading number(s) and the tons for each load by material stream (single-stream/mixed, baled cardboard, etc.) The Owner and Contractor will mutually agree on the format of the monthly report, preferably in Excel. The Contractor shall provide such monthly reports to the Owner no later than the 15th day of each month for basic services rendered in the previous month.
- Contractor shall provide a monthly invoice and report to include:
  - The number of loads and tons of inbound materials by each stream (mixed, baled cardboard, baled plastic, etc.) per certified inbound scales totals.
  - Total fee per ton picked up from Owner's facility based on contracted rates.
  - Contractor will provide Owner with a report of all sold recyclables by type and tonnage for the past month.
- Contractor is required to provide notification of a receipt of a Notice of Violation (NOV) for any violations of applicable law that has occurred at the designated facility within three (3) days following the receipt of violation, accompanied by a copy of the violation and the corrective action taken or to be taken.

**End of Exhibit A**

**Exhibit B**  
CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
SPECIAL CONTRACT CONDITIONS  
SEPTEMBER 2023 EDITION  
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- VIII. Lock out / Tag out
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(i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs

Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task

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planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for Reedy Creek Fire Department. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trash cans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trash cans must be provided for the disposable cups and/or bottles.

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Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

III. RESERVED.

IV. ASBESTOS/CADMIUM OR LEAD/CFCs

A. ASBESTOS

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (“ACM”) and/or Presumed Asbestos-Containing Materials (“PACM”), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

B. CADMIUM and/or LEAD

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification

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pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

C. CHLOROFLUOROCARBONS (“CFCs”)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (“CFCs”) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor’s work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner’s property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space (“PRCS”), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space (“PRCS”) entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor’s Project Specific Safety Plan (“PSSP”). In support of the Contractor’s preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner’s experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor’s personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner’s job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.



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Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such, despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.

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VII. ELECTRICAL SAFETY POLICY

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment ("PPE") and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6') of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing ("FRC").

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

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A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3'6") away from the exposed fixed energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

VIII. LOCK OUT / TAG OUT

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers

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Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

IX. FALL PROTECTION

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The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a "STOP WORK" condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards ("SRLs") must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn't feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer's instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor's qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System ("PFAS"), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25').

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5') or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40° require the use of fall protection.

Fall protection is required for work conducted six feet (6') or more above water. Where fall protection completely prevents falling into the water, personal flotation devices ("PFDs") are not required.

**X. AERIAL WORK PLATFORMS ("AWP")**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner's request. Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP's that are not in proper operating condition shall be

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immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as “out of service” the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer’s capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline (“SRL”) of appropriate length (e.g. 3 feet). If the AWP is being used at heights of 18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

## XI. LADDERS

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.
- f) Ropes/pulleys in good condition (extension ladders).

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Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

**XII. TRENCHING AND EXCAVATION**

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade.

Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

**XIII. UTILITY LOCATES**

*Routine Locate Tickets:*

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The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services (“RCES”) between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida (“SSOCOF”) by calling 811.

Call the Reedy Creek Energy Services (“RCES”) Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services (“RCES”) Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office.

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office.

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.



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Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

#### XIV. MOBILE CRANES

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (“NCCCO”).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water’s edge, Ground Bearing Pressures (“GBP”) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.

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Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing. Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems.

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (“PPE”) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

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Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.  
Remove keys from unattended vehicles.

Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

**XVI. DIVING OPERATIONS**

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection.
- f) Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces
- g) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- h) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

**XVII. RESERVED**

END OF SPECIAL CONTRACT CONDITIONS

**End of Exhibit B**

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 8.5**

**Board Meeting Date: 04/24/2024**

Subject: Award of Bid # C006512 Anoxic Lift Pump #1 Replacement

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.5 award of contract to replace the Anoxic Lift Pump #1 at the District’s Water Resource Recovery Facility to Evoqua Water Technologies LLC in the amount of \$1,227,017

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** Bid released to the public: December 26, 2023

**BACKGROUND:**

The Utilities Department operates the District’s Water Resource Recovery Facility which treats over four billion gallons of wastewater each year. This facility includes a biological nutrient removal treatment process for removal of nitrogen and phosphorous from the waste stream to meet Florida Department of Environmental Protection permit requirements.

The wastewater treatment process includes seven, 20,000 gallon-per minute anoxic lift pumps that maintain proper hydraulic conditions throughout the plant. Three (3) of these pumps are Archimedes screw pumps placed in-service in 1992. One of these pumps, designated Anoxic Lift Pump #2, failed and was replaced in February 2024. This project is for the replacement of a second screw pump at the end of its service life, designated Anoxic Lift Pump #1, in fiscal year (FY) 2025. However, due to the extensive lead times, the agreement for the screw pump must begin so the pump installation can be completed by the end of FY 2025. Evoqua Water Technologies, LLC has agreed to appropriations payments by fiscal year. Only ten percent (10%) of the contract value (\$122,701.70) is funded out of FY 2024 for the submittal drawings.

**FINDINGS AND CONCLUSIONS:**

On December 26, 2023, Invitation to Bid # C006512 was released to bid for replacement of Anoxic Lift Pump #1 at the District’s Water Resource Recovery Facility. One (1) bid was received as follows:

Vendor’s Legal Name	Location	Bid Amount
Evoqua Water Technologies, LLC	Pittsburgh, PA	\$1,227,017

Evoqua Water Technologies, LLC was the responsive and responsible bidder.

The Utilities Department is requesting approval of Contract # C006512 with Evoqua Water Technologies, LLC for the replacement of Anoxic Lift Pump #1 at the District’s Water Resource Recovery Facility. Staff recommends approving the contract for the period of **May 01, 2024** through **September 30, 2025**.

**FISCAL IMPACT:**

This contract will be 90% funded by the FY25 Utility Capital Planned Work budget. 10% of the contract is funded by the in FY2024 as follows:

Estimated Fiscal Impact		
Accounting Line	Amount	Fiscal Year
	\$122,701.70	2024
Planned Work (825C001)	\$1,104,315.30	2025

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Evoqua Water Technologies, LLC    Contract



## **ANOXIC LIFT PUMP #1 REPLACEMENT**

**Agreement: C006512**

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### **PROJECT MANUAL**

**ISSUED FOR CONSTRUCTION**

**Date of Issuance: April 24, 2024**

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**Owner:** Central Florida Tourism Oversight District  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

**Owner's Representative:** Central Florida Tourism Oversight District  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

**Engineer/Architect of Record:** Reedy Creek Energy Services, Inc.  
ET AL

**Contractor:** Evoqua Water Technologies LLC  
210 Sixth Avenue, Suite 3300  
Pittsburgh, Pennsylvania 15222

## **PROJECT MANUAL**

Definition: The compilation of Documents listed herein is hereinafter referred to as the Project Manual.

The following listed documents comprise the Project Manual entitled:

### **ANOXIC LIFT PUMP #1 REPLACEMENT ISSUED FOR CONSTRUCTION**

Contract Number: **C006512**

#### **CONTRACT DOCUMENTS**

Agreement (Lump Sum)

- Exhibit A – Project Description and List of Contract Documents
- Exhibit B – Project Milestone Schedule
- Exhibit C – Recap of Contract Sum
- Exhibit D – Pending Alternates
- Exhibit E – Unit Price Schedule

Special Contract Conditions

General Conditions of the Contract for Construction

Payment Bond

Performance Bond

Consent of Surety for Partial Payment Application

Dual Oblige Rider

Contractor's Interim Affidavit (sample form), including Schedule A

Contractor's Request for Information ("RFI") (sample form)

Directive (sample form)

Change Order (sample form), including Exhibit A

Close-Out Change Order (sample form includes Certificate of Substantial Completion)

Punch List (sample form)

Drawings:

The As-Built drawings for the BNR Anoxic Lift Pump dated 11/01/1993 are available for inspection and copying at <https://pbsystem.planetbids.com/portal/62171/bo/bo-detail/112838#>. All Drawings listed herein are specifically incorporated into the Project Manual by this reference.

<b>END OF TABLE OF CONTENTS - PROJECT MANUAL</b>
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**ANOXIC LIFT PUMP #1 REPLACEMENT  
LUMP SUM AGREEMENT**

THIS AGREEMENT, made effective as of April 24, 2024, by and between **Central Florida Tourism Oversight District** (herein referred to as the “Owner”), whose mailing address is 10450 Turkey Lake Road, Box # 690519, Orlando, Florida 32869, and **Evoqua Water Technologies LLC** (herein referred to as the “Contractor”), whose mailing address is 210 Sixth Avenue, Suite 3300, Pittsburgh, Pennsylvania 15222.

**W I T N E S S E T H**

WHEREAS, references to Reedy Creek Improvement District (“RCID”) within the Agreement are referring to the Owner, now known as Central Florida Tourism Oversight District (“CFTOD”);

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid (“ITB”) No. C006512 on December 26, 2023 for Anoxic Lift Pump #1 Replacement;

WHEREAS, one (1) bidder responded, and Evoqua Water Technologies LLC was the responsive and responsible bidder for the project. The Contractor was subsequently selected as the intended awardee for these services; and

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**Article 1**

**DEFINITIONS: THE CONTRACT DOCUMENTS**

1.1. The capitalized terms used herein shall have the meanings set forth in the General Conditions of the Contract for Construction (herein referred to as the “General Conditions”) unless a specific definition therefor is provided herein. Unless otherwise specified, references herein to numbered articles and paragraphs are to those in this Agreement. This Agreement shall be referred to throughout the Contract Documents as the “Agreement.”

1.2. The Contract Documents consist of this Agreement, the Conditions of the Contract (General and Special), the Drawings, the Specifications, all Addenda (except portions thereof relating purely to any of the bidding forms or bidding procedures), all Modifications and all other documents identified in the “List of Contract Documents” included in Exhibit A, which is attached hereto. Such documents form the Contract and all are as fully a part thereof as if attached to this agreement or repeated herein.

**Article 2**

**STATEMENT OF THE WORK**

2.1. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the “Work.”

2.2. Exhibit A, “Project Description and List of Contract Documents,” contains a brief description of the Project.

2.3. The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and nonprofessional services, and shall perform all other acts and supply all other things necessary to fully and properly perform and complete the Work. The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor.



**Article 3**  
**OWNER'S REPRESENTATIVE**

3.1. **Reedy Creek Energy Services**, whose designated representative is **Randall Sims**, and whose mailing address is Post Office Box 690519, Orlando, Florida 32869, shall act as the Owner's authorized representative (herein referred to as the "Owner's Representative"); provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.

3.2. Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

**Article 4**  
**THE ARCHITECT/ENGINEER**

4.1. The Architect/Engineer for the Project (herein referred to as the "A/E") is Reedy Creek Energy Services, Inc. whose mailing address is P.O. Box 10000, Lake Buena Vista, Florida 32830.

**Article 5**  
**TIME OF COMMENCEMENT AND COMPLETION**

5.1 The Contractor shall commence the Work promptly upon Agreement execution ("Execution") by the both parties. Contractor shall provide submittal drawings to Owner within 98 days after execution; and Contractor shall begin delivery of (1) new Anoxic Lift Pump and appurtenances within 224 days from complete submittal approval Contractor shall finish installation and perform start-up within 14 days of delivery to site.

5.2. The Contractor acknowledges that the Owner has made no warranties to the Contractor, expressed or implied, that the Contractor will be able to follow a normal, orderly sequence in the performance of the Work or that there will be no delays in, or interference with, the Work.

**LIQUIDATED DAMAGES**

Should the Contractor fail to substantially complete all Work under this Contract and make the project available for beneficial use on or before the date stipulated (or such later date as may result from extension of time granted by the District), the Contractor shall pay and/or the District may retain from the compensation otherwise to be paid to the Contractor, as liquidated damages, the sum of \$500.00 per day not to exceed a maximum of 10% of the contract value for each consecutive calendar day that terms of the Contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which District will sustain per diem by failure of the Contractor to complete work within the time as stipulated; it being recognized by the District and the Contractor that the injury to the District which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

Liquidated damages do not apply to final completion dates.

**Article 6  
CONTRACT SUM**

6.1. Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Change Order or as otherwise provided in the General Conditions, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of **ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00)** (herein referred to as the “Contract Sum”) to cover the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including, without limitation, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor.

**Article 7  
APPLICATIONS FOR PAYMENT**

7.1. The Contractor shall, on the twenty-fifth (25th) day of each calendar month (herein referred to as the “Payment Application Date”), deliver to the Owner an Application for Payment in accordance with the Article 8 below and the provisions of Article 9 of the General Conditions. Before submitting the first Application for Payment, Contractor shall submit (and resubmit until approval is obtained) to the Owner's Representative for approval the “Schedule of Values,” generally following the Uniform Construction Index (CSI) cost analysis format but further broken down by facility, labor and material, all as required by the Owner's Representative. Each item in the "Schedule of Values" shall only include its proper share of overhead and profit. The Schedule of Values, when approved by the Owner's Representative, shall be used as a basis for the Contractor's Application for Payment.

**Article 8  
ANNUAL APPROPRIATIONS, PROGRESS PAYMENTS  
AND FINAL PAYMENT OF THE CONTRACT SUM**

8.1. It is understood and agreed that the Agreement is subject to annual appropriations per fiscal year by the Central Florida Tourism Oversight District Board of Supervisors. It is further understood and agreed between the Parties that the Owner shall be bound and obligated only to the extent that funds have been appropriated for the current fiscal year. The payment schedule based on annual appropriation is outlined in Section 8.2. below.

8.2. Payment Schedule:

Milestone	Fiscal Year*	Agreement Percent	Amount
1 - Drawing Submittal Delivery to Owner	2024	10%	\$122,701.70
2 - Equipment Shipment and Installation (includes pump removal)**	2025	85%	\$1,042,964.45
3 - Start-up and Retainage	2025	5%	\$61,350.85

\*Fiscal Year is October 1-September 30.

\*\* Milestone 2 will be paid in monthly progress payments based on percentage of project completion.

8.3. Based on the Contractor's Application for Payment, the Payment Schedule, the Schedule of Values submitted by the Contractor and approved by the Owner, and the Owner’s approval of the Application for Payment pursuant to Article 9 of the General Conditions, the Owner shall make monthly payments to the Contractor on account of the Contract Sum. Such monthly payments shall be made on or before the twenty-fifth (25th) day of each calendar month or the thirtieth (30th) day after receipt by the Owner of such documentation as the Owner may require pursuant to Article 9 of the General Conditions to substantiate the amount owed, whichever is later; provided, however, that the Owner shall have no obligation to make payment as aforesaid if it has withheld approval thereof as permitted under Subparagraph 9.3.1. of the General Conditions or if the Contractor has not submitted to the Owner all documentation

required to substantiate the Application for Payment. Each such monthly payment shall be in an amount equal to ninety-five percent (95%) of the net amount allowed the Contractor for labor, materials and equipment incorporated or used in the Work (or suitably stored at the job site if the Owner has agreed in advance to pay for such stored materials and equipment) through the Payment Application Date, as indicated in the Owner's approval of the Application for Payment, after deducting any sums withheld by the Owner pursuant to the Contract Documents and the aggregate of all previous payments to the Contractor on account of the Contract Sum. Upon Start-up of the Work, as determined by the Owner, the Owner shall pay to the Contractor a sum sufficient to increase the aggregate payments theretofore made to the Contractor on account of the Contract Sum to ninety-five percent (95%) of the Contract Sum, less such retainage as the Owner shall determine is necessary for all incomplete Work, unsettled claims or other matters for which the Owner is permitted to withhold under the General Conditions.

8.4. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within fourteen (14) days after completion of those items set forth in the Punch List, including, without limitation, approval by Owner of the final Application for Payment, and execution by the Contractor of the Close-out Change Order, in accordance with the General Conditions; provided, however, that final payment shall in no event be due unless and until the Contractor shall have complied with all provisions of the Contract Documents, including those contained in Subparagraph 9.4.2 of the General Conditions.

## **Article 9**

### **CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 9.1. The Contractor hereby represents and warrants to the Owner that:
- a. it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed hereunder;
  - b. it is experienced and skilled in the construction and work of the type described in, or required by, the Contract Documents;
  - c. all equipment and materials used in connection with the Work shall be new (except if otherwise required by the Specifications) and the equipment, the materials and the Work shall be of the best quality, free from faults and defects and shall strictly conform to the material requirements of the Contract Documents; and
  - d. it has, by careful examination satisfied itself as to: (i) the nature, location and character of the job site including, without limitation, the surface and subsurface conditions of the land and all structures and obstructions thereon, both natural and manmade, surface water conditions of the Job Site and the surrounding area and, to the extent pertinent to the Work, all other conditions; (ii) the nature, location and character of the general area in which the Job Site is located including, without limitation, its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (iii) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (iv) all other matters or things which could in any manner affect the performance of the Work. Without limitation on the foregoing, the Contractor recognizes the physical and operational restrictions on carrying on of the Work in or about the Project or the Job Site.
- 9.2. The Contractor accepts the relationship of trust and confidence established by this Agreement between it and the Owner. It covenants with the Owner that it shall: furnish its best skill and judgment and cooperate with the Owner in furthering the interests of the Owner; furnish efficient business administration and superintendence and an adequate supply of workmen, equipment, tools and materials at all times; and perform the work in the best and soundest way and in the most expeditious and economical manner consistent with the best interests of the Owner.
- 9.3. **EQUIPMENT WARRANTY:** Subject to the following sentence, Contractor warrants to Owner that the shall be free from defects in material and workmanship and (ii) the Services shall be performed in a timely and workmanlike manner. Determination of suitability of treated water for any use by Owner shall be the sole and exclusive responsibility of Owner, and Contractor disclaims any warranty regarding such suitability. The foregoing warranty

shall not apply to any Work that is specified or otherwise demanded by Owner and is not manufactured or selected by Contractor, as to which (i) Contractor hereby assigns to Owner, to the extent assignable, any warranties made to Contractor and (ii) Contractor shall have no other liability to Owner under warranty, tort or any other legal theory. The Contractor warrants the Work, or any components thereof, through the earlier of (i) eighteen (18) months from delivery of the Work, or (ii) twelve (12) months from Owner's initial operation of the Work, or in the case of services performed as part of the Work (the "Warranty Period"). If Owner gives Contractor prompt written notice of breach of this warranty within the Warranty Period, Contractor shall, at its sole option and as Owner's sole and exclusive remedy, repair or replace the subject parts, re-perform the Service or refund the purchase price. If Contractor determines that any claimed breach is not, in fact, covered by this warranty, Owner shall pay Contractor its then customary charges for any repair or replacement made by Contractor. Contractor's warranty is conditioned on Owner's (i) operating and maintaining the Work in accordance with Contractor's instructions, (ii) not making any unauthorized repairs or alterations, and (iii) not being in default of any payment obligation to Contractor. Contractor's warranty does not cover (i) damage caused by chemical action or abrasive material, improper thermal or electrical capacity, misuse or improper installation (unless installed by Contractor) and (ii) media goods (such as, but not limited to, resin, membranes, or granular activated carbon media) once media goods are installed. THE WARRANTIES SET FORTH IN THIS SECTION ARE THE CONTRACTOR'S SOLE AND EXCLUSIVE WARRANTIES AND ARE SUBJECT TO THE LIMITATION OF LIABILITY PROVISION BELOW. CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE.

#### **Article 10 TERMINATION**

10.1. Termination of the Contract by the Owner, with or without cause, and by the Contractor are provided for in Article 15 of the General Conditions. If the Owner terminates the Contract pursuant to Paragraph 15.2. of the General Conditions, and the unpaid balance of the Contract Sum exceeds the costs and expenses incurred by or on behalf of the Owner in finishing the Work, including compensation for any additional architectural, engineering, management and administrative services, such excess shall, upon the completion of the Work, be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner upon demand.

#### **Article 11 LEGAL PROCEEDINGS**

11.1. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

11.2. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Contract, or arising out of any matter pertaining to this Contract or the Work to be performed hereunder (a "Proceeding"), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

11.3. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

**Article 12  
PUBLIC RECORDS**

**12.1. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX 690519, ORLANDO, FLORIDA 32869.**

**a. THE CONTRACTOR SHALL:**

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

**b. REQUEST FOR RECORDS; NONCOMPLIANCE:**

1. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
2. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
3. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

**c. CIVIL ACTION:**

1. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
  - i. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and

- ii. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
2. A notice complies with subparagraph (c) ii. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
3. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

### **Article 13** **E-VERIFY COMPLIANCE**

13.1. The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of Article 10 hereof and Article 15 of the General Conditions of the Contract for Construction, which forms a part of this Agreement, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

### **Article 14** **FORCE MAJEURE**

14.1. Neither Owner nor Contractor shall have any liability for any breach or delay (except for breach of payment obligations) caused by a Force Majeure Event. If a Force Majeure Event exceeds six (6) months in duration, the Contractor shall have the right to request an extension of time equal to the duration of Force Majeure event. "Force Majeure Event" shall mean events or circumstances that are beyond the affected party's control and could not reasonably have been easily avoided or overcome by the affected party and are not substantially attributable to the other party. Force Majeure Event may include, but is not limited to, the following circumstances or events: war, act of foreign enemies, terrorism, riot, strike, or lockout by persons other than by Contractor or its sub-suppliers, natural catastrophes, (with respect to on-site work) unusual weather conditions, epidemic, pandemic, communicable disease outbreak, quarantines, national emergency, or state or local order.

### **Article 15** **SCRUTINIZED COMPANIES**

- a. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.
- b. Specifically, by executing this Agreement, the Contractor certifies that it is **not**: on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

c. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:

1. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473 Florida Statutes; and/or
2. Engaged in business operations in Cuba or Syria.

d. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:

1. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes, and/or
2. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.

e. If this Agreement is terminated by the Owner as provided in paragraph d above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.

f. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner’s termination.

g. Unless explicitly states in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

**Article 16**  
**PUBLIC CONSTRUCTION BOND**

16.1. The Contractor must submit a recorded, Public Construction Bond in conformance with Florida Statute 255.05 for the Total Contract Sum Amount of **ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00)** as security for the faithful performance of the work within the time set forth as required herein and for prompt payment to all persons defined in 713.01, Florida Statutes, who furnish labor, services, or materials for the completion of the work provided herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

OWNER:  
**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**

CONTRACTOR:  
**EVOQUA WATER TECHNOLOGIES LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

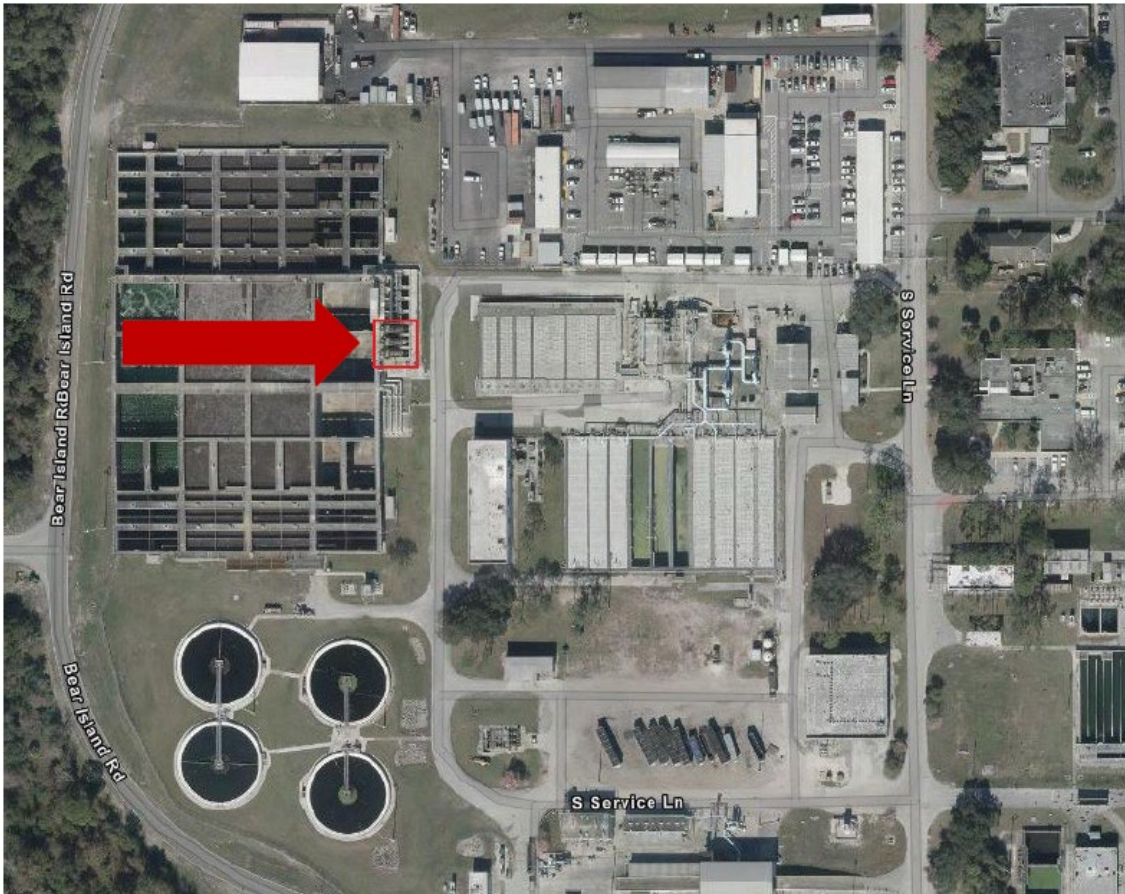
Date: \_\_\_\_\_

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

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006512**

I. Project Description

The Project is briefly described as follows: Contractor shall provide all labor, equipment, tools, and materials to furnish and install a replacement Anoxic Lift Pump #1 located at South Service Area (“SSA”) Wastewater Resource Recovery Facility (“WRRF”) as depicted in the below pictures. Pumps at this facility move up to 20,000 GPM of partially treated wastewater from the lower anoxic zones to the upper aeration zone in the Biological Nutrient Removal (“BNR”) process.





**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
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- A. Contractor shall provide one (1) new complete 96” diameter x 29’-11/16” long enclosed Archimedes-style (ASP) screw pump designed for a capacity of 20,000 GPM 45° angle under the following conditions:
1. New pump body of A36 carbon steel construction, complete with carbon steel flights and drive shaft. Pump tube will have a minimum thickness of 0.5”. Made in the United States.
  2. New wear ring assembly with pilot blocks and saddle plates.
  3. New two-piece 304 stainless steel upper splash guards.
  4. New lower bearing assembly, to include four (4) roller assemblies, two (2) roller carriages, one (1) guard. Guard, sole plate, and carriages are to be painted carbon steel construction.
  5. New upper bearing assembly.
  6. New automatic oil lubrication system that includes black nylon tubing and fittings.
  7. New drive system consisting of 125HP, 3ph/60hz/480v Super E severe duty motor, gearbox, belts, sheaves, backstop, low speed coupling and sole plate, motor mounts, belt & coupling guards are to be painted carbon steel construction.
- B. Contractor shall provide, deliver, and install a new enclosed Archimedes-style (ASP) screw pump along with all mechanical components in place of the old pump, while also removing and disposing of current in place old screw pump and mechanical components associated with the pump.
- C. Contractor shall conform to the most current National Sanitation Foundation (“NSF”) 60/61 and/or North American National Standards Institute (“ANSI”) or American Water Works Association (“AWWA”) standards for water.
- D. Contractor shall provide surface protection based on the following:
1. All exposed fabricated carbon steel or cast-iron components shall be near white blasted (SSPC- SP10) and final coated with Tnemec Tneme-Tar at 16 mils D.F.T. minimum.
  2. Interior surfaces shall be near-white blast cleaned (SSPC-SP10) prior to fabrication and after fabrication assembly completely coated using a two-pass, flow coat process with Tnemec Series 46-465 H.B Tnemecol Coal tar Epoxy at 8 mils minimum D.F.T.
  3. Shafting and exposed machined surfaces will be cleaned with a solvent wiping followed by the shop preservative.
  4. Drive units and controls will match manufacturer’s standards.
  5. All stainless surfaces shall be cleaned in accordance with ASTM A380 standards.
- E. Existing anchors shall be reused unless condition does not permit so and will then be replaced by the Contractor. Contractor’s price shall include a separate line item to provide and install anchors.
- F. Contractor will provide all lubricants for gearbox’s, rollers, bearings, or lubrication system.
- G. **DELIVERABLES:**
1. Deliver and install (1) new Anoxic Lift Pump and appurtenances. All work is to be performed during the hours of operation Monday through Sunday between the hours of 7:00 AM to 5:00 PM.
  2. All equipment related to the scope of work will be delivered only during the week of, or one (1) week prior to, work being performed.
  3. Prior to any work being completed the Contractor shall also provide a Project Specific Safety Plan (“PSSP”) as well as a lift plan approved by the Owner.
  4. The Contractor shall keep the premises and surrounding area free of accumulation of waste materials or rubbish caused by this work at all times. Upon completion of the work, all excess material and rubbish will be removed from the job site, and any off-site locations used, and disposed of in a lawful manner and shall clean off property/building surfaces and the area “broom clean”. Upon completion of the work, the Contractor shall remove all tools, equipment, and machinery.
  5. Contractor shall be responsible for off-loading, unpacking/uncrating all materials and equipment at the job site. The Contractor shall coordinate with the Central Florida Tourism Oversight District (“CFTOD”) Utilities Department for property/building access; use of utilities; temporary storage area for supplies/equipment, and equipment operations. Contractor shall be responsible to safeguard all of their

**EXHIBIT A**  
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tools, equipment, signs, barricades, etc. while operating on the CFTOD Utilities Department work site. The Owner assumes no responsibility for act of theft or vandalism which may occur while contractor's tools, equipment or materials are located on property.

6. The Contractor shall supply and schedule all cranes required for completion of work.
7. Upon completion, the Contractor shall provide drawings and operations and maintenance manuals to the Owner in the form of electronic Adobe PDF format.
8. Upon completion, the Contractor shall provide a technician from the manufacturer who is trained to perform a startup and commissioning of installed equipment.
9. Any deficiencies noted during an inspection shall be corrected before final acceptance. Such deficiencies will be corrected with twenty-four (24) hours after receipt of notification at the Contractor's expense.

**H. CONTRACTOR CLARIFICATIONS:**

1. Contractor shall furnish the Internalift screw pump equipment and labor associated with the below options for replacement on Anoxic Lift Pump #1 at the South Service Area WRRF in Lake Buena Vista, FL. One (1) new 96" Diameter x 29' - 1 11/16" long Internalift Screw Pump, designed for a capacity of 20,000 GPM. Pump is installed at 45° incline and includes the following items:
  - a. New Pump Body of A36 carbon steel construction, complete with carbon steel flights and drive shaft. Pump tube thickness is 0.5" minimum.
  - b. New Wear Ring Assembly with Pilot Blocks and saddle plates.
  - c. New Evoqua standard Two Piece 304 Stainless Steel Upper Splash Guard.
  - d. New Lower Bearing Assembly, to include four (4) roller assemblies, two (2) roller carriages, one (1) sole plate and one (1) guard. Guard, sole plate, and carriages of painted carbon steel construction.
  - e. New Upper Bearing Assembly (will ship attached to pump body).
  - f. New Malco Products automatic oil lubrication system includes black nylon tubing, and fittings.
  - g. Drive Systems consisting of a 125HP, 3ph/60hz/480v Super E Severe Duty motor, gearbox, belts, sheaves, backstop, low speed coupling and sole plate. Sole plate, motor mounts, belt & coupling guards are to be painted carbon steel construction.
  - h. Lubricants for start-up of equipment.
  - i. Submittal packages.
  - j. Operation and Maintenance manuals.
2. Field Erection Services: Contractor field demo and installation services are included. Field services are based on standard Contractor wage rates and a 7-day workweek, 10 hours/day. Contractor will supply cranes as required and dispose of existing equipment in compliance with local, State and Federal laws and regulations.
3. Manufacturers Field Start-Up Services: Services included are one (1) trip, three (3) days onsite for inspection of installed equipment, instruction of owner's personnel and start-up of equipment.
4. Painting and Surface Protection: (New Pump Body):
  - a. All exposed fabricated carbon steel or cast-iron components shall be near white blasted (SSPC-SP10) and final coated with Tnemec Tnemec-Tar at 16 mils D.F.T. minimum. Color is Black,
  - b. Interior surfaces shall be near-white blast cleaned (SSPC-SP10) prior to fabrication and after fabrication/assembly completely coated using a two-pass, flow coat process with Tnemec Series 46-465 H.B. Tnemecol Coal Tar Epoxy at 8 mils minimum DFT, Color Black.
  - c. Shafting and exposed machined surfaces: solvent wiping, followed by one (1) coat of Evoqua's standard shop preservative.
  - d. Wood, nonferrous materials, and galvanized surfaces: unpainted.
  - e. Drive units and controls: manufacturer's standard.
  - f. All stainless surfaces shall be cleaned in accordance with ASTM A380 standards.

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5. Pricing: FCA shipping point with standard freight allowed to the job site. Pricing includes freight, unloading, transporting onsite, phased shipments and storage because field services was purchased.
6. Service Manuals: Electronic version in Adobe PDF file format included with pricing. Drawings will be supplied in an unchangeable TIF, bitmap or PDF file format only. The rights to the content of the Evoqua O&M Manuals and drawings belong solely to Evoqua and Evoqua reserves the right to make changes to content at any time.
7. Excluded Items: The items listed below will not be supplied by Contractor.
  - Anchors (Existing to be reused).
  - Special written process performance or extended mechanical warranties.
  - Electrical controls, field run wiring or conduit.
  - Detail shop fabrication drawings.
  - Any items/equipment not specifically listed in this scope.
  - No process or performance testing is included by Contractor.
  - Dewatering of the pit, temporary bypass pumping if required.
  - Taxes of any kind.
  - No spare parts.
8. Clarifications & Exceptions:
  - The scope does not include any civil design or site work, such as for the supporting concrete structure and structural calculations.
  - It is Contractor's intent that the existing anchorage is to be reused if deemed fit. In the instance that any anchorage shall need to be replace, Contractor shall supply Epoxy adhesive anchors.
  - No controls are included in this offering, VFD Controllers if required are not supplied by Contractor.
  - No performance, factory or field testing is included in Contractor's Scope of Supply.
  - Estimated Screw Pump shipping weight is 50,000 lbs. each.
  - Pumps are fabricated in the USA at Contractor's manufacturing facility in Thomasville, GA.

II. List of Contract Documents

A. Drawings:

The As-Built drawings for the BNR Anoxic Lift Pump dated 11/01/1993 are available for inspection and copying at <https://pbsystem.planetbids.com/portal/62171/bo/bo-detail/112838#>. All Drawings listed herein are specifically incorporated into the Project Manual by this reference.

- B. This Exhibit A, Project Description and List of Contract Documents, 5 pages
- C. Exhibit B, Project Milestone Schedule, 1 page
- D. Exhibit C, Recap of Contract Sum, 1 page
- E. Exhibit D, Pending Alternates, 1 page
- F. Exhibit E, Unit Price Schedule, 1 page
- G. Special Contract Conditions, 15 pages, June 2023 Ed.
- H. General Conditions of the Contract for Construction, 26 pages, including table of contents, March 2023 Ed.
- I. Payment Bond, 2 pages
- J. Performance Bond, 2 pages
- K. Consent of Surety for Partial Payment Application, 1 page
- L. Dual Obligee Rider, 1 page
- M. Contractor's Interim Affidavit (SAMPLE), including Schedule A, 2 pages

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- N. Contractor's Request for Information (SAMPLE), 1 page
- O. Directive (SAMPLE), 1 page
- P. Change Order (SAMPLE), including Exhibit A, 2 pages
- Q. Close-Out Change Order (SAMPLE contains Certificate of Substantial Completion), including Attachments A through G, 10 pages
- R. Punch List (SAMPLE), 1 page

**End of Exhibit A**

**EXHIBIT B**  
**PROJECT MILESTONE SCHEDULE**  
**Contract No.: C006512**

The Contractor agrees to commence and complete the Work in strict accordance with the Project Milestone Schedule for performance of the work, as provided below:

MILESTONE DESCRIPTION	START DATE	COMPLETION DATE
Submittal Drawings	Upon fully executed agreement	98 days
Equipment Delivery	ONLY during the week of, or one (1) week prior to, work being performed.	
Contractor shall provide a Project Specific Safety Plan (“PSSP”) as well as a lift plan approved by the Owner.	Prior to any work being completed	
Ship one (1) new Anoxic Lift Pump and appurtenances per Scope of Services	224 days from complete submittal approval	
Installation completion	14 days from delivery to site	

*NOTE: Contractor shall schedule services on project site with the Owner’s Representative.*

**End of Exhibit B**

**EXHIBIT C**  
**RECAP OF CONTRACT SUM**  
**Contract No.: C006512**

The Contract Sum is based solely on the Contractor's proposed Lump Sum Fixed Price of \$1,227,017.00.

**Itemized Lump Sum Amount:**

One (1) New 96" Internalift Screw Pump System Complete	\$1,077,585.00
Field Services:* Removal and Installation Services for One (1) pump	\$149,432.00
	<b>TOTAL \$1,227,017.00</b>

*This amount does not include sales tax.*

*\* Field Services: Contractor field demo and installation services are included. Field services are based on standard Contractor wage rates and a 7-day workweek, 10 hours/day. Contractor will supply cranes as required. Disposal of existing equipment is by Contractor.*

Pricing is FCA shipping point with standard freight allowed to the job site. Pricing includes freight, unloading, transporting onsite, phased shipments and storage because field services was purchased.

**End of Exhibit C**

**EXHIBIT D**  
**PENDING ALTERNATES**  
**Contract No.: C006512**

THERE ARE NO PENDING ALTERNATES

**End of Exhibit D**

**EXHIBIT E**  
**SCHEDULES OF UNIT PRICES**  
Contract No.: **C006512**

THERE ARE NO UNIT PRICES

**End of Exhibit E**



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**SPECIAL CONTRACT CONDITIONS**

Contract No.: C006512

June 2023 Edition

Table of Contents:

- (i) Definitions
  - I. General Safety Requirements, Contractor Parking and Access, Break Areas
  - II. Construction Site Minimum Personal Protective Equipment (“PPE”) and Clothing Requirements
  - III. Reserved
  - IV. Asbestos/Cadmium or Lead/CFCs
  - V. Confined Spaces
  - VI. Hazardous and Chemical Waste Disposal
  - VII. Electrical Safety Policy
  - VIII. Lock out / Tag out
  - IX. Fall Protection
  - X. Aerial Work Platforms (“AWP”)
  - XI. Ladders
  - XII. Trenching and Excavation
  - XIII. Utility Locates
  - XIV. Mobile Cranes
  - XV. Heavy Equipment Operations
  - XVI. Diving Operations
  - XVII. Reserved

(i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs

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Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trash cans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trash cans must be provided for the disposable cups and/or bottles.

Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

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**II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS**

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

**III. RESERVED**

**IV. ASBESTOS/CADMIUM OR LEAD/CFCs**

**A. ASBESTOS**

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (ACM) and/or Presumed Asbestos-Containing Materials (PACM), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

**B. CADMIUM and/or LEAD**

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

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C. CHLOROFLUOROCARBONS (CFCs)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (CFCs) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor's work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner's property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space ("PRCS"), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space ("PRCS") entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor's Project Specific Safety Plan ("PSSP"). In support of the Contractor's preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner's experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor's personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner's job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.

Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such, despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

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Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.

VII. ELECTRICAL SAFETY POLICY

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

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The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment (“PPE”) and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6’) of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing (FRC).

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3’6”) away from the exposed fixed energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

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The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

**VIII. LOCK OUT / TAG OUT**

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers

Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

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- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

**IX. FALL PROTECTION**

The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a "STOP WORK" condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to



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an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards (“SRLs”) must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn’t feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer’s instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor’s qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System (“PFAS”), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25’).

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5’) or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40<sup>0</sup> require the use of fall protection.

Fall protection is required for work conducted six feet (6’) or more above water. Where fall protection completely prevents falling into the water, personal flotation devices (PFDs) are not required.

**X. AERIAL WORK PLATFORMS (“AWP”)**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner’s request.

Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP’s that are not in proper operating condition shall be immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as “out of service” the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer’s capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline (“SRL”) of appropriate length (e.g. 3 feet). If the AWP is being used at heights of

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18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP's are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

**XI. LADDERS**

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.
- f) Ropes/pulleys in good condition (extension ladders).

Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

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If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

**XII. TRENCHING AND EXCAVATION**

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade. Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

**XIII. UTILITY LOCATES**

*Routine Locate Tickets:*

The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services (RCES) between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida ("SSOCOF") by calling 811.

Call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

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*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.

Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

**XIV. MOBILE CRANES**

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (NCCCO).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

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A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water's edge, Ground Bearing Pressures (GBP) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.

Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing. Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

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Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (PPE) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.

Remove keys from unattended vehicles.

Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

## XVI. DIVING OPERATIONS

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection. Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces

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- f) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- g) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

XVII. RESERVED.

END OF SPECIAL CONTRACT CONDITIONS

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REEDY CREEK IMPROVEMENT DISTRICT  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

**ARTICLE 1**  
**DEFINITIONS**

1.1. **THE CONTRACT.** The Contract for Construction (referred to herein as the "Contract") is the sum of all Contract Documents. It represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification, as defined below.

1.1.1. The Contract Documents consist of those documents specified in Paragraph 1.2. of the Agreement or otherwise referred to in these General Conditions of the Contract for Construction. The Contract Documents do not include bidding documents, such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda as and to the extent that they may relate to any of the bidding documents or bidding procedure.

1.1.2. An Addendum is a written or graphic instrument issued by the Owner prior to the execution of the Agreement which sets forth additions, deletions or other revisions to the Contract Documents or clarifications thereof.

1.1.3. A Modification may be accomplished by: (a) a Change Order; (b) a Directive; or (c) any other written amendment to the Contract signed by both parties. A Modification may be made only after execution of the Agreement. No Directive shall be construed as a Change Order or other Modification unless it expressly so states.

1.1.4. A Change Order is a written Modification executed by both parties (except in the event of a unilateral Change Order as herein provided) and consisting of additions, deletions or other changes to the Contract. A Change Order may be accompanied by and/or may identify additional or revised Drawings, sketches or other written instructions, which become and form a part of the Contract Documents by virtue of the executed Change Order. Except as otherwise provided in Subparagraph 1.1.5., a Change in the Work, or a change in the Contract Time or the Contract Sum shall become the subject of a Change Order.

1.1.5. A Directive is a written document issued by the Owner and consisting of additions, deletions, clarifications or other written instructions issued by the Owner with respect to the performance of the Work or the activities of the Contractor on the Job Site or the property of the Owner. A Directive may include, but shall not be limited to, a bulletin, an engineering change, or other orders or instructions. Directives may become the subject of a Change Order, either singularly or collectively. Directives shall become the subject of a Change Order if they involve a Change in the Work, or a change in the Contract Time or the Contract Sum.

1.2. **THE OWNER.** The Owner is the person or organization identified as such in the Agreement. The term "Owner," whenever it appears in the Contract Documents, means the Owner and/or the Owner's Representative acting on behalf or for the benefit of the Owner (except as otherwise specified in the Contract Documents or as the context otherwise requires); provided, however, that with respect to any provisions of the Contract which require the Contractor to provide insurance for the protection of the Owner or to release the Owner from, or waive, any claims the Contractor may have against it, the term "Owner" shall mean the Owner and its supervisors, officers, employees, agents and assigns and the Owner's Representatives and its parent, related, affiliated and subsidiary companies, and the officers, directors, agents, employees and assigns of each.

1.3. **THE OWNER'S REPRESENTATIVE.** The Owner's Representative is the person or organization designated from time to time by the Owner to act as its representative as identified in Article 3 of the Agreement or the most current Modification thereto.

1.4. **THE CONTRACTOR.** The Contractor is the person or organization identified as such in the Agreement. The Contractor shall so designate a sufficient number of Project representatives that there shall be at least one authorized representative on the Job Site at all times in which the Work is being performed including, without limitation, a project manager (herein referred to as the "Project Manager") who shall at all times have authority to act (in all capacities necessary for the Work) for and bind the Contractor.

1.5. SUBCONTRACTOR; SUB-SUBCONTRACTOR.

1.5.1. A Subcontractor is a person or organization having a direct contract with the Contractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.5.2. A Sub-subcontractor is a person or organization having a direct or indirect contract (on any tier) with a Subcontractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.6. THE JOB SITE. The Job Site shall mean the area in which the Work is to be performed and such other areas as may be designated by the Owner for the storage of the Contractor's materials and equipment.

1.7. THE PROJECT. The Project is the total construction of which the Work may be the whole or a part.

1.8. WORK; CONTRACT TIME; CONTRACT SUM. The Work, the Contract Time and the Contract Sum are as defined in Articles 2, 5 and 6, respectively, of the Agreement.

1.9. PROVIDE. Except as the context otherwise requires, the term "provide" means to furnish, fabricate, complete, deliver, install and erect including all labor, materials, equipment, apparatus, appurtenances and expenses, necessary to complete in place, ready for operation or use under the terms of the Specifications.

1.10. PLANS. Wherever the words "Plan" or "Plans" are used in the Contract Documents, they shall be construed as having the same meaning as Drawing or Drawings (as referred to in the Agreement).

1.11. SPECIFICATIONS. The Specifications shall include those referred to in the Agreement.

1.12. THE ARCHITECT/ENGINEER. The person or entity having a direct contract with the Owner to design the Project or a portion thereof and to produce the Project Plans and Specifications or portion thereof, as identified in Article 4 of the Agreement or the most current Modification thereto, together with its subconsultants.

**Article 2**  
**THE CONTRACT DOCUMENTS**

2.1. EXECUTION, INTENT AND INTERPRETATIONS.

2.1.1. The Contractor warrants and represents that, in executing the Agreement and undertaking the Work, it has not relied upon any oral inducement or representation by the Owner, the Owner's Representative, the Architect/Engineer or any of their officers or agents as to the nature of the Work, the Job Site, the Project conditions or otherwise.

2.1.2. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. If the Contract Documents do not specifically allow the Contractor a choice as to quality or cost of items to be furnished, but could be interpreted to permit such choice, subject to confirmation or approval by the Owner, they shall be construed to require the Contractor to furnish the best quality. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.1.3. Where conflict exists within or between parts of the Contract Documents, or between the Contract Documents and either applicable industry standards or applicable codes, ordinances or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used: the Agreement; the Special Conditions; the General Conditions; the Specifications; the Drawings. If the Contractor is required to perform any extra or corrective Work to comply with the preceding sentence, it shall not be entitled to an increase in the Contract Sum or Contract Time, and no claim shall result from such compliance. Subject to confirmation or approval by the Owner, large scale Drawings take precedence over smaller scaled Drawings, figured dimensions on the Drawings take precedence over scaled dimensions, and noted items on the Drawings take precedence over graphic representations.

2.1.4. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, are not intended to influence the Contractor in its division of the Work among Subcontractors or its establishment of the extent of the Work to be performed by any trade.

2.1.5. The Contractor shall submit a written request to the Owner for any interpretations necessary for the proper execution or progress of the Work. Such interpretations shall be issued in writing.

2.1.6. The Contract Documents reflect conditions as they are believed to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute a representation by or on behalf of the Owner that such conditions actually exist. The Contractor shall inspect the Job Site and conduct any tests or surveys it deems necessary or desirable prior to the commencement of the Work and shall accept full responsibility for any loss sustained by it as a result of any variances between the conditions as shown on the Contract Documents and the actual conditions revealed during the progress of the Work or otherwise. The Contract Sum shall in no event be increased by reason of any such variance unless otherwise specifically provided herein.

2.1.7. The Contractor shall develop and maintain current "as-built" Plans to be provided to the Owner in accordance with Subparagraph 9.4.2. The Owner may inspect and copy such Plans at any time during the course of the Work.

2.2. COPIES FURNISHED; OWNERSHIP. All Contract Documents and copies thereof furnished by the Owner, the Owner's Representative or the Architect/Engineer are and shall remain the Owner's property. They are not to be published or used by the Contractor on any other project and, with the exception of one complete set for the Contractor, are to be returned to the Owner upon completion of the Work.

2.3. NO ORAL WAIVER. The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification signed by the Owner. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from, any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent. Despite any prior waiver, approval or consent as to any particular matter, the Owner may at any time require strict compliance with the Contract Documents as to any other matter.

### **Article 3 OWNER**

3.1. EASEMENTS. The Owner shall obtain and pay for any easements required for permanent structures.

3.2. ACCESS. The Owner shall at all times have access to the Work at each and every stage of preparation and progress. The Contractor shall provide facilities (including, without limitation, roadways) for such access.

### **Article 4 THE OWNER'S REPRESENTATIVE**

4.1. CONTRACTUAL RELATIONSHIPS. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner's Representative and the Contractor; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by the Contract Documents (including, but not limited to, the Owner's rights pursuant to Paragraph 7.2. and Articles 10 and 11 of these General Conditions).

4.2. ROLE. Except as otherwise provided in the Contract Documents, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder. If the Owner's Representative is an organization, then it shall, in turn, act through such person or persons as it may designate in writing from time to time. Only those so designated are authorized to grant on behalf of the Owner any approval, consent or waiver with respect to the Contract Documents or the Work, or to otherwise act for the Owner in any capacity whatsoever.

### **Article 5 CONTRACTOR**

5.1. REVIEW OF CONTRACT DOCUMENTS. In addition to the representations and warranties contained in Article 9 of the Agreement, the Contractor acknowledges that prior to execution of the Agreement it has thoroughly reviewed and inspected the Contract Documents. The Contractor further acknowledges that it has satisfied itself regarding any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or

explanation and has assured itself of the adequacy and accuracy of each of the Contract Documents, as well as the compatibility of any combination thereof, as they relate to one another and to the scope of Work and the Schedule. The Contractor hereby warrants and represents to the Owner that the Contract Documents are suitable and adapted for the Work. The Contractor shall perform no portion of the Work at any time without approved Contract Documents or, where required, shop drawings, product data, or samples, for such portions bearing the A/E's appropriate action stamp. Work performed in violation of this provision shall be at the Contractor's risk. Nothing in this Paragraph 5.1 shall in any way limit the effects of Article 9 of the Agreement.

## 5.2. SUPERVISION AND CONSTRUCTION PROCEDURES.

5.2.1. The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, coordination, scheduling (subject to Article 8) and procedures, for all cleanup and for all safety and weather precautions and programs, in connection with the Work.

5.2.2. The Contractor shall employ a competent Foreman and necessary assistants who shall be in attendance at the Job Site during the progress of the Work and who shall be satisfactory to the Owner. The Contractor shall remove any of its employees or agents (including, without limitation, the Foreman) from the Project upon instruction from the Owner. The Foreman shall not be changed except with the consent of the Owner unless the Foreman ceases to be in the Contractor's employ.

5.2.3. The Contractor shall be responsible to the Owner for the acts and omissions of its employees. It shall also be responsible to the Owner for the acts and omissions of its Subcontractors and Sub-subcontractors, their agents and employees, and other persons performing any of the Work, in the same manner as if they were the acts and omissions of persons directly employed by the Contractor.

5.2.4. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Contract, including, without limitation, by any inspections or tests required or performed under Paragraph 5.7., or by approvals or other similar action with regard to shop drawings or submittals (of any type), or by the activities of persons other than the Contractor with respect to the Project. Further, notwithstanding the fact that a dispute, controversy or other question may have arisen between the parties hereto relating to the execution or progress of the Work, the interpretation of the Contract Documents, the payment of any monies, the delivery of any materials or any other matter whatsoever, the Contractor shall not be relieved of its obligations to pursue the Work diligently under the Contract Documents pending the determination of such dispute, controversy or other question.

5.2.5. The Contractor shall establish, implement and supervise the submission of shop drawings and other submittals (of any type) in accordance with the Schedule and any Milestones. The Contractor shall note any variances between any such shop drawings or other submittals and the Contract Documents for the benefit of the Owner at the time of submission.

## 5.3. MATERIALS AND EQUIPMENT.

5.3.1. The Contractor shall, if so directed by the Owner, cause any or all materials and equipment to be manufactured in advance, and be warehoused either at the factory or elsewhere at the Contractor's cost. The Contractor shall cause all materials and equipment to be delivered to the Job Site in accordance with any schedule or schedules therefor established from time to time and approved by the Owner and, in any event, in a manner which will assure the timely progress and completion of the Work but will not encumber the Job Site unreasonably. Materials delivered to the Job Site for incorporation in the Work shall not be removed from the Job Site without the consent of or unless directed by the Owner.

5.3.2. The Owner may, from time to time during the performance of the Work and without any liability or obligation whatsoever to the Contractor or any of its Subcontractors or Sub-subcontractors, direct the Contractor to relocate, or cause to be relocated, to any other location on or off the Job Site, as designated by the Owner, any materials, equipment, office or storage trailers, storage sheds or the like brought onto the Owner's property by the Contractor or any of its Subcontractors or Sub-subcontractors, with which directions the Contractor shall promptly comply. Should such relocation not be completed within the time therefor established by the Owner, the Owner may accomplish such relocation and offset the costs incurred by it in accomplishing the same against any amounts then or thereafter due to the Contractor.

5.3.3. The Contractor shall give, or shall require its Subcontractors and their Sub-subcontractors to give, full and accurate quality, performance and delivery status reports, in a form satisfactory to the Owner, regarding any materials and equipment, or such other data with respect thereto as may be requested by the Owner, and shall obtain for the Owner the written assurances of any manufacturer that its material or equipment is designed, and appropriate, for the use intended.

5.4. **WARRANTY.** The Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. This warranty is not limited by the provisions of Paragraph 14.2. of these General Conditions or Article 9 of the Agreement. All warranties and guarantees from Subcontractors or Sub-subcontractors (including, without limitation, manufacturers) shall be assignable to the Owner regardless of whether it is so stated therein, and the Contractor agrees to assign all such warranties and guarantees to the Owner and deliver them pursuant to Subparagraph 9.4.2. The Contractor's obligations under this Paragraph shall survive the expiration or sooner termination of the Contract.

5.5. **TAXES; FEES AND LICENSES; ROYALTIES AND PATENTS.**

5.5.1. If the project is not tax exempt, the Contractor shall pay, or cause to be paid, all import duties and sales, consumer, use, excise, value added and ad valorem taxes required to be paid in connection with the Work or upon materials, tools or equipment brought to the Job Site or used in the Work for which Contractor will be reimbursed for such taxes as shown in an itemized invoice. If any of the foregoing taxes are not paid in a timely manner, the Owner may withhold the amount of any such taxes from any amounts owing to the Contractor under the Contract Documents, submit the amount so withheld to the appropriate taxing authority on behalf of the Contractor or its Subcontractors or Sub-subcontractors and offset said amount against the Contract Sum.

5.5.2. **INTENTIONALLY LEFT BLANK**

5.5.3. The Contractor shall pay all royalties and license fees incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others, all of which shall be deemed included in the Contract Sum. The Contractor shall not unlawfully use or install any patented or copyrighted article, and any such unlawful use or installation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions for infringement of, or otherwise related to, any patent rights or copyrights, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. In the event of any injunction or legal action arising out of any such infringement which has the effect of delaying the Work, the Owner may require the Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the Work, and all costs and expenses occasioned thereby shall be borne by the Contractor.

5.6. **COMPLIANCE WITH LAWS.** The Contractor shall, at its cost and expense, comply with each and every Federal, state and local law, ordinance, code, rule and regulation, as well as the lawful order or decree of any public or quasi-public authority, bearing on the performance of the Work specifically including, but not limited to, those specified in Subparagraph 10.1.2., and all applicable building codes. It shall be the responsibility of the Contractor to familiarize itself with all of the same, and any performance of the Work by or on behalf of the Contractor which is not in compliance therewith shall be at the Contractor's sole risk and expense. The Contractor shall notify the Owner prior to execution of the Contract (and, without limiting the duty of such prior notice, continuously thereafter) of any instances where the Contract Documents are, or where the Contractor believes the Contract Documents are, not in compliance with the same.

5.7. **TESTS.**

5.7.1. If the Contract Documents, or any laws, ordinances, rules, regulations, or any orders or decrees of any public or quasi-public authority having jurisdiction, or common practice in the industry, require or dictate that the Contractor have any portion of the Work inspected, tested or approved, the Contractor shall advise the Owner in a timely manner (in writing, if practicable) of its readiness and of the date arranged so that the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals except as otherwise specified.

5.7.2. The Owner may require any special inspection, testing or approval of the Work not included under Subparagraph 5.7.1., or any more stringent inspection, testing or approval thereof, in which event it shall instruct the Contractor to order such inspection, testing or approval, and the Contractor shall advise the Owner in a timely manner (in writing, if practicable) as in Subparagraph 5.7.1. If such inspection or testing reveals any failure of the Work or the performance thereof to comply with the more stringent of: (a) the requirements of the Contract Documents; (b) applicable industry standards; or (c) applicable laws, ordinances, codes, rules, regulations or orders or decrees of any public or quasi-public authority having jurisdiction, or reveals any defect in the Work, the Contractor shall bear the costs of such inspection or testing and all costs to correct the Work to the satisfaction of the Owner, which, if incurred by the Owner, may be offset by the Owner against any amounts then or thereafter due to the Contractor. If such inspection or testing proves that the Work was performed properly, the Owner shall bear the costs of such inspection or testing.

5.7.3. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Owner.

5.8. GENERAL. The duties and responsibilities of the Contractor as set forth in this Article 5 are in addition to, and not in lieu of, other duties and responsibilities of the Contractor enumerated elsewhere in these Contract Documents.

## **Article 6 SUBCONTRACTORS**

6.1. GENERAL. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor. However, it is acknowledged that the Owner and Owner's Representative are intended third party beneficiaries of the obligations of the Subcontractors and Sub-subcontractors related to the Work and the Project.

### 6.2. AWARD OF SUBCONTRACTS.

6.2.1. The Contractor shall, prior to awarding any subcontract, notify the Owner in writing of the names of all Subcontractors proposed for the several parts of the Work and shall include with any such notice the completed insurance information form and any insurance certificates required by this Contract for any proposed Subcontractor. The Owner may also require such lists and information regarding any proposed Sub-subcontractors. The Contractor shall also advise the Owner in writing of any Subcontractor or Sub-subcontractor with which it shares any business relationship or financial interest, and of the nature and extent of any such relationship or interest. No Subcontractor or Sub-subcontractor shall be engaged if objected to by the Owner; provided, however, that if the Owner does not take exception to a Subcontractor or Sub-subcontractor in writing within fifteen (15) days of its receipt of such notification, such Subcontractor or Sub-subcontractor shall be deemed acceptable to the Owner. The Owner shall not be liable to the Contractor in any manner arising out of the Owner's objection to a proposed Subcontractor or Sub-subcontractor. The Contractor shall not terminate the employment of a Subcontractor or Sub-subcontractor engaged in the Work prior to the expiration of that subcontract without good cause shown and the Owner's prior approval after reasonable notice of the Contractor's intent to so terminate.

6.2.2. The Owner may, without any responsibility or liability whatsoever, require the Contractor to utilize any person or organization for any portion of the Work as a Subcontractor or a Sub-subcontractor (herein referred to as a "Nominated Subcontractor" or "Nominated Sub-subcontractor") provided the Owner gave notice of its intention to so nominate any such Subcontractor or Sub-subcontractor prior to execution of the Agreement. The Contractor shall assume full responsibility for any such Nominated Subcontractor or Nominated Sub-subcontractor.

6.2.3. In the event the Owner and Contractor agree that the Owner may participate in any Subcontractor or Sub-subcontractor procurement activities, provided the Owner has informed the Contractor and allowed the Contractor the opportunity to participate and concur with such activities, the Contractor shall assume full responsibility for the results of any such activities including, without limitation, full responsibility for the Subcontractors' or Sub-subcontractors' awarded portions of the Work as a result thereof.

6.2.4. The Owner may assign to the Contractor any contracts or purchase orders entered into between the Owner and any other person or organization in any way related to the Project or the Work, at any time, in which event the Contractor shall assume full responsibility for such person or organization and its portion of the Work as if such person or organization was originally a Subcontractor. Such assignment may occur by Change Order or other Modification to the Contract, and any increase in the Contract Sum shall be governed by Article 12.

### 6.3. SUBCONTRACTUAL RELATIONS.

6.3.1. All subcontracts and sub-subcontracts shall be in writing. Each subcontract and sub-subcontract shall contain a reference to this Contract and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by, and to require each of its Sub-subcontractors to be bound by, such terms and conditions to the full extent applicable to its portion of the Work.

6.3.2. Each subcontract shall provide for its termination by the Contractor if, in the Owner's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to its portion of the Work; and each Subcontractor shall be required to insert a similar provision in each of its sub-subcontracts. In the event of any such failure by a Subcontractor or Sub-subcontractor to comply with the requirements of the Contract Documents, such Subcontractor or Sub-subcontractor, as the case may be, shall, upon the Owner's request, be removed immediately from the Work and shall not again be employed on the Work. Any such failure (specifically including, without limitation, a failure to pay for labor (including applicable fringe benefits) or materials) by a Subcontractor or Sub-subcontractor shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

### 6.4. PAYMENTS TO SUBCONTRACTORS.

6.4.1. Unless the Owner otherwise agrees or the Contract Documents otherwise provide, the Contractor shall pay each Subcontractor, upon receipt of payments from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's portion of the Work, less a percentage thereof equal to the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments due to any Sub-subcontractor.

6.4.2. If the Owner fails to approve a Contractor's Application for Payment, as hereinafter provided, for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall nevertheless pay that Subcontractor for its portion of the Work to the extent completed, less the retained percentage, such payment to be made no later than the date payment to the Contractor would otherwise have been made by the Owner.

6.4.3. The Contractor shall pay each Subcontractor its proper share of any insurance monies received by the Contractor under Article 11, and it shall require each Subcontractor to make similar payments due to a Sub-subcontractor.

## **Article 7 SEPARATE CONTRACTS**

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS. The Owner reserves the right to award other contracts in connection with the Project or other work on the Job Site on any terms and conditions which the Owner may from time to time determine in its sole discretion (hereinafter referred to as "Separate Contracts"; and such other contractors are hereinafter referred to as "Separate Contractors").

### 7.2. MUTUAL RESPONSIBILITY OF CONTRACTORS.

7.2.1. The Contractor shall afford all Separate Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work and shall properly cooperate, connect and coordinate the Work with such other work as shall be in the best interest of the Project as determined by the Owner.

7.2.2. If the execution or result of any part of the Work depends upon any work of the Owner or of any Separate Contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any Separate Contractor that render it unsuitable for the proper execution or result of any part of the Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or Separate Contractor's work as fit and proper



to receive the Work, except as to defects which may develop in the Owner's or Separate Contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

7.2.3. Should the Contractor cause damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work, the Contractor shall be liable for the same; and, in the case of a Separate Contractor, the Contractor shall attempt to settle said claim with such Separate Contractor prior to such Separate Contractor's institution of litigation or other proceedings against the Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. Any such damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such damage, delay or interference, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

7.2.4. Should any Separate Contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present to such Separate Contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against such Separate Contractor prior to the institution of litigation or other proceedings against such Separate Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. In no event shall the Contractor seek to recover from the Owner, the Owner's Representative or the Architect/Engineer, and the Contractor hereby represents that it will not seek to recover from them, any costs, expenses or losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused or allegedly caused by any Separate Contractor.

7.2.5. If a dispute arises between the Contractor and any Separate Contractor as to the responsibility for cleaning as required by the Contract Documents, the Owner may clean and charge the cost thereof to the responsible contractor, or apportion it among the several responsible contractors, as the Owner shall determine to be just.

## **Article 8** **TIME**

### **8.1. DEFINITIONS.**

8.1.1. Whenever the word "day" is used in the Contract Documents, it shall mean a calendar day unless otherwise specifically provided.

8.1.2. The Date of Commencement of the Work is the date established in a written notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established by the Owner in writing.

8.1.3. The Date of Substantial Completion of the Work (or "Substantial Completion") is the date, certified by the Owner, when all construction is sufficiently complete in accordance with the Contract Documents that the Owner may, if it so elects, occupy and use the Work or designated portion thereof for the purpose for which it was intended.

### **8.2. PROGRESS AND COMPLETION; SCHEDULING.**

8.2.1. All times and dates stated in the Contract Documents including, without limitation, those for the Commencement, prosecution, Milestones, Substantial Completion and final completion of the Work and for the delivery and installation of materials and equipment, are of importance of the Contract.

8.2.2. The Contractor shall begin the Work on the Date of Commencement and shall perform the Work diligently, expeditiously and with adequate resources so as to meet all Milestones and complete all the Work within the Contract Time. The scheduling of the Work shall be performed and monitored by the Contractor utilizing a method to be chosen by the Owner. The Contractor (and its Subcontractors, if the Owner requires) shall furnish all scheduling information requested by the Owner (in such form and detail as requested for the particular portion of the Work; herein referred to as the "Schedule" or "Schedules") within two (2) weeks of the Owner's request, shall revise the same from time to time thereafter when so requested by the Owner, and shall attend such meetings concerning scheduling as the Owner may call from time to time (teleconference is acceptable). The Contractor shall comply with any Schedule or Schedules established by it and approved by the Owner, or established by the Owner with respect to the Commencement, performance, Milestones or completion of the whole or various portions of the Work. With respect to any portion of the Work for which a Schedule has not been established, the Contractor shall commence such portion of the Work within three (3) days of the date on which the Owner directs such commencement and shall thereafter prosecute and complete the same with all due diligence or as otherwise directed by the Owner. Neither the scheduling information submitted by the Contractor or its Subcontractors, the acceptance or approval thereof by the Owner nor the establishment or implementation of, or failure to establish or implement, Schedules by the Owner shall relieve the Contractor of its obligation to perform and complete the Work in a timely manner or to otherwise perform in accordance with the Contract Documents.

8.2.3. Float or slack time associated with any one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as set forth in an approved Schedule for the Work (assuming the critical path method is used), including any revisions or updates thereto. Float or slack time is not for the exclusive use or benefit of either the Owner or the Contractor. However, if float time associated with any chain of activities is expended but not exceeded by any actions attributable to the Owner, the Contractor shall not be entitled to an extension in the Contract Time.

### 8.3. DELAYS, EXTENSIONS OF TIME AND OVERTIME.

8.3.1. The time during which the Contractor is delayed in the performance of the Work by the acts or omissions of the Owner, the Owner's Representative, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for such delays shall be considered unless made in accordance with Paragraph 13.1.

#### 8.3.2. INTENTIONALLY LEFT BLANK

8.3.3. Whenever, in the opinion of the Owner, the Work falls behind Schedule due to the fault of the Contractor, the Contractor shall, to the extent necessary and if possible to meet said Schedule, increase its labor force and/or provide overtime, extra shifts, Saturday, and Sunday and/or holiday work, and shall have each Subcontractor do likewise, all at no additional cost to or compensation from the Owner. Further, the Owner shall have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any additional costs the Owner may incur as a direct result of said increase in labor force or overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4. The Owner may, in its sole discretion and for any reason, direct the Contractor to accelerate the Schedule of performance by providing overtime, extra shifts, Saturday, Sunday and/or holiday work and/or by having all or any Subcontractors or Sub-subcontractors designated by the Owner provide overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4.1. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by the Contractor's own forces pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor (except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Contractor of the premium time (or shift differential for any extra shifts) for all labor utilized by the Contractor in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time costs of such labor, together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time (or shift differential for any extra shifts)).

8.3.4.2. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by a Subcontractor pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor (except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Subcontractor for the premium time (or shift differential for any extra shifts) of all labor utilized in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time cost of such labor), together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time.

8.3.4.3. Anything in the foregoing to the contrary notwithstanding, should the Owner's direction to the Contractor to accelerate the Schedule of performance pursuant to this Subparagraph 8.3.4. require the Contractor's or a Subcontractor's forces to work in excess of fifty (50) hours per week for a period in excess of four (4) consecutive weeks, the Owner shall pay to the Contractor, for each consecutive week after the fourth consecutive week in which the same forces are required to work in excess of fifty (50) hours, an additional amount equivalent to ten percent (10%) of the gross wages of Job Site labor, less payroll costs as defined in Subparagraph 12.2.1., paid to such forces on account of such overtime, Saturday, Sunday or holiday work pursuant to this Subparagraph 8.3.4. Such acceleration shall be referred to as "Extended Acceleration", and the payment described herein shall be the sole and exclusive remedy for such Extended Acceleration including, without limitation, all inefficiencies, impacts, added supervision and overhead, ripple effect or any other costs or expenses of any kind. Anything in this Subparagraph 8.3.4.3. to the contrary notwithstanding, the Owner shall have no obligation to make payments on account of overtime, Saturday, Sunday or holiday work ordered pursuant hereto unless: (a) the Contractor shall submit to the Owner, for the Owner's review and approval, duly authenticated time tickets evidencing the hours of overtime, Saturday, Sunday or holiday work performed pursuant to this Subparagraph 8.3.4.3. by the end of the day on which performed and recapped in summary form; and (b) the Contractor shall include with its request for reimbursement a duplicate of each of the foregoing time tickets and such other substantiation of costs reimbursable hereunder as the Owner may require. If overtime, extra shifts, Saturday, Sunday or holiday work is performed in part pursuant to Subparagraph 8.3.3. and in part pursuant to this Subparagraph 8.3.4.3., the provisions of this Subparagraph 8.3.4.3. calling for payments by the Owner on account thereof shall only apply to such work performed pursuant to this Subparagraph 8.3.4.3.

8.4. TEMPORARY SUSPENSION OF WORK. The Owner shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as it may deem necessary or desirable, in its sole discretion including, without limitation: (a) unsuitable weather; (b) other conditions considered unfavorable for the suitable prosecution of the Work; (c) special events; and/or (d) other conditions considered adverse to the best interests of the Owner. Any such suspension shall be in writing to the Contractor. The Contractor shall immediately obey such orders of the Owner and shall not resume the Work until so ordered in writing by the Owner. No such temporary suspension of the Work, for periods of time up to thirty (30) cumulative days, shall be the basis of a claim by the Contractor for any increase in the Contract Sum or for any other damages, losses, costs or expenses whatsoever, all of which claims the Contractor hereby expressly waives. The Contractor shall be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended provided the claim is submitted in accordance with Paragraph 13.1. and the suspension is not due to an act or omission of the Contractor, any Subcontractor or Sub-subcontractor.

## **Article 9 PAYMENTS AND COMPLETION**

### 9.1. APPLICATION FOR PAYMENT; PASSAGE OF TITLE.

9.1.1. The "Payment Application Date" shall be that day of each calendar month designated in the Agreement when the Contractor shall deliver the "Application for Payment," as hereinafter defined, to the Owner.

9.1.2. The "Application for Payment" shall be an invoice prepared by the Contractor and submitted to the Owner in accordance with the Contract Documents. It shall show in detail all monies properly payable to the Contractor in accordance with the previously approved Schedule of Values, including those items of labor, materials and equipment used or incorporated in the Work (and, if the Owner has agreed in advance in writing, suitably stored at the Job Site) through and including the Payment Application Date. The Application for Payment shall have, as attachments, waivers of mechanics' and materialmen's liens by the Contractor and its Subcontractors and Sub-subcontractors as of the date of submission of the Application for Payment, which waivers shall conform in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor thereto), and such other evidence of performance of the Work, the costs thereof and payment therefor as the Owner may deem necessary or desirable.

9.1.3. The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment shall pass to the Owner, free and clear of all liens, claims, security interests or encumbrances, upon the sooner occurrence of: (a) the delivery of any such materials or equipment to the Job Site; or (b) the tender of payment of the applicable Application for Payment by the Owner to the Contractor; and that no Work, materials or equipment covered by an Application for Payment shall have been acquired, whether by the Contractor or by any Subcontractor or Sub-subcontractor, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. The passage of title to the Owner as provided herein shall not alter or limit the obligations and duties of the Contractor with respect to the Work and the materials or equipment incorporated therein or used in connection therewith as set forth in the Contract Documents.

## 9.2. APPROVALS OF APPLICATIONS FOR PAYMENT.

9.2.1. If the Contractor has submitted an Application for Payment in the manner prescribed in the Contract Documents, the Owner shall, with reasonable promptness, approve the same (or such portions thereof covering amounts it determines to be properly due) or shall state in writing its reasons for withholding its approval (whether of all or a part).

9.2.2. The Owner's approval of an Application for Payment shall not constitute a representation by the Owner that the conditions precedent to the Contractor's entitlement to payment have been fulfilled, nor shall approval of an Application for Payment by the Owner be deemed a representation by the Owner: (a) that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) that it has reviewed the construction means, methods, techniques, sequences, coordination or procedures, or the cleanliness of the Job Site, or the safety precautions and programs, in connection with the Work; (c) that it has made any examination to ascertain how or for what purposes the Contractor has used the monies previously paid on account of the Contract Sum.

9.2.3. No approval of an Application for Payment, progress payment or any beneficial, partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any Work which is not in accordance with the Contract Documents; and regardless of approval of an Application for Payment by the Owner, the Contractor shall remain totally obligated and liable for the performance of the Work in strict compliance with the Contract Documents.

9.2.4. Subject to the Owner's rights to offset or withhold as set forth in these General Conditions, after the Owner has approved an Application for Payment, in whole or in part, it shall make payment of the amount approved to the Contractor as provided in the Contract Documents.

## 9.3. PAYMENTS WITHHELD; OWNER'S RIGHT TO MAKE DIRECT PAYMENTS FOR WORK.

9.3.1. The Owner may withhold its approval of an Application for Payment, in whole or in part, or nullify the whole or any part of an approval previously given, if it determines that the Application for Payment covers portions of the Work which have not, in fact, been completed, or that it includes amounts for claims allegedly made but not actually made (or subsequently withdrawn), and/or for which payment is not then due or if, and to the extent that, it deems it necessary or desirable to protect itself against loss or damage due to: (a) defective Work not remedied; (b) Contractor, Subcontractor, Sub-subcontractor or third party claims, disputes or liens or reasonable evidence indicating such claims, disputes or liens; (c) failure or alleged failure of the Contractor to make payments to Subcontractors (or of Subcontractors to make payments to Sub-subcontractors) as required by the Contract Documents, or failure to provide lien waivers for previous payments; (d) inability, or reasonable doubt as to the ability, of the Contractor to complete the Work within the Contract Time, for the unpaid balance of the Contract Sum or within the estimates prepared by the Contractor and submitted to and approved by the Owner; (e) damage to the Owner or a Separate Contractor; (f) unsatisfactory prosecution of the Work by the Contractor, its Subcontractors or Sub-subcontractors; (g) failure of the Contractor to maintain the Job Site in a clean and safe condition; (h) failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents; or (i) failure of the Contractor to comply with any other provision of the Contract Documents.

9.3.2. The Owner after giving the Contractor appropriate notice, may make payments on account of labor, materials and/or equipment for the Work directly to the Subcontractors, Sub-subcontractors or persons entitled to the same in lieu of paying the Contractor therefor or make joint payment to any such person and the Contractor. Any amounts so paid shall be credited against the Contract Sum. No such payment shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Contractor shall cooperate with the Owner to facilitate any such direct payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid. If the Owner elects to make such payments as a result of a failure on the part of the Contractor to perform in accordance with the Contract, or as a result of a request from the Contractor that the Owner make such payments, then the Owner may offset or credit the amount of its administrative costs incurred in making said such payments against the Contract Sum or render an invoice to the Contractor for such administrative costs, which invoice the Contractor shall pay promptly.

## 9.4. SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

9.4.1. At such time as the Contractor deems the Work to be Substantially Complete, the Contractor shall so notify the Owner and prepare and submit to the Owner a list of items to be completed and/or corrected and its final bill, including itemized projected amounts for any portions of the Work not yet completed. The failure to include any items on such list shall not alter the responsibility of the Contractor to complete and/or correct the

Work in accordance with the Contract Documents. When the Owner, on the basis of an inspection, confirms the notification from the Contractor that the Work is Substantially Completed or, without being notified by the Contractor, determines that the Work is Substantially Completed, it shall prepare and deliver to the Contractor a Certificate of Substantial Completion which may state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities and insurance and it shall, within twenty (20) days from the date of the Certificate of Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, which sets forth those items determined by the Owner to require completion or correction, as applicable, and fix the time within which the Contractor shall complete or correct the items listed and complete all obligations required by the Contract Documents and submit to the Owner all documents and other matters required by the Contract Documents to be submitted by the Contractor upon completion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs, claims or fees for any outstanding Change Orders, or any other matter which the Contractor has not previously waived pursuant to the General Conditions, and itemized projections for any incomplete Work), and the Contractor shall be deemed conclusively to have waived the right to payment of any such item, fee or cost of any kind not billed to the Owner within thirty (30) days of delivery to the Contractor of the Certificate of Substantial Completion. The issuance of the Certificate of Substantial Completion shall not constitute a waiver of any rights of the Owner, including without limitation the right to those retainages permitted by the Contract Documents. If the Contractor does not complete and/or correct the items listed in the Punch List within the time fixed therein, the Owner shall have the right to accomplish the same and offset all costs thereof against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner. The Owner's decision as to the Date of Substantial Completion shall be final and binding.

9.4.2. Within a reasonable time following the Owner's receipt of written notification from the Contractor that the Work is ready for final inspection and acceptance and that the Contractor has completed all items set forth on the Punch List, including, delivery of the final Application for Payment, the Owner shall make such inspection and, when the Work is found to be acceptable under the Contract Documents and the Contract fully performed, shall certify completion of the Punch List, including approval of the final Application for Payment; provided, however, Owner shall not be required to certify completion of the Punch List and, therefore, neither final payment nor any retainage shall become due, until the Contractor submits to the Owner: (a) an affidavit, in a form approved by the Owner, that all payrolls, bills for materials and equipment and other indebtednesses connected with the Work for which the Owner or its property might in any way be responsible have been paid in full or otherwise satisfied; (b) consent of sureties, if any, to final payment; (c) all Contract Documents (except one set thereof to be retained by the Contractor), including, without limitation, a completed set of as-builts and record documents (as defined in and to the extent required by the Specifications); (d) such other data as the Owner may require establishing payment or satisfaction of all obligations of the Contractor in connection with the Work including, without limitation, receipt of final satisfaction and releases and waivers of lien and releases of any and all claims by the Contractor, Subcontractors and Sub-subcontractors, conforming in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor thereto) and evidencing performance of the Work in accordance with the Contract Documents; (e) a release of the Owner and its insurers from and against any claims under the insurance required to be provided by the Owner hereunder (except to the extent of any claims theretofore timely filed which are owing but unpaid) and a release of the Owner from and against any claims between the Contractor and a separate contractor; (f) any governmental certificates required by the Contract Documents or otherwise to evidence compliance of the Contractor and the Work with applicable laws, ordinances, rules, codes, regulations and the Contract Documents; and (g) warranties, guarantees, assignments thereof, and maintenance or other manuals, required by the Specifications in the forms approved by the Owner, in favor of the Owner and such other persons as the Owner may direct (notwithstanding the foregoing, by execution of the Agreement, the Contractor shall be deemed to have guaranteed to the Owner the matters contained in the attached form of guarantee incorporated by reference into the Agreement); and (h) a fully and properly executed Close-out Change Order, with all of its fully and properly executed Exhibits, in the form attached to the Agreement.

9.4.3. The making of final payment shall not constitute a waiver of any claims or rights by the Owner.

9.4.4. The acceptance of final payment shall constitute a waiver of all claims by the Contractor and shall constitute a general release of the Owner, the Owner's Representative and the Architect/Engineer by the Contractor.

9.4.5. If any Subcontractor or Sub-subcontractor refuses to furnish any release, satisfaction or waiver of lien required at any time by the Owner under Paragraphs 9.1., 9.3. or 9.4., or files a claim of lien against the Owner's property, the Contractor shall, if requested by the Owner and at the Contractor's expense, furnish a bond (separate and apart from any other bond provided by the Contractor hereunder) satisfactory to the Owner to

exempt the Owner and its property from and against any such lien. The Contractor authorizes the Owner, and shall cause its Subcontractors and Sub-subcontractors to authorize the Owner, to check directly with any suppliers of labor and material with respect to any item chargeable to the Owner's property, to confirm balances due and to obtain sworn statements and waivers of lien, all if the Owner so elects. If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall reimburse the Owner on account of all monies that the latter may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

#### 9.5. BENEFICIAL USE AND OCCUPANCY; PARTIAL SUBSTANTIAL COMPLETION.

9.5.1. The Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Project or equipment at any time prior to completion of the Work upon two (2) days written notice to the Contractor (referred to herein as "Beneficial Occupancy"). The Owner shall use its best efforts to prevent such occupancy from interfering with the performance of the remaining Work; provided, however, that the Owner shall not be liable for any delays or additional costs of any nature caused by such occupancy.

9.5.2. Beneficial Occupancy shall not constitute acceptance by the Owner or the Owner's Representative of the completed Work or any portion thereof, shall not relieve the Contractor of its full responsibility for correcting defective Work and repairing the Work, shall not be deemed to be the equivalent of completion of the Work, shall not relieve the Contractor from its obligation to complete the Punch List, and shall not entitle the Contractor to any increase in the Contract Sum.

9.5.3. Anything in this Paragraph 9.5. to the contrary notwithstanding, the Owner may certify any portion of the Work to be occupied or used hereunder to be Substantially Completed and shall prepare and deliver to the Contractor a Certificate of Partial Substantial Completion for such portion of the Work. The Owner shall, within twenty (20) days from the date of the Certificate of Partial Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, and, upon the Contractor's timely completion or correction of the items on the Punch List and the Owner's approval thereof, accept that portion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List, shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The provisions of Paragraph 9.4., except as they relate to the Contractor's obligations to complete or correct the Work in accordance with the Contract Documents, shall not apply to such Partial Substantial Completion, but the provisions of Subparagraph 14.2.2. shall apply to the portion of the Work which the Owner certifies to be Substantially Completed.

### **Article 10 PROTECTION OF PERSONS AND PROPERTY**

#### 10.1. RESPONSIBILITY FOR SAFETY AND HEALTH.

10.1.1. The Contractor shall be responsible for initiating, maintaining and supervising safety and anti-substance abuse precautions and programs in connection with the Work, and shall provide all protection to prevent injury to all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby. These precautions shall include, but in no event be limited to: the posting of danger signs and personal notification to all affected persons of the existence of a hazard of whatever nature; the furnishing and maintaining of necessary traffic control barricades and flagman services; the use, or storage, removal and disposal of required explosives or other hazardous materials only under the supervision of qualified personnel and after first obtaining permission of all applicable governmental authorities; and the maintenance of adequate quantities of both hose and operable fire extinguishers at the Job Site. The Contractor shall set forth in writing its safety and anti-substance abuse precautions and programs in connection with the Work and, if requested by the Owner, submit the same to the Owner for review. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Contractor with respect thereto.

10.1.2. All Work, whether performed by the Contractor, its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

10.1.3. The Contractor shall designate a responsible member of its organization at the Job Site as the Project Safety Officer, whose duties it shall be to enforce the Contractor's safety and anti-substance abuse programs, to

assure compliance with Subparagraph 10.1.2 and to prevent accidents. This person shall be the Contractor's Project Manager unless otherwise designated in writing by the Contractor and approved by the Owner. The Contractor shall further cause each of its Subcontractors and Sub-subcontractors to designate a responsible supervisory representative to assist the Contractor's Project Safety Officer Representative in the performance of his or her duties as aforesaid.

10.1.4. Should the Contractor fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature (including, without limitation, overtime pay) resulting from the suspension, by whomsoever incurred, shall be borne by the Contractor.

10.1.5. The Contractor shall provide to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Contractor to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices or anti-substance abuse policies, with which order the Contractor shall promptly comply.

10.1.6. Any failure of the Contractor, its Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be responsible, to comply with the provisions of Paragraph 10.1. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

10.1.7 The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

## 10.2. PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS.

10.2.1. The Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Work and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards. The Owner may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal security program. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities.

10.2.2. Until final acceptance of the Work by the Owner pursuant to Paragraph 9.4. (unless and to the extent otherwise set forth in a Certificate of Substantial Completion), the Contractor shall have full and complete charge and care of and, except as otherwise provided in this Subparagraph 10.2.2., shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever. The Contractor shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration: (a) is directly due to errors in the Contract Documents which were not discovered by the Contractor and which the Contractor could not have discovered through the exercise of due diligence; (b) is caused by the Owner (unless (i) the Contractor has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (ii) such loss or damage would be covered by any policy or policies of insurance which the Contractor is required to maintain hereunder, whether the Contractor actually maintains such insurance or not, or (iii) is otherwise covered by a policy or policies of insurance

maintained by the Contractor, whether or not required hereunder); or (c) is caused by a hazard against which the Owner is required to insure under the provisions of Article 11 hereof; provided, however, that if the loss, injury or damage would not have occurred but for the negligent act or omission of the Contractor, any of its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the rebuilding, repair or restoration shall be at the Contractor's cost and expense to the extent of the deductible on said insurance.

10.3. SURFACE OR SUBSURFACE WATER. Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be submitted to the Owner for its prior written approval. All such work shall be done at the sole expense of the Contractor.

10.4. EMERGENCIES. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss or to remedy said violation, whichever is applicable, failing which the Owner may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in Paragraph 8.4. Any failure by the Contractor to so act or so remedy a violation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure to act or remedy a violation, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. If the Contractor shall be entitled to any additional compensation or extension of time claimed on account of emergency work not due to the fault or neglect of the Contractor or its Subcontractors or Sub-subcontractors, it shall be handled as a claim as provided in Article 13.

10.5. CLEANUP. The Contractor shall at all times keep the Job Site clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by his performance of the Work, and shall continuously throughout performance of the Work remove and dispose of all such materials from the Job Site and the Project. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the Job Site clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor. The Contractor shall notify the Owner in advance of the generation, importation, storage, transportation or disposal, of any hazardous waste, toxic materials or contaminants of any type in connection with the Project.

10.6. OWNER'S STANDARDS. The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the Contractor shall comply, and to review the efficiency of all protective measures taken by the Contractor. The exercise of or failure to exercise any or all of these acts by the Owner shall not relieve the Contractor of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Contractor.

## **Article 11 INSURANCE**

11.1. COMMERCIAL INSURANCE/INDEMNIFICATION. The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:



- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with combined single limits for bodily injury and property damage of **\$1,000,000** per occurrence;
- ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with combined single limits of **\$1,000,000** per occurrence;
- iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with limits of **\$1,000,000** per occurrence;
- iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i., ii, and iii. above in an amount of **\$1,000,000** per occurrence;
- v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be \$4 million.
- viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.

Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

- A. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.
- B. CANCELLATION. All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.
- C. ADDITIONAL INSURED. Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.
- D. WAIVERS. The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.
- E. CLAIMS. The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.
- F. INDEMNIFICATION. The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever, provided such claim is a third party claim for personal injury, death, or damage to tangible property, to the extent caused by the

negligence, recklessness or intentional wrongful misconduct of the Contractor or any persons employed or utilized by the Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement. Contractor's indemnification is conditioned on Owner (a) promptly notifying Contractor of any claim, and (b) providing reasonable cooperation in defense of any claim.

## **Article 12 CHANGES IN THE WORK**

12.1. CHANGE ORDERS AND DIRECTIVES. The Owner may, without affecting the validity of the Contract Documents or any term or condition thereof, issue Change Orders, or Directives, or give other orders and instructions regarding the Work which may have the effect of ordering extra work or other changes in the Work by altering, adding to or deducting from the Work, modifying the method or manner of its performance or otherwise (herein sometimes referred to as "Changes in the Work"). The Contractor shall comply with all such orders and instructions issued by the Owner. In any such event, the Contract Sum shall, where applicable, be increased or decreased in the manner hereinafter set forth; provided, however, that if the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Sum or extension of the Contract Time on account thereof. Upon receipt of any such Change Order, or Directive or other order or instructions, the Contractor shall promptly proceed with the Change in the Work, even though the amount of any resultant increase or decrease in the Contract Sum has not yet been determined. All Changes in the Work shall be performed in accordance with the Contract Documents.

12.2. CHANGES REQUIRING AN INCREASE IN CONTRACT SUM. If any Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described.

12.2.1. If the Owner elects to have any Change in the Work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a lump sum proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors or Sub-subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The portion of the proposal relating to labor, whether by the Contractor's forces or those of its Subcontractors or Sub-subcontractors, may only include reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including Social Security, federal or state unemployment insurance taxes and fringe benefits in connection with such labor required by union and/or trade agreements if applicable) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for any such entity actually performing the Change in the Work or a portion thereof. The portion of the proposal relating to materials may only include the reasonably anticipated direct costs to the Contractor, its Subcontractors or Sub-subcontractors (as applicable) of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes, and up to fifteen percent (15%) of said direct material costs as overhead and profit for the entity actually supplying the materials. The proposal may further include the Contractor's or its Subcontractor's or Sub-subcontractor's reasonably anticipated direct rental costs in connection with the Change in the Work (either actual rates or discounted local published rates), plus up to six percent (6%) thereof as overhead and profit for the entity actually incurring such costs. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Documents, the Owner may elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices. The lump sum proposal may only include up to six percent (6%) of the amount which the Contractor will pay to any Subcontractor, and up to six percent (6%) of the amount which a Subcontractor will pay to any Sub-subcontractor, for the Change in the Work as overhead and profit to the Contractor or Subcontractor (only a maximum of two contractual tiers of such markup may be included).

12.2.2. If the Owner elects to have the Change in the Work performed on a unit price basis, its election shall be based on a unit price proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a unit price proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a unit price basis). The Contractor's proposal shall itemize the quantities of each item of the Change in the Work for which there is an

applicable unit price contained in the Contract Documents. The quantities shall be itemized in relation to each specific Drawing. Unit prices shall be applied to net differences of quantities of the same item. Nothing herein contained shall preclude the Owner from requesting a lump sum proposal and a unit price proposal with respect to the same Change in the Work, in which event the Contractor shall submit both.

12.2.3. If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendents of any nature whatsoever, except foremen directly involved in the Change in the Work, or the cost, use or rental of small tools, defined as tools with a cost or value of less than \$1,000, or equipment owned by the Contractor or any of its related or affiliated companies), plus fifteen percent (15%) of gross wages (excluding payroll costs) of Job Site labor and direct material costs and six percent (6%) of rental costs (other than small tools or equipment owned by the Contractor or any of its related or affiliated companies) as the total overhead and profit. Only the entity actually performing the Change in the Work or a portion thereof shall be entitled to a mark-up as aforesaid for overhead and profit, but the Contractor may include up to six percent (6%) of the amount it will pay to any Subcontractor, and a Subcontractor may include up to six percent (6%) of the amount it will pay to any Sub-subcontractor (only a maximum of two contractual tiers of such markup may be included), for the Change in the Work as overhead and profit to the Contractor or Subcontractor. The Contractor shall submit to the Owner daily time and material tickets, to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification, names and social security numbers of the labor employed, the materials used, the equipment rented (not tools) and such other evidence of costs as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

12.2.4. The Owner shall have no obligation or liability on account of a Change in the Work except as specifically provided in this Paragraph 12.2. If the Contractor fails to render any proposal within ten (10) days after the date of the Owner's request pursuant to this Paragraph 12.2. or such longer period of time established by the Owner in its request, the Owner may issue a unilateral Change Order for any such Change in the Work giving the Owner's reasonable estimate of the cost of the Change, which shall become automatically binding upon the Contractor. Overhead and profit, as allowed under this Paragraph 12.2., shall be deemed to cover all costs and expenses of any nature whatsoever, including, without limitation, those for clean-up, protection, supervision, estimating, field operations, insurance, impacts, inefficiency, extended (Job Site and home office) overhead, unabsorbed (Job Site and home office) overhead, delays, acceleration (actual or constructive), ripple effect, small tools and security, which the Contractor or any of its Subcontractors or Sub-subcontractors may incur in the performance of or in connection with a Change in the Work and which are not otherwise specifically recoverable by them pursuant to this Paragraph 12.2.

12.2.5. The Work pursuant to this Contract shall be performed by the Contractor at no extra cost to the Owner despite any order from the Owner which designates or contemplates a portion of the Work as a Change in the Work.

12.3. CHANGES REQUIRING A DECREASE IN CONTRACT SUM. If any Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days after the date of the Owner's request or such longer period of time established by the Owner therein and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner's Representative in its reasonable judgment. If the Contractor fails to render any proposal within the time required herein, the Owner may issue a unilateral deductive Change Order giving the Owner's reasonable estimate of the deductive Change, which shall become automatically binding upon the Contractor.

12.4. DISPUTES REGARDING CHANGES. If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum as a result of a Change in the Work, the Contractor shall not suspend performance of any such Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner may, however, notify the Contractor of its determination regarding any such Change and, in the case of an increase, may thereafter pay to the Contractor up to 50% of the Owner's reasonable estimate of the

value of the Change in the Work as its sole obligation with respect to any such Change pending resolution of the dispute. The Contractor shall thereafter be subject to the terms of Paragraph 13.2. regarding its claim for any difference.

12.5. **AUDIT RIGHTS.** The Contractor shall afford, and shall cause its Subcontractors and Sub-subcontractors to afford, access to the Owner at all reasonable times to any accounting books and records, correspondence, instructions, invoices, receipts, vouchers, memoranda and other records of any kind relating to the Work, all of which each of them shall maintain for a period of at least four (4) years from and after the Date of Substantial Completion. The Contractor and its Subcontractors and Sub-subcontractors shall make the same available for inspection, copying and audit, in accordance with generally accepted accounting standards, within three (3) days following notification to the Contractor of the Owner's intent to audit, failing which any claims for an increase in the Contract Sum and/or extension of the Contract Time, as applicable, shall be waived.

### **Article 13 CLAIMS**

13.1. **CLAIMS FOR EXTENSIONS OF CONTRACT TIME.** No claim by the Contractor for an extension of the Contract Time or any Milestones shall be considered unless made in accordance with this Paragraph 13.1. The Contractor shall not be entitled to any extension of the Contract Time or any Milestones as a result of any condition or cause, unless it shall have given written notice to the Owner pursuant to Paragraph 16.3. promptly, but in any event within fourteen (14) days following the commencement of each such condition or cause and stating the probable duration of the condition or cause and the Contractor's request for an extension of time. The Contractor shall deliver to the Owner, within thirty (30) days after the commencement of each condition or cause for which the Contractor has submitted a request for extension of time, supporting data to substantiate and justify the Contractor's request, including, without limitation, an analysis showing the actual impact of the condition or cause on the Schedule and the critical path of construction activities, plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's request. The Contractor hereby waives any claims for any such extensions not timely made or timely substantiated in accordance herewith. If the Contractor timely makes any such claim and the parties are unable to agree as to whether or not the Contractor is entitled to an extension of time or the length of such extension regarding such claim, the Owner's Representative may, but shall not be required to, ascertain the facts and the extent of the delay and determine and fix an extension of the time for completing the Work.

#### **13.2. CLAIMS FOR INCREASES IN CONTRACT SUM.**

13.2.1. Except as otherwise provided in Paragraph 12.2., no claim by the Contractor for an increase in the Contract Sum shall be considered unless made in accordance with this Paragraph 13.2. The Contractor shall give the Owner written notice pursuant to Paragraph 16.3. of any such claim promptly, but in any event not later than fourteen (14) days after the occurrence of the event giving rise to the claim (including, without limitation, any Owner determination pursuant to Article 12.4.), but (except in the event of emergencies pursuant to Paragraph 10.4.) prior to the incurring of any expenses by the Contractor. Failure to give such notice, or to provide substantiation thereof as required below, shall constitute a waiver of the claim including, but not limited to, any and all damages, cost, impacts, inefficiency, extended overhead, unabsorbed overhead, ripple effect, or expenses of any nature whatsoever which the Contractor, or its Subcontractors or Sub-subcontractors, may suffer or incur. Claims shall be made in writing and shall identify the instructions or other circumstances that are the basis of the claim and shall set forth the Contractor's best estimate of the dollar amount claimed. Within thirty (30) days after the occurrence of the event giving rise to the claim, the Contractor shall fix the amount of its claim with specificity and shall provide to the Owner supporting data to substantiate and justify the Contractor's claim, including, without limitation, substantiation of all costs plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's claim. No claim shall be considered by the Owner if the Contractor has otherwise waived its rights to file a claim pursuant to the Contract Documents.

13.3. **NO OTHER CLAIMS.** The parties acknowledge that the provisions of Paragraphs 13.1. and 13.2. are included herein for the purpose of fixing and limiting the time within which, and the manner in which claims must be made; and that Paragraphs 13.1. and 13.2. do not grant to the Contractor any right to increases in the Contract Sum, or extensions in the Contract Time or any Milestones, not otherwise permitted or provided by the other terms and provisions of the Contract Documents.

**Article 14**  
**UNCOVERING AND CORRECTION OF WORK;**  
**OWNER'S RIGHT TO CARRY OUT WORK**

**14.1. UNCOVERING OF WORK.**

14.1.1. If any portion of the Work should be covered contrary to the instructions or request of the Owner or the requirements of the Contract Documents, the Contractor shall, if required by the Owner, uncover such portion of the Work for the Owner's observation and shall replace such Work all at the Contractor's expense.

14.1.2. If any portion of the Work should be covered prior to a specific request for observation or instruction by the Owner, the Owner may request to see such Work, and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents and without defect, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall bear such costs; provided, however, that if it is found that the condition was caused by a Separate Contractor employed as provided in Article 7, the Contractor shall have the right to seek reimbursement of the costs it incurs as aforesaid from said Separate Contractor.

**14.2. CORRECTION OF WORK.**

14.2.1. Upon delivery to site, the Owner shall, prior to Contractor commencing installation services, have the authority to reject any portion of the Work which is defective or does not conform to the Contract Documents, and the Contractor shall promptly correct all Work so rejected by the Owner, whether observed before or after the Date of Substantial Completion and whether or not fabricated, installed or completed. In order that such corrective Work shall not interrupt or delay the Owner's schedule for completion of the Project or, if applicable, disturb the occupants of the completed Project, the Contractor shall perform such Work according to a schedule therefor established by the Owner (which may provide that the same be performed on overtime, shiftwork, Saturdays, Sundays and/or holidays), utilizing in the performance thereof such manpower as is necessary to complete the corrective Work in accordance with said schedule. The Contractor shall bear all costs of correcting such rejected Work including, without limitation, compensation for any additional architectural and engineering services made necessary thereby.

**14.2.2. INTENTIONALLY LEFT BLANK**

14.2.3. The Contractor shall remove from the Job Site all Work which is defective or non-conforming and not corrected under Paragraph 5.4. or Subparagraphs 14.2.1. or 14.2.2. unless removal is waived by the Owner.

14.2.4. The Contractor shall bear the cost of making good all work of Separate Contractors (and any of the Owner's other structures or facilities) destroyed or damaged by such removal or correction.

14.2.5. If the Contractor does not remove such uncorrected defective or non-conforming Work within a reasonable time fixed by written instructions to that effect from the Owner, the Owner may remove it and store the materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) additional days written notification to the Contractor, sell such materials and equipment at public or private sale and account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional architectural and engineering services and attorneys' fees made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such difference, the Contractor shall, upon demand, pay the same to the Owner. The obligations of the Contractor under this Subparagraph 14.2.5. shall be in addition to, and not in limitation of, any obligations imposed on it by law, by any other provision of this Contract or by any warranty or guarantee under this Contract.

14.2.6. If the Contractor fails to correct any defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 14.3. In the event of a defect found after final acceptance of the Work by the Owner which the Contractor is obligated to correct pursuant to Subparagraph 14.2.2., the Owner may, at its option, after giving the Contractor an opportunity to correct such defect, cause such corrective Work to be performed by others and charge the Contractor with the cost thereof. Such charge shall be due and payable by the Contractor upon demand.

**14.3. OWNER'S RIGHT TO CARRY OUT WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of this Contract, and such

default, neglect or non-performance shall continue for a period of five (5) days after written notification thereof from the Owner (or if such default, neglect or non-performance cannot be reasonably remedied within such 48-hour period, and Contractor does not (in the sole determination of Owner) undertake in good faith the remedy of the same within said period and thereafter proceed diligently to completion), then the Owner may, without prejudice to any other remedy the Owner may have, make good such deficiencies; provided, however, that in the event of an emergency, as determined by the Owner, no notification shall be required. The Owner shall have the right to take possession of such portion of the Job Site as will enable it to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, construction equipment and machinery of the Contractor located on the Job Site. If the Owner makes good any such deficiencies, the costs of correcting the same including, without limitation, compensation for additional architectural and engineering services made necessary by such default, neglect or non-performance, shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall, upon demand, pay the difference to the Owner.

14.4. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case an appropriate amount shall be offset against any amounts then or thereafter due to the Contractor; or, if the said appropriate amount of offset is determined after final payment (or if there is not then or thereafter due to the Contractor an amount sufficient to cover the offset available to the Owner), the Contractor shall, upon demand, pay the appropriate amount (or the difference after offset, as applicable) to the Owner.

#### **Article 15 TERMINATION OF CONTRACT**

15.1. TERMINATION BY CONTRACTOR. If the Owner should, without notifying the Contractor of its cause for doing so, fail or refuse to approve an Application for Payment or make payment thereon for a period of thirty (30) days after the same is required to be approved or paid pursuant to the Contract Documents, then the Contractor shall have the right, as its sole and exclusive remedy and upon fourteen (14) days prior written notice to the Owner, to terminate this Contract and recover from the Owner payment for all unpaid Work executed up to the date of termination, including any proven loss of reasonable profits sustained, based upon the percentage of Work completed through the date of termination. If the Owner shall cure its said default within such fourteen (14) day period, then the Contractor's notice of termination shall thereby be rendered ineffective, and this Contract shall continue in full force and effect. Prior to termination as aforesaid, the Contractor shall not delay or suspend the Work in whole or in part. The Contractor may not terminate this Contract on the grounds that the cause given by the Owner for failing or refusing to pay is not in accordance with fact or law, it being understood and agreed that the Contractor's sole remedy in such event shall be to seek money damages. The Contractor acknowledges that it can be adequately compensated by such money damages for any breach of this Contract which may be committed by the Owner. Accordingly, and except as hereinabove provided, the Contractor expressly agrees that no default, act or omission of the Owner shall entitle the Contractor to cancel or rescind this Contract or suspend or abandon its performance of the Work.

15.2. TERMINATION BY OWNER FOR CAUSE.

15.2.1. If the Contractor should become insolvent, file any bankruptcy proceedings, make a general assignment for the benefit of creditors, suffer or allow appointment of a receiver, refuse, fail or be unable to make prompt payment to Subcontractors, disregard applicable laws, ordinances, governmental orders or regulations or the instructions of the Owner, or if the Contractor should otherwise be guilty of a violation of, or in default under, any material provision of the Contract, then the Owner may, without prejudice to any other right or remedy available to the Owner and after giving the Contractor and its surety, if any, three (3) days written notice, terminate the Contract and the employment of the Contractor on the Project, take possession of the Job Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner may deem expedient. In addition, without terminating this Contract as a whole, the Owner may, under any of the circumstances set forth above, terminate any portion of this Contract (by reducing, in such manner the Owner deems appropriate, the scope of the Work to be performed by the Contractor) and complete the portion of this Contract so terminated in such manner as the Owner may deem expedient, taking possession of such part of the Job Site and utilizing such materials, equipment, tools, construction equipment and machinery owned by the Contractor as may be necessary to accomplish the same.

15.2.2. If this Contract is terminated pursuant to Subparagraph 15.2.1., the Contractor shall not be entitled to receive any further payment until the Work is completed, and the Owner shall have the same right to retain monies owing to the Contractor as it would have to retain such monies from and against final payments. Upon the completion of the Work, the Owner shall make payment to the Contractor, or the Contractor shall reimburse

the Owner, as the case may be, as provided in Article 10 of the Agreement. If a portion of this Contract is terminated pursuant to Subparagraph 15.2.1., such termination shall not be treated as a reduction in the scope of the Work pursuant to Article 12. Rather, in such event, the Owner shall offset against any monies then or thereafter due to the Contractor an amount determined by the Owner to be adequate to cover all costs and expenses it will incur in performing, or causing to be performed, the portion of this Contract so terminated. If the Owner's cost and expenses prove to be less than the amount offset, the Contractor shall be entitled to the difference unless otherwise provided herein. If the amount then or thereafter due to the Contractor is less than the amount to be offset and/or if the Owner's costs and expenses prove to exceed the amount offset, the Contractor shall pay the difference to the Owner upon demand.

15.2.3. The remedies provided to the Owner in this Paragraph 15.2. are in addition to, and not in lieu of, any other rights or remedies available to the Owner under the Contract Documents, at law or in equity. In the event of any breach of this Contract by the Contractor, and whether or not this Contract is terminated by the Owner, the Contractor shall be liable for all damages, losses, costs and expenses incurred by the Owner as a result thereof.

15.3. **TERMINATION BY OWNER WITHOUT CAUSE.** Without limitation to the provisions of Paragraph 15.2., the Owner shall have the right at any time, upon not less than three (3) days notice to the Contractor to terminate this Contract without cause and/or for the Owner's convenience. Upon receipt of such notice of termination, the Contractor shall forthwith discontinue the Work and remove its equipment and employees from the Job Site. In the event of termination under this Paragraph 15.3., the Contractor shall have the right, as its sole and exclusive remedy, to recover from the Owner payment for all unpaid Work executed or performed up to the date of termination, including any proven loss of reasonable profits sustained based upon the percentage of Work completed through the date of termination. In addition, without terminating this Contract as a whole, the Owner may, for its convenience, terminate a portion of this Contract (by reducing, in such manner as the Owner deems appropriate, the scope of the Work to be performed by the Contractor), in which event such termination of a portion of this Contract shall be treated as a reduction in the scope of the Work pursuant to Article 12.

## **Article 16 MISCELLANEOUS PROVISIONS**

16.1. **GOVERNING LAW.** This Contract shall be governed by, and construed in accordance with, the laws of the State of Florida, to the exclusion of Florida rules of conflicts of laws.

### **16.2. ASSIGNABILITY; SUCCESSORS AND ASSIGNS.**

16.2.1. This Contract may be assigned by Owner at any time without Contractor's consent; without limiting the generality of the foregoing, all warranties and guarantees in favor of Owner under the Contract Documents may be assigned without Contractor's consent by Owner to any party designated by Owner and such assignee may directly enforce any such warranty or guarantee. The Contractor shall not assign this Contract in whole or in part without the written consent of the Owner, which consent the Owner may withhold in its sole discretion; nor shall this Contract be assignable by the Contractor by operation of law. The Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of the Owner.

16.2.2. The Owner and the Contractor each binds itself and, to the extent permitted herein, its successors and assigns, to the other party and, to the extent permitted herein, the other party's successors and assigns, in respect to all covenants, agreements and obligations contained in the Contract Documents.

16.3. **NOTICE.** All notices (whether or not designated as such herein) which are required under this Contract to be given between the parties pursuant to this paragraph shall be in writing and deemed given and, unless otherwise provided herein, effective when delivered personally to an officer of the party to be served (including the Contractor's Project Manager, in the case of the Contractor), when deposited in the United States mail, or in a sealed envelope, with postage thereon prepaid, sent by registered or certified mail, return receipt requested, and addressed to the appropriate party at the address set forth in the Agreement or such other address as may be designated by either party hereto by notice to the other, or when transmitted by wire or facsimile to the appropriate party at the aforesaid address (a complimentary confirming letter shall also be mailed to the appropriate party on the same date).

16.4. **PERFORMANCE AND PAYMENT BONDS.** Unless waived or otherwise agreed by the Owner, the Contractor shall furnish (and if directed by the Owner shall require all or certain of its Subcontractors to furnish) a bond covering the faithful performance of this Contract (or any such subcontract), as revised or modified from time to time, and a bond covering the payment of all obligations arising thereunder in full compliance with the then current provisions of Section 713.23, Florida Statutes (or any successor thereto; or, if applicable, Section 255.05, Florida Statutes, or any successor thereto), each in the full Contract Sum, as revised or Modified from

time to time, and with such sureties as may be approved by the Owner. Each bond shall contain the following language: "The provisions and limitations of Section 255.05 or of Section 713.23, Florida Statutes, whichever is applicable to the Contract, are incorporated herein by reference, provided, however, that in the event of any conflict between the provisions of said Section 255.05 or Section 713.23 and those contained in this bond, the provisions of said Section 255.05 or Section 713.23 shall govern." If such bonds, or either of them, are stipulated in the bidding documents or in the Contract Documents, the premium therefor shall be paid by the Contractor (or appropriate Subcontractors); but if required or increased in amount pursuant hereto subsequent to award of the Contract or due to Changes in the Work, the premium therefor shall be reimbursed by the Owner. The Contractor shall deliver promptly, and in any event no later than ten (10) days after notice of award, to the Owner any required bonds or amendments thereto. The Contractor's failure to timely obtain and deliver the required bonds or amendments thereto shall constitute cause for the Owner to terminate this Contract (or for the Contractor to terminate any subcontract). The Owner shall not be obligated to respond to, and the Contractor shall assure that the Owner is not sent, any job status inquiries from the Contractor, any surety, or any of their accountants or independent auditors.

**16.5. MAINTENANCE OF HARMONIOUS RELATIONS.** The Contractor is hereby advised that any portion of the Project, or other projects in proximity to the Project may be subject to, and governed by, certain union or trade agreements. It is the policy of the Owner to promote and maintain harmonious relationships in connection with the Project. The Contractor and its Subcontractors and Sub-subcontractors shall follow this policy; and shall utilize only qualified persons or organizations in the performance of the Work. A qualified person or organization is one: which is not likely to promote labor unrest on the Project; which shall abide by all local, state and federal labor and employment relation rules, regulations and laws; whose financial stability is reasonably assured throughout the duration of the Contract; and whose commitments to other projects are not likely to interfere with its ability to perform its portion of the Work efficiently and cost effectively. The Owner reserves the right to disapprove, or to require the removal of, any person or organization who is being considered for, or has received, an award to perform all or a portion of the Work but has failed to demonstrate the willingness or ability to follow this policy.

**16.6. UNION AGREEMENTS.** Regardless of the expiration of any collective bargaining agreement during the term of this Contract which may affect the Contractor in any of its activities including, without limitation, with respect to the Work or the Project, the Contractor is obligated to man the job and properly and timely perform the Work in a diligent manner. Upon notification of expected or actual labor disputes or job disruption arising out of any such collective bargaining negotiations, the expiration of any union or trade agreement or any other cause, the Contractor and its Subcontractors and Sub-subcontractors shall cooperate with the Owner concerning any legal, practical or contractual actions to be taken by the Owner in response thereto and shall perform any actions requested by the Owner to eliminate, neutralize or mitigate the effects of such actions on the progress of the Work and the impact of such actions on the public access to the Reedy Creek Improvement District or any of the properties or facilities located therein, irrespective of whether such properties are owned by the Owner or by a third party. It is the Contractor's obligation, at the Contractor's own cost and expense, to take all steps available to prevent any persons performing the work from engaging in any disruptive activities such as strikes, picketing, slowdowns, job actions or work stoppages of any nature or ceasing to work due to picketing or other such activities, which steps shall include, without limitation, execution of an appropriate project agreement with appropriate unions prohibiting all such activities on or about the Project. Notwithstanding any such occurrences, the Contractor shall not be relieved of its obligation to man the job and properly and timely perform the Work in a diligent manner.

**16.7. USE OF OWNER'S NAME/CONFIDENTIALITY.** Neither the Contractor nor its Subcontractors or Sub-subcontractors, by virtue of this Contract, shall acquire any right to use, and they shall not use, the name of the Owner, the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any of its related, affiliated or subsidiary companies: in any of their advertising, publicity or promotion; to express or imply any endorsement of their respective Work or services; or in any other manner whatsoever (whether or not similar to the foregoing uses hereinabove specifically prohibited). The Contractor may, during the course of its engagement hereunder, have access to, and acquire knowledge of or from, material, data, strategies, systems or other information relating to the Work, the Project, the Owner, the Owner's Representative, its parent, affiliated, or related companies, which may not be accessible or known to the general public. Any such knowledge acquired by the Contractor shall be kept confidential and shall not be used, published or divulged by the Contractor to any other person, firm or corporation, or in any advertising or promotion regarding the Contractor or its Work or services, or in any other manner or connection whatsoever without first having obtained the written permission of the Owner, which permission the Owner may withhold in its sole discretion. The Contractor shall not be allowed to undertake or allow any photography on or about the Job Site or the Project absent written permission of the Owner, which permission the Owner may withhold in its sole discretion. In the event of a breach by Contractor of its obligations under this Paragraph 16.7., Owner shall be entitled to an injunction restraining Contractor from disclosing or divulging in whole or in part any confidential information. Further, any failure by Contractor to comply with this



Paragraph 16.7. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. The Provisions of this Paragraph shall survive the expiration or sooner termination of the Contract.

#### 16.8. GENERAL.

16.8.1. The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in the Contract Documents are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, paragraphs, subparagraphs, clauses and the like. The parties agree that the Contract Documents shall not be construed more strictly against any party regardless of the identity of their drafter.

16.8.2. Unless otherwise specified, article, paragraph and subparagraph references appearing in these General Conditions are to articles, paragraphs and subparagraphs herein.

16.8.3. Wherever this Contract obligates the Contractor hereunder to reimburse the Owner or others for attorneys' fees, such obligation shall not only include attorneys' fees incurred prior to and including litigation in the trial court, but also all attorneys' fees incurred in connection with any and all appellate proceedings, no matter to which court any appeal is taken and by whomever so taken.

16.8.4. Wherever this Contract obligates the Contractor to "indemnify" the Owner, such obligations shall include, but shall not be limited by, the following: (i) the Contractor shall indemnify the Owner and its supervisors, administrators, officers, directors, agents, employees, agents, successors and assigns and Owner's Representative, and its parent, related, affiliated and subsidiary companies and the officers, directors, agents, employees and assigns of each; (ii) the Contractor shall defend (if requested by the Owner) and hold each indemnitee harmless; (iii) in the event of any such requested defense, the Owner may choose its legal counsel, control the litigation including, without limitation, determining legal strategy, settlement strategy and whether or not to file any appeals; (iv) the Contractor shall not raise as a defense to its obligation to indemnify any comparative or contributing negligence, recklessness or intentional wrongful misconduct of any of those indemnified pursuant to any such provision, it being understood and agreed that no such comparative or contributing negligence, recklessness or intentional wrongful misconduct shall relieve the Contractor from its liability to so indemnify nor entitle the Contractor to any contribution, either directly or indirectly, by those indemnified; (v) no indemnification obligation hereunder shall be limited in any way to any limit on the amount or type of damage, compensation or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under any Worker's Compensation Act, disability benefit acts or other employee benefit acts; and (vi) all such indemnity provisions shall survive the expiration or sooner termination of this Contract.

16.8.5. Unless otherwise specifically provided herein, the Owner may withhold any consents, approvals or waivers required of it pursuant to the Contract in its sole discretion.

16.9. IMMIGRATION REFORM CONTROL ACT. All Contractors, Subcontractors, and Sub-subcontractors must adhere to the Immigration Reform Control Act of 1986 and shall maintain I-9 forms regarding all employees. It is not the Owner's obligation to insure compliance with this law, however, the Owner reserves the right to inspect and copy the Contractor's records in this regard upon request.

16.10. ADJACENT LAND AND LANDOWNERS. To the extent the Work requires the Contractor to enter upon land owned by others than the Owner, or the Contractor is permitted to enter upon such land, then the Contractor shall, prior to entry, satisfy itself as to all conditions present upon such land and shall take all necessary precautions to protect all persons and property from injury or damage as a result of the Contractor's entry upon such land and shall promptly repair any damage to the land and any property located thereon. The Contractor shall defend, indemnify and hold harmless the owner(s) of such land from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by or arising out of the Contractor's entry upon such land. Nothing contained herein shall create any contractual relationship between the Contractor and the owner(s) of such land; however, it is acknowledged that the owner(s) of such land are intended third party beneficiaries of the obligations of the Contractor hereunder.

**Article 17**  
**EQUAL OPPORTUNITY**

17.1. POLICIES OF EMPLOYMENT. The Contractor shall maintain policies of employment as follows:

17.1.1. Neither the Contractor nor any of its Subcontractors or Sub-subcontractors shall discriminate against any employee or applicant for employment on the basis of race, religion, color, sex or national origin. The Contractor shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

17.1.2. The Contractor and its Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

17.2. INTENTIONALLY LEFT BLANK

17.3. PROCEDURES AND GUIDELINES. The provisions of this Article are in addition to any and all other policies, procedures or guidelines established by the Owner with respect to equal employment opportunities which are set forth elsewhere in the Contract Documents. The Owner may, at any time during the term of the Contract, issue Directives in furtherance of this Article and the obligations of the Contractor and its Subcontractors and Sub-subcontractors hereunder, and the Contractor and its Subcontractors and Sub-subcontractors shall comply with all of the foregoing as they relate to any Work performed under this Contract. No policies, procedures or guidelines established by the Owner pursuant hereto shall give rise to a claim by the Contractor for an increase in the Contract Sum or an extension of the Contract Time, nor shall they relieve the Contractor of its primary responsibilities to provide equal employment opportunities and to insure that its Subcontractors and Sub-subcontractors do the same. Any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to provide equal employment opportunities as required by these Contract Documents or by law shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

**ARTICLE 18**  
**LIMITATION OF LIABILITY**

18.1 NOTWITHSTANDING ANYTHING ELSE TO THE CONTRARY, CONTRACTOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES, AND CONTRACTOR'S TOTAL LIABILITY ARISING AT ANY TIME FROM THE SALE OR USE OF THE WORK, INCLUDING WITHOUT LIMITATION ANY LIABILITY FOR ALL WARRANTY CLAIMS OR FOR ANY BREACH OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE AGREEMENT, SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE WORK. THESE LIMITATIONS APPLY WHETHER THE LIABILITY IS BASED ON CONTRACT, TORT, STRICT LIABILITY OR ANY OTHER THEORY.

END OF GENERAL CONDITIONS OF THE  
CONTRACT FOR CONSTRUCTION

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PAYMENT BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

EVOQUA WATER TECHNOLOGIES LLC  
210 Sixth Avenue, Suite 3300  
Pittsburgh, Pennsylvania 15222 (hereinafter "Contractor")

**SURETY:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024  
Contract No. C006512  
Project: ANOXIC LIFT PUMP #1 REPLACEMENT

Legal Description or Street Address of Project: Water Recovery Resources Facility: 2151 South Services Lane, Lake Buena Vista, FL 32830.

Contract Sum: ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024  
Amount: ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Oblige, to pay for labor, material, services, utilities, equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor promptly makes full payment to all Claimants, as hereinafter defined, for all labor, material, services, utilities and equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from

their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.

4. The Surety and the Contractor further agree that this bond shall inure to the benefit of, and may be sued directly upon by, any Claimant furnishing labor, materials, services, utilities or equipment or any other item for which a construction lien could be claimed if Ch. 713, Florida Statutes applied to this Project.
5. "Claimant" shall mean for purposes hereof all persons, firms, partnerships, corporations or other entities that would be entitled to claim a construction lien if Ch. 713, Florida Statutes applied to this Project.
6. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
7. The sum of this Payment Bond is in addition to the sum of the Performance Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
EVOQUA WATER TECHNOLOGIES LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PERFORMANCE BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

EVOQUA WATER TECHNOLOGIES LLC  
210 Sixth Avenue, Suite 3300  
Pittsburgh, Pennsylvania 15222 (hereinafter "Contractor")

**SURETY:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024  
Contract No. C006512  
Project: ANOXIC LIFT PUMP #1 REPLACEMENT

Legal Description or Street Address of Project: Water Recovery Resources Facility: 2151 South Services Lane, Lake Buena Vista, FL 32830.

Contract Sum: ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024  
Amount: ONE MILLION, TWO HUNDRED TWENTY-SEVEN THOUSAND, SEVENTEEN AND ZERO-ONE HUNDREDTHS DOLLARS (\$1,227,017.00) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Obligee, for the performance of the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor fully performs the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety further agrees that whenever the Contractor shall be, and is declared by Owner to be, in default under or in breach of the Contract (which shall include without limitation any breach by the Contractor of any of the provisions of the Contract) the Surety shall promptly remedy the default or breach and undertake to perform and complete the Contract in accordance with its terms and conditions. The Surety's obligations include, but are not limited to, (i) the responsibilities of the Contractor for correction of defective work, completion of the Contract and fulfillment of warranty obligations, (ii) additional legal, design professional and delay costs resulting from the Contractor's default or breach or from the Surety's failure to act as required under this paragraph, and (iii) liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed

performance or non-performance of the Contractor or the Surety. The Surety shall fully indemnify and hold harmless the Owner from all costs, damages, and expenses (including attorneys' fees), which the Owner may incur as a result of the Surety's failure to act as required under this paragraph.

4. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.
5. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
6. The sum of this Performance Bond is in addition to the sum of the Payment Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
EVOQUA WATER TECHNOLOGIES LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CONSENT OF SURETY FOR PARTIAL PAYMENT APPLICATION**

(Date) \_\_\_\_\_

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869

Re: Consent of Surety  
Bond # \_\_\_\_\_  
Contract # C006512  
Payment Req. No.: \_\_\_\_\_

Dear Sir or Madam:

\_\_\_\_\_ (Surety) hereby consents to the payment of the amount of moneys due to \_\_\_\_\_ (Prime Contractor), by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT for which the necessary duly executed affidavits/releases of liens have not been provided.

This Consent of Surety is executed in lieu of the appropriated Affidavit and Release of Lien from \_\_\_\_\_ (Subcontractor/s - Supplier/s list if necessary) which the District's Prime Contractor has not submitted with its Partial Payment Application. The Surety executes this Consent for the amount of \_\_\_\_\_, encompassing Work and/or labor performed, the provision of materials, equipment, and supplies through the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, except for any applicable retainage.

\_\_\_\_\_ (Surety) further acknowledges that payment by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT shall not be construed as a waiver of any of the District's rights or those of any other named Obligee under the Payment and Performance Bonds; nor a determination by the District or those of any other named Obligee as to the merits of any controversy or dispute between the Prime Contractor and a Subcontractor/Supplier.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Attorney-in-Fact

**Note: Documentation must be provided that reflects the Attorney-in-Fact's authority to sign for the Surety.**

**DUAL OBLIGEE RIDER**

To be attached to and form a part of contract payment bond number \_\_\_\_\_ issued by

\_\_\_\_\_  
Surety  
On behalf of \_\_\_\_\_

In the amount of \_\_\_\_\_ Dollars \_\_\_\_\_ and  
dated \_\_\_\_\_ in favor of CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT.

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. Walt Disney Parks and Resorts U.S. Inc. is hereby added to said bond as additional Obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligee, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligee is limited to the penal sum above stated Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against and other party liable to the payee on the discharged obligation.

Signed, sealed and Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**Contractor:** EVOQUA WATER TECHNOLOGIES LLC

By \_\_\_\_\_

**Surety**

By \_\_\_\_\_



**CONTRACTOR'S INTERIM AFFIDAVIT**

From: EVOQUA WATER TECHNOLOGIES LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No.: C006512, dated April 24, 2024, for ANOXIC LIFT PUMP #1 REPLACEMENT.
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to, or claimed by, all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of liens and waivers of claims through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

Contractor: EVOQUA WATER TECHNOLOGIES LLC

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

**CONTRACTOR'S INTERIM AFFIDAVIT - SCHEDULE A**

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

From: EVOQUA WATER TECHNOLOGIES LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006512, dated April 24, 2024, between CENTRAL FLORIDA TOURISM DISTRICT and EVOQUA WATER TECHNOLOGIES LLC

The following are ALL the amounts due and owing to, or claimed by, all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above-referenced Contract. All amounts represent the total amount due and owing, or claimed, as of the date hereof and any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

<u>Name</u>	<u>Amount Due and Owing</u>	<u>Notes</u>
-------------	---------------------------------	--------------

Sample

Please initial:

\_\_\_\_\_

Owner

\_\_\_\_\_

Contractor

**CONTRACTOR'S REQUEST FOR INFORMATION**

RFI NO: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE INFORMATION REQUIRED: \_\_\_\_\_

SUBMITTED BY: \_\_\_\_\_

SCHEDULE EFFECT IF THE RESPONSE IS NOT RECEIVED BY THE ABOVE REFERENCED

DATE: \_\_\_\_\_

CATEGORY \_\_\_\_\_ Information not shown on the Contract Documents  
\_\_\_\_\_ Interpretation of Contract Requirements  
\_\_\_\_\_ Conflict in Contract Requirements  
\_\_\_\_\_ Coordination Problems

Contract Drawing Ref. \_\_\_\_\_  
Shop Drawing Ref \_\_\_\_\_  
Specification Ref \_\_\_\_\_  
Other: \_\_\_\_\_

SUBJECT: \_\_\_\_\_

DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

ENGINEER/ARCHITECT ASSIGNMENT

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

From: \_\_\_\_\_

ENGINEER/ARCHITECT RESPONSE

REPLY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

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

RESPONSE TO CONTRACTOR

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

Copy To: \_\_\_\_\_ From: \_\_\_\_\_

**DIRECTIVE NO.**

CONTRACT NO: C006512

DATE: \_\_\_\_\_

PROJECT: ANOXIC LIFT PUMP #1 REPLACEMENT

SUB-PROJECT: \_\_\_\_\_

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC

ATTACHMENTS:

DESCRIPTION: \_\_\_\_\_

Pursuant to the General Conditions of the Contract for Construction, you are hereby directed to proceed to perform the Work described above as indicated below. All work is to be accomplished in accordance with the Contract Documents. Any time extension associated with this Directive should be identified and a separate price stated to incorporate this change within the Contract completion date. Accurate records of any additional work, which may result in a change to the Contract Sum or Contract Time must be maintained. The implementation of all work now in process must be coordinated with the proposed revised conditions associated with this Directive.

The following is applicable to this Directive as marked:

- \_\_\_\_\_ A. The work described above and in the accompanying attachments will not change the Contract Sum or Contract Time.
- \_\_\_\_\_ B. The Contract Sum shall be increased/decreased by the sum of \$ \_\_\_\_\_ as a result of this Directive and the Contract Time shall be increased/decreased by \_\_\_\_\_ calendar days and shall be reflected in a Change Order to be signed by the parties.
- \_\_\_\_\_ C. The amount of change, if any, to the Contract Sum or Contract Time is undetermined as of the date of the Directive. Any such change amount shall be determined in accordance with the provisions of Article 12 of the General Conditions of the Contract for Construction.
- \_\_\_\_\_ D. Proceed immediately with the changes on a time-and-materials basis. Time tickets shall be submitted daily to the Owner’s Representative for verification. A formal Change Order will be issued for the actual costs based upon the signed time tickets and material invoices plus the Contractor’s allowable mark-up as specified in the Contract Documents.
- \_\_\_\_\_ E. The parties are unable to agree at this time as to whether the work described above constitutes a change in the scope of the work of the Contractor. Such dispute shall be resolved in accordance with the applicable provisions in the Contract Documents.

Approved:

Recommended for Approval:

\_\_\_\_\_  
Central Florida Tourism Oversight District    Date

\_\_\_\_\_  
Engineer/Architect – (insert company name)    Date

Accepted:

\_\_\_\_\_  
Contractor: Evoqua Water Technologies LLC    Date

Copy: Contract File  
Engineer/Architect’s Project Manager: \_\_\_\_\_  
Owner’s Project Manager: Craig Sandt

PROJECT: ANOXIC LIFT PUMP #1 REPLACEMENT

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
210 Sixth Avenue, Suite 3300  
Pittsburgh, Pennsylvania 15222

CONTRACT NO. C006512

CHANGE ORDER NO.  
DATE: «Change Order Date»

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CHANGE ORDER

The Owner and the Contractor hereby agree to this Change Order for all labor, services, materials, equipment and other items or things to be furnished, provided or performed, and all other obligations, terms and conditions, as described in Exhibit A hereto, all of which shall become part of the Work.

1. Original Contract Sum	\$1,227,017.00
2. Total net change by previous Change Orders	«Prior Revisions Fee Amount»
3. Contract Sum prior to this Change Order	«Prior Contract Sum Amount»
4. Contract Sum will be adjusted with this Change Order	«Fee Amount»
5. Adjusted Contract Sum including this Change Order	«Total Contract Fee Amount»
6. Original Contract Time	«Original Completion Date»
7. Contract Time prior to this Change Order	«Prior Completion Date»
8. Adjustment in Contract Time by this Change Order	«Extended Days» days
9. Adjusted Contract Time including this Change Order	«Current Completion Date»

Any funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor to be first applied to the payment of Subcontractors, laborers and materialmen, and other costs of construction, pursuant to law.

The total amount of this Change Order is fair, reasonable and mutually agreeable, and includes all applicable taxes, insurance, bond or corporate guarantee, delivery, supervision, overhead, profit, labor, labor impact, materials, changes, cardinal change, delays, acceleration, inefficiency and cumulative impact, or any claims, lawsuits, actions or causes of action therefor, and the Contractor hereby waives, releases and forever discharges any and all claims, lawsuits, actions or causes of action for such items associated with or related to the Work covered by this Change Order. Without limitation on the foregoing, the parties hereto specifically acknowledge that it is their intent to hereby waive, release and forever discharge any and all cardinal change or cumulative impact claims, whether known or unknown, whether in law or in equity, whether contingent or non-contingent, and whether past, present or future, arising out of or in connection with this Change Order and all previous Change Orders.

This Change Order represents the entire and integrated agreement between the parties, and supersedes all prior negotiations and qualifications, for this change in scope; but this Change Order and the Work contemplated herein is, except as otherwise specifically provided herein, subject to all the terms and conditions of the Contract including, without limitation, those concerning payment.

OWNER  
CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

CONTRACTOR  
EVOQUA WATER TECHNOLOGIES LLC

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: Stephanie Kopelousos

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

Title: District Administrator

Title: \_\_\_\_\_

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

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

CONTRACT NUMBER: C006512  
CHANGE ORDER NO. « Change Order\_Number»  
DATE: «Change Order Date»  
Page 1

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EXHIBIT A

<u>Item</u>	<u>Description</u>	<u>Value</u>
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Sample

Please initial:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

PROJECT: ANOXIC LIFT PUMP #1 REPLACEMENT

CONTRACT NUMBER: C006512

CHANGE ORDER NUMBER: (C.O. No.)

**CLOSE-OUT CHANGE ORDER**

THIS CLOSE-OUT CHANGE ORDER, is made effective as of (Insert Change Order Date), by and between the Owner and the Contractor.

WHEREAS, the parties desire to close-out the above referenced Contract based upon the Contract Documents as, and to the extent, modified below.

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The current status of the Contract is as follows:

Original Contract Sum	\$1,227,017.00
Total net change by previous Change Orders	\$(Insert Amount)
Contract Sum prior to this Change Order	\$(Insert Amount)
Contract Sum will be increased/decreased with this Change Order	\$(Insert Amount)
Final Contract Sum including this Change Order	\$(Insert Amount)

2. The Contractor certifies that all Work covered by the Contract and Change Order No. \_ through \_ has been completed in accordance with the terms of the Contract, including all punch list items.

3. The attached Contract Close-out Documents, all of which are incorporated herein by reference, relate to all Work performed under the Contract and all Change Orders thereto (which are inclusive of all the Work in Contract No. C006512 and, along with the other terms of this Close-out Change Order, constitute material consideration and representations to the Owner to induce the Owner into execution of this Close-out Change Order.

CONTRACT CLOSE-OUT DOCUMENTS

Attachment A	General Release
Attachment B	Contractor's Affidavit
Attachment C	Contractor's Release and Waiver - Insurance
Attachment D	Waiver of Claim/Waiver of Lien/Litigation List
Attachment E	Contractor's Guarantee to Owner
Attachment F	Consent of Surety
Attachment G	Certificate of Substantial Completion

4. RETAINAGE: Within (15) working days after approval by Owner of the Contract Close-out Documents submitted by Contractor hereunder and satisfaction by Owner that Contractor shall have complied with all provisions of the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor.

5. The Contractor represents to the Owner that:

a. There are no outstanding claims, which the Contractor has against the Owner or Separate Contractors, their Subcontractors or Sub-subcontractors, on the Project, and to the best of

Please initial:

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Owner

its knowledge, there are no outstanding claims against Contractor, its Subcontractors or Sub-subcontractors, by Separate Contractors or their Subcontractors or Sub-subcontractors on the Project.

- b. Without limitation upon the indemnity provisions contained in the Contract and in addition thereto, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner's Representative, the parent, related, affiliated and subsidiary companies of each, and the officers, directors, agents, employees, successors and assigns of each from and against any and all claims, causes of action, liens, rights to claim a lien, suits, expenses, losses and damages (including, without limitation, any and all expenses, losses and damages, for or arising out of direct costs, indirect costs, expenses, overhead, profit, labor, labor impacts, materials, supplies, equipment, changes, cardinal changes, cumulative impacts, disruptions, hindrances, interferences, delays, acceleration, inefficiencies, lost productivity, taxes, insurance, bonds, deliveries, supervision, or any other costs, expenses, losses or damages of any nature whatsoever), judgments, and rights whatsoever, in law or in equity, known or unknown or which may hereafter accrue (hereinafter referred to collectively as "Claims") directly or indirectly (i) made or asserted by any Subcontractors or Sub-subcontractors arising out of, related to or in connection with the Contract or the Project, or (ii) arising out of or relating to any and all Claims asserted or made by any of such Subcontractors or Sub-subcontractors including, without limitation, any Claims made or asserted against any of the "Releasees" ("Releasees" being as defined in the General Release attached hereto as Attachment A), provided such Claim arises out of or relates to the Contract or the Project.
  - c. If requested by the Owner, the Contractor shall cooperate with the Owner in gathering and providing information to the Owner regarding any claims by or against Separate Contractors.
6. The Contractor hereby certifies and warrants that all charges for labor, materials, supplies, equipment, lands, licenses, and other expenses under the Contract incurred up to and including the date hereof, for which the Owner might be sued or for which a lien might be filed, have been fully satisfied, paid in full and released, except for those names listed on the attached Contractor's Affidavit and that those listed on the Contractor's Affidavit shall be fully satisfied, paid in full and released prior to final payment as provided herein.
7. All other obligations of the Contractor under the Contract Documents remain unchanged and shall survive the disbursement of final payment and the closing hereon.
- 
- 

OWNER:  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

CONTRACTOR:  
**EVOQUA WATER TECHNOLOGIES LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: Stephanie Kopelousos

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

Title: District Administrator

Title: \_\_\_\_\_

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

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



CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

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GENERAL RELEASE

Attachment A

CONTRACT NO. C006512

FOR AND IN CONSIDERATION OF THE SUM OF \$ \_\_\_\_\_ (Insert Amount of Final Payment, including all retainage withheld), as FINAL PAYMENT, the receipt and adequacy of which is hereby acknowledged, EVOQUA WATER TECHNOLOGIES LLC, the undersigned, hereby fully and forever releases, acquits and discharges CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, the Owner's Representative, the Architect/Engineer and their parent, related and affiliated companies, their agents, employees, consultants, architects, engineers, officers, directors, successors and assigns, all of whom are hereinafter referred to collectively as "Releasees", from all manner of action and causes of action, suits, claims, judgments, damages, liens, claims of lien and rights whatsoever, in law or in equity, now existing or which may hereafter accrue in favor of the undersigned including, without limitation, any and all liability arising out of or in connection with that certain construction Contract dated April 24, 2024, Contract No. C006512, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and EVOQUA WATER TECHNOLOGIES LLC and all Work, labor and materials furnished, performed or provided pursuant thereto or otherwise for the project.

The undersigned covenants that except for actions and suits based upon breaches of the terms of this Release, it shall not commence or prosecute any action or suit in law or in equity, against the Releasees, either collectively or individually, on account of any action or cause of action which now exists or which may hereafter accrue in its favor.

In addition to any other liability which shall accrue upon the breach of the covenants contained herein, undersigned shall be liable to pay all reasonable attorneys' fees and costs incurred by the Releasees in the defense of any such action or suit.

Attested on this date \_\_\_\_\_.

\_\_\_\_\_  
EVOQUA WATER TECHNOLOGIES LLC  
(Contractor)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name/Title

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

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CONTRACTOR'S AFFIDAVIT

Attachment B  
Page 1

From: EVOQUA WATER TECHNOLOGIES LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No. C006512, dated April 24, 2024, for the ANOXIC LIFT PUMP #1 REPLACEMENT project.
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of lien through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

EVOQUA WATER TECHNOLOGIES LLC  
(Contractor)

By: \_\_\_\_\_

\_\_\_\_\_  
Print Name/Title

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

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CONTRACTOR'S AFFIDAVIT - SCHEDULE A

Attachment B  
Page 2

Date: (Insert Date)

From: EVOQUA WATER TECHNOLOGIES LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006512, dated April 24, 2024, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and EVOQUA WATER TECHNOLOGIES LLC

The following are ALL the amounts due and owing to all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above referenced Contract. All amounts represent the total amount due and owing as of the date hereof AND any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

NAME

AMOUNT DUE AND OWING

OTHER

Please initial: \_\_\_\_\_  
Contractor

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

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CONTRACTOR'S RELEASE AND WAIVER - INSURANCE

Attachment C

Project: ANOXIC LIFT PUMP #1 REPLACEMENT

Contract No.: C006512

Contractor: EVOQUA WATER TECHNOLOGIES LLC

Date of Contract: April 24, 2024

In consideration of the final payment under the Contract shown above between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, as Owner, and the undersigned, as Contractor, for Work on the above-captioned Project, the undersigned hereby represents that all claims which the undersigned may have against the Owner-furnished insurance (as and to the extent provided pursuant to the Contract Documents) for the Project have been reported in writing to the Owner and the Owner's insurance representative. The undersigned hereby waives and releases CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, its insurance carriers pursuant to any such Owner-furnished insurance, the Owner's Representative, their respective parent, subsidiary, related and affiliated companies and the officers, directors, agents and employees of each from any and all claims for property damage which have not been timely reported in writing to the Owner's insurance representative. CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and its insurance carriers reserve the right to deny any claim which has not been timely filed.

Company:

\_\_\_\_\_  
(EVOQUA WATER TECHNOLOGIES LLC)

Signature: \_\_\_\_\_  
(Signature of Corporate Officer)

Title: \_\_\_\_\_

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

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Attachment D

WAIVER OF CLAIM/WAIVER OF LIEN/LITIGATION LIST

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC

CONTRACT NO. C006512

All of the following have filed one or more of the following Notices:

(NONP) NOTICE OF NON-PAYMENT  
(NOC) NOTICE OF CLAIM  
(COL) CLAIM OF LIEN

Pursuant to the General Conditions, provide such releases, waivers, or satisfactions of Claims and Liens (or other documentation) in such form as the Owner may require for the following:

TYPE                      COMPANY FILING NOTICE                      UNDER AN ORDER GIVEN BY:

Please initial: \_\_\_\_\_  
Contractor

Sample

CONSENT OF SURETY

Attachment F

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

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

Attention: Contracting Officer

Dear Ms. Kimball:

We are the surety for the "Contractor" under Performance and Payment Bonds issued in connection with Contract No. C006512, dated April 24, 2024, between the Contractor and the Owner pursuant to which Contract the Contractor is performing certain Work in connection with the construction of the ANOXIC LIFT PUMP #1 REPLACEMENT project. We understand that the Contractor desires to be paid, subject to our consent, the retainage held by the Owner under the aforesaid Contract and any Change Orders. Accordingly, please be advised as follows:

1. We hereby consent to the payment of the retainage as aforesaid.
2. Said payment shall in no way affect the aforesaid Payment and Performance Bonds or our obligations thereunder, all of which shall remain in full force and effect.

Very truly yours,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

THIS SPECIFIC FORMAT MUST BE SUBMITTED ON THE LETTERHEAD OF THE SURETY

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC  
CONTRACT NUMBER: C006512  
CHANGE ORDER NO. (Insert C.O. Number)  
DATE: (Insert Date)

---

Attachment G

CERTIFICATE OF SUBSTANTIAL COMPLETION

CONTRACT NO. C006512  
PROJECT: ANOXIC LIFT PUMP #1 REPLACEMENT  
CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC

Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, this is to certify that the Work under the above referenced Contract has been substantially completed on \_\_\_\_\_ (Insert date of substantial completion) (the "date of substantial completion") and a Punch List shall be issued within twenty (20) days.

Commencing on the day following the date of substantial completion, the Owner shall have responsibility for maintenance of the Project, utilities serving the Project and casualty insurance covering the Project; provided, however, that nothing herein contained shall relieve Contractor of its responsibilities under Article 11 of the General Conditions of the Contract for Construction during the period following the date of substantial completion of the Work and final completion (or thereafter with respect to Section 11.8 of said General Conditions).

As provided in Section 9.4.1 of the General Conditions of the Contract for Construction, this Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs and/or fees for any outstanding Revision Orders and itemized projections for any incomplete Work), and the Contractor shall conclusively be deemed to have waived the right to payment of any item or fee or cost not billed within thirty (30) days of Contractor's receipt hereof. The issuance of this Certificate of Substantial Completion shall not constitute a waiver of any right of the Owner hereunder including, without limitation, the right to those retainages permitted by the Contract Documents.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



PUNCH LIST FOR THE  
PROJECT AREA KNOWN AS  
ANOXIC LIFT PUMP #1 REPLACEMENT

CONTRACT NO.: C006512

PROJECT: ANOXIC LIFT PUMP #1 REPLACEMENT

CONTRACTOR: EVOQUA WATER TECHNOLOGIES LLC

DATE: \_\_\_\_\_

1. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Owner has determined that the following items related to the Work require completion and/or correction:

SEE ATTACHED LIST (\_\_\_\_pages), dated \_\_\_\_\_

2. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Contractor shall submit to the Owner all items required by Section 9.4.2 of the General Conditions of the Contract for Construction, including, without limitation, the following items. All such items shall be delivered to the Owner and the Owner must approve all such items before the Contractor is entitled to receive payment from the Owner.
  - (i) Application for Payment;
  - (ii) As-Built Drawings; and
  - (iii) Retainage Reduction Change Order including all Exhibits attached thereto and all Waivers of Claim. **NOTE: THIS PROVISION WILL BE INCLUDED ONLY WHEN THE OWNER WILL RELEASE RETAINAGE.**

The items referenced in paragraph 1, above, shall be accomplished on or before \_\_\_\_\_ (insert completion date). In the event Contractor does not complete and/or correct such items set forth above within the time set forth above, then, in accordance with the provisions of Section 14.3 of the General Conditions of the Contract for Construction, the Owner shall have the right to complete and/or correct such items or to cause the same to be completed and/or corrected by others, and Owner shall have the right to offset such costs against any amounts then or thereafter due the Contractor. If the amounts then or thereafter are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

\_\_\_\_\_  
Owner's Representative

---

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BOARD OF SUPERVISORS REPORT 8.6

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Board Meeting Date: 04/24/2024

Subject: Award of Bid # C006493 Epcot Central Energy Plant (EEP) Boiler #1 Replacement & Low Temperature Hot Water (LTHW) Valve Automation

Presented by: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

---

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.6 award of contract for Epcot Energy Plant Boiler #1 replacement and low temperature hot water valve automation with Harper Limbach LLC in the amount of \$1,969,290, plus \$363,585 in allowances for a total of \$2,363,148

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**RELEVANT STRATEGIC GOALS:** Operational Excellence

**PROOF OF PUBLICATION:** Bid released to the public: January 29, 2024

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### **BACKGROUND:**

#### Boiler #1 Replacement

The Epcot Central Energy Plant is equipped with three (3) natural gas-fired boilers that were installed as part of the original 1981 construction. Each boiler has a capacity of 27 MMBtu/hr. In FY22 and FY23, the need for repairs and/or replacement of internal/external components on the boilers started to significantly increase for all three (3) boilers. These age and degradation related repairs total approximately \$400,000 but have not extended the useful service life of the boilers. Boiler replacement is recommended to continue providing an acceptable level of service.

The project includes replacement of the boiler designated Boiler #1, including controls, fumes, exhaust, valves, and associated piping. The new boiler and controls system will be integrated into the plant controls network for remote monitoring and control.

#### Low Temperature Hot Water Valve Automation

The Epcot Central Energy Plant has 18 low temperature hot water isolation valves used for manipulating flow to and from the boilers. These valves are located high above the ground, necessitating the use of an aerial work platform to access them for operating/actuating. Due to the congested piping and equipment configuration in the facility it is very difficult to maneuver platforms into a safe position for personnel to reach the valve operators while complying with both fall protection requirements and recommended guidelines for ergonomics and/or body motion/positioning. The ability to remotely actuate these valves would eliminate the working at heights and ergonomic hazards associated with these routine tasks. Additionally, it will improve system condition response time during emergencies and overall plant efficiency.

The project includes installation of programmable logic controlled electric actuators on all low temperature hot water isolation valves used for manipulating flow to individual boilers. This includes the electric actuators and associated piping. The new electric actuators and ancillary equipment will be integrated into a new automated control system, which will be connected to the existing plant control network for remote access.

These two (2) projects were originally envisioned to be bid and constructed independent of one another. Based on the complexity of coordinating the instrumentation and controls aspects of both projects, it was recommended to bid them together for execution by a unified construction team (i.e. general contractor and control system integration subcontractor).

Constructing the projects together is anticipated to reduce cost, system downtime, overall time for construction, and the associated safety and operational risks of having multiple contractors working in the same system and area.

**FINDINGS AND CONCLUSIONS:**

On January 29, 2024, Invitation to Bid # C006493 was released as a construction services bid to certified mechanical contractors with an American Society of Mechanical Engineers (ASME) “R” Symbol Stamp awarded by The National Board of Boiler and Pressure Vessel Inspectors (NBBI).

Two (2) bids were received as follows:

Vendor’s Legal Name	Location	Bid Amount
Harper Limbach, LLC	Lake Mary, Florida	\$1,898,715.00
Gibson Air Conditioning and Refrigeration, LLC	Winter Haven, Florida	\$2,825,000.00

Harper Limbach, LLC was the lowest responsive and responsible bidder.

Following a post-bid interview with the low bidder, the Utilities Department included two (2) necessary add alternates that were not included in the base bid price.

The Utilities Department is requesting establishment of a total project budget of \$2,363,148 as illustrated in the table below and approval of Contract # C006493 with Harper Limbach, LLC for the replacement of Boiler #1 and the addition of electric valve actuators on the existing low temperature hot water valves at the District’s Epcot Central Energy Plant. Staff recommends approving the contract for the period **May 01, 2024** through **December 31, 2024**.

Description	Amount
Base Bid	\$1,898,715.00
Add Alternate 1: Replace (2) 3-way valves	\$29,403.00
Add Alternate 2: Astropak Pipe flushing services per documents	\$41,172.00
<b>Total Award to Harper Limbach, LLC</b>	<b>\$1,969,290.00</b>
Allowance for Contingency for Harper Contract (10%)	\$196,929.00
Allowance for General Requirements: Material Testing, Asbestos Abatement, Weld Inspections, etc. (1%)	\$19,692.90
Allowance for Soft Costs (9%)	\$177,236.10
<b>Total Allowances</b>	<b>\$393,858.00</b>
<b>Total Board Authorization for CFTOD Series 2021-2 Utility Revenue Bonds (Taxable)</b>	<b>\$2,363,148.00</b>

**FISCAL IMPACT:**

Funding will be from the CFTOD Series 2021-2 Utility Revenue Bonds (Taxable).

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Harper Limbach, LLC      Contract



# EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

**Agreement: C006493**

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## **PROJECT MANUAL**

### **ISSUED FOR CONSTRUCTION**

**Date of Issuance: April 24, 2024**

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**Owner:** Central Florida Tourism Oversight District  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

**Owner's Representative:** Reedy Creek Energy Services  
5300 North Center Drive  
Lake Buena Vista, Florida 32830

**Engineer/Architect of Record:** EXP U.S. Services Inc.  
(EEP Boiler #1 Replacement) 205 North Michigan Avenue, Suite 3600  
Chicago, Illinois 60601

**Engineer/Architect of Record:** Peninsula Engineering, Inc.  
(EEP LTHW Valve Automation) 2016 Alden Road  
Orlando, Florida 32803

**Contractor:** Harper Limbach LLC  
1251 Waterfront Place, Suite 201  
Pittsburgh, Pennsylvania 15222

## PROJECT MANUAL

Definition: The compilation of Documents listed herein is hereinafter referred to as the Project Manual.

The following listed documents comprise the Project Manual entitled:

### EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION **ISSUED FOR CONSTRUCTION**

Contract Number: C006493

#### CONTRACT DOCUMENTS

Agreement (Lump Sum)

- Exhibit A – Project Description and List of Contract Documents
- Exhibit B – Project Milestone Schedule
- Exhibit C – Recap of Contract Sum
- Exhibit D – Pending Alternates
- Exhibit E – Schedule of Unit Prices

Special Contract Conditions

General Conditions of the Contract for Construction

Payment Bond

Performance Bond

Consent of Surety for Partial Payment Application

Dual Oblige Rider

Contractor's Interim Affidavit (sample form), including Schedule A

Contractor's Request for Information ("RFI") (sample form)

Directive (sample form)

Change Order (sample form), including Exhibit A

Close-Out Change Order (sample form includes Certificate of Substantial Completion)

Punch List (sample form)

Specification Section 00850 - List of Drawings and Specifications

Drawings - Drawings are separately bound. For the List of Drawings, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

Specifications - For the List of Specifications, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION. All specifications listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

Owner-Furnished Products - For the information and specifications on the Owner-Furnished AERCO Benchmark Platinum Condensing Boilers (4) and Yaskawa Variable Frequency Drive (VFD) refer to <https://pbsystem.planetbids.com/hub/bm/bm-detail/112619#bidAddendaAndEmails>. All specifications listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

<b>END OF TABLE OF CONTENTS - PROJECT MANUAL</b>
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**EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION  
LUMP SUM AGREEMENT**

THIS AGREEMENT, made effective as of April 24, 2024, by and between **Central Florida Tourism Oversight District** (herein referred to as the “Owner,” “District” or “CFTOD”), whose mailing address is 10450 Turkey Lake Road, Box # 690519, Orlando, Florida 32869, and **Harper Limbach LLC** (herein referred to as the “Contractor”), whose mailing address is 1251 Waterfront Place, Suite 201, Pittsburgh, Pennsylvania 15222.

**W I T N E S S E T H**

WHEREAS, references to Reedy Creek Improvement District (“RCID”) within the Agreement are referring to the Owner, now known as Central Florida Tourism Oversight District (“CFTOD”);

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid (“ITB”) No. C006493 on January 29, 2024 for EEP Boiler #1 Replacement & LTHW Valve Automation;

WHEREAS, two (2) bidders responded, and Harper Limbach LLC was the lowest responsive and responsible bidder. The Contractor was subsequently selected as the intended awardee for these services; and

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**Article 1**

**DEFINITIONS: THE CONTRACT DOCUMENTS**

1.1. The capitalized terms used herein shall have the meanings set forth in the General Conditions of the Contract for Construction (herein referred to as the “General Conditions”) unless a specific definition therefor is provided herein. Unless otherwise specified, references herein to numbered articles and paragraphs are to those in this Agreement. This Agreement shall be referred to throughout the Contract Documents as the “Agreement.”

1.2. The Contract Documents consist of this Agreement, the Conditions of the Contract (General and Special), the Drawings, the Specifications, all Addenda (except portions thereof relating purely to any of the bidding forms or bidding procedures), all Modifications and all other documents identified in the “List of Contract Documents” included in Exhibit A, which is attached hereto. Such documents form the Contract and all are as fully a part thereof as if attached to this agreement or repeated herein.

**Article 2**

**STATEMENT OF THE WORK**

2.1. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the “Work.”

2.2. Exhibit A, “Project Description and List of Contract Documents,” contains a brief description of the Project.

2.3. The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and nonprofessional services, and shall perform all other acts and supply all other things necessary to fully and properly perform and complete the Work. The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor.

**Article 3**

**OWNER'S REPRESENTATIVE**

3.1. **Reedy Creek Energy Services**, whose designated representative is **Kylie Canarina**, and whose mailing address is Post Office Box 690519, Orlando, Florida 32869, shall act as the Owner's authorized representative (herein

referred to as the "Owner's Representative"); provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.

3.2. Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

#### Article 4 THE ARCHITECT/ENGINEER

4.1. The Architect/Engineers for the project (herein referred to as the "A/E") are as follows:

- a. **EEP Boiler #1 Replacement:** EXP U.S. Services Inc., whose mailing address is 205 North Michigan Avenue, Suite 3600, Chicago, Illinois 60601.
- b. **EEP LTHW Valve Automation:** Peninsula Engineering, Inc., whose mailing address is 2016 Alden Road, Orlando, Florida 32803.

#### Article 5 TIME OF COMMENCEMENT AND COMPLETION

5.1. The Contractor shall commence the Work promptly upon receipt of written Notice-to-Proceed ("NTP") from the Owner and **shall complete all Work within 240 Days** after issuance of said NTP (such period of time is herein referred to as the "Contract Time") and in accordance with such interim milestone dates (herein referred to as the "Milestones") as may be specified in the Contract Documents. The Contract Time and any such Milestones are of the essence of the Contract.

5.2. If any Work is performed by the Contractor prior to the execution of this Agreement based on receipt of written notice to proceed, all such Work performed shall be in accordance with and governed by the Contract Documents.

5.3. The Contractor acknowledges that the Owner has made no warranties to the Contractor, expressed or implied, that the Contractor will be able to follow a normal, orderly sequence in the performance of the Work or that there will be no delays in, or interference with, the Work.

##### SUBSTANTIAL COMPLETION

Substantial Completion of the Work shall be achieved no later than **230 DAYS from the Notice-to-Proceed**. The Notice-to-Proceed is defined as the date the Owner provides the Notice to Contractor to begin the project.

##### FINAL COMPLETION

Final Completion of the Work shall be achieved no later than **240 DAYS from the Notice-to-Proceed**.



**Article 6  
CONTRACT SUM**

6.1. Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Change Order or as otherwise provided in the General Conditions, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of **ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,969,290.00)** (herein referred to as the "Contract Sum") to cover the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor.

**Article 7  
APPLICATIONS FOR PAYMENT**

7.1. The Contractor shall, on the twenty-fifth (25th) day of each calendar month (herein referred to as the "Payment Application Date"), deliver to the Owner an Application for Payment in accordance with the provisions of Article 9 of the General Conditions. Before submitting the first Application for Payment, Contractor shall submit (and resubmit until approval is obtained) to the Owner's Representative for approval the "Schedule of Values," generally following the Uniform Construction Index (CSI) cost analysis format but further broken down by facility, labor and material, all as required by the Owner's Representative. Each item in the "Schedule of Values" shall only include its proper share of overhead and profit. The Schedule of Values, when approved by the Owner's Representative, shall be used as a basis for the Contractor's Application for Payment.

**Article 8  
PROGRESS PAYMENTS AND FINAL PAYMENT OF THE CONTRACT SUM**

8.1. Based on the Contractor's Application for Payment, the Schedule of Values submitted by the Contractor and approved by the Owner, and the Owner's approval of the Application for Payment pursuant to Article 9 of the General Conditions, the Owner shall make monthly payments to the Contractor on account of the Contract Sum. Such monthly payments shall be made on or before the twenty-fifth (25th) day of each calendar month or the thirtieth (30th) day after receipt by the Owner of such documentation as the Owner may require pursuant to Article 9 of the General Conditions to substantiate the amount owed, whichever is later; provided, however, that the Owner shall have no obligation to make payment as aforesaid if it has withheld approval thereof as permitted under Subparagraph 9.3.1. of the General Conditions or if the Contractor has not submitted to the Owner all documentation required to substantiate the Application for Payment. Each such monthly payment shall be in an amount equal to ninety-five percent (95%) of the net amount allowed the Contractor for labor, materials and equipment incorporated or used in the Work (or suitably stored at the job site if the Owner has agreed in advance to pay for such stored materials and equipment) through the Payment Application Date, as indicated in the Owner's approval of the Application for Payment, after deducting any sums withheld by the Owner pursuant to the Contract Documents and the aggregate of all previous payments to the Contractor on account of the Contract Sum. Upon Substantial Completion of the Work, as determined by the Owner, the Owner shall pay to the Contractor a sum sufficient to increase the aggregate payments theretofore made to the Contractor on account of the Contract Sum to ninety-five percent (95%) of the Contract Sum, less such retainage as the Owner shall determine is necessary for all incomplete Work, unsettled claims or other matters for which the Owner is permitted to withhold under the General Conditions.

8.2. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within fourteen (14) days after completion of those items set forth in the Punch List, including, without limitation, approval by Owner of the final Application for Payment, and execution by the Contractor of the Close-out Change Order, in accordance with the General Conditions; provided, however, that final payment shall in no event be due unless and until the Contractor shall have complied with all provisions of the Contract Documents, including those contained in Subparagraph 9.4.2 of the General Conditions.

**Article 9  
CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 9.1. The Contractor hereby represents and warrants to the Owner that:
- a. it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed hereunder;
  - b. it is experienced and skilled in the construction and work of the type described in, or required by, the Contract Documents;
  - c. all equipment and materials used in connection with the Work shall be new (except if otherwise required by the Specifications) and the equipment, the materials and the Work shall be of the best quality, free from faults and defects and shall strictly conform to the Contract Documents; and
  - d. it has, by careful examination satisfied itself as to: (i) the nature, location and character of the job site including, without limitation, the surface and subsurface conditions of the land and all structures and obstructions thereon, both natural and manmade, surface water conditions of the Job Site and the surrounding area and, to the extent pertinent to the Work, all other conditions; (ii) the nature, location and character of the general area in which the Job Site is located including, without limitation, its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (iii) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (iv) all other matters or things which could in any manner affect the performance of the Work. Without limitation on the foregoing, the Contractor recognizes the physical and operational restrictions on carrying on of the Work in or about the Project or the Job Site.
- 9.2. The Contractor accepts the relationship of trust and confidence established by this Agreement between it and the Owner. It covenants with the Owner that it shall: furnish its best skill and judgment and cooperate with the Owner in furthering the interests of the Owner; furnish efficient business administration and superintendence and an adequate supply of workmen, equipment, tools and materials at all times; and perform the work in the best and soundest way and in the most expeditious and economical manner consistent with the best interests of the Owner.

**Article 10  
TERMINATION**

10.1. Termination of the Contract by the Owner, with or without cause, and by the Contractor are provided for in Article 15 of the General Conditions. If the Owner terminates the Contract pursuant to Paragraph 15.2. of the General Conditions, and the unpaid balance of the Contract Sum exceeds the costs and expenses incurred by or on behalf of the Owner in finishing the Work, including compensation for any additional architectural, engineering, management and administrative services, such excess shall, upon the completion of the Work, be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner upon demand.

**Article 11  
LEGAL PROCEEDINGS**

11.1. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

11.2. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Contract, or arising out of any matter pertaining to this Contract or the Work to be performed hereunder (a "Proceeding"), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have

jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

11.3. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

## Article 12 PUBLIC RECORDS

**12.1. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX 690519, ORLANDO, FLORIDA 32869.**

a. THE CONTRACTOR SHALL:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. REQUEST FOR RECORDS; NONCOMPLIANCE:

1. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
2. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

3. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.
- c. CIVIL ACTION:
1. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
    - i. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
    - ii. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
  2. A notice complies with subparagraph (c) ii. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
  3. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

#### **Article 13 E-VERIFY COMPLIANCE**

13.1. The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of Article 10 hereof and Article 15 of the General Conditions of the Contract for Construction, which forms a part of this Agreement, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

#### **Article 14 NON-FUNDING**

14.1. In the event that budgeted funds for this Agreement are reduced, terminated, or otherwise become unavailable, Owner may terminate this Agreement upon written notice to Contractor without penalty to Owner. Owner shall be the final authority as to the availability of the funding.

#### **Article 15 SCRUTINIZED COMPANIES**

15.1 By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.

- a. Specifically, by executing this Agreement, the Contractor certifies that it is **not**: on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.
- b. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:
  1. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473 Florida Statutes; and/or
  2. Engaged in business operations in Cuba or Syria.
- c. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:
  1. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes; and/or
  2. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.
- d. If this Agreement is terminated by the Owner as provided in paragraph c above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.
- e. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner’s termination.
- f. Unless explicitly stated in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

#### **Article 16 PUBLIC CONSTRUCTION BOND**

16.1. The Contractor must submit a recorded, Public Construction Bond in conformance with Florida Statute 255.05 for the Total Contract Sum Amount of **ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDRETHS DOLLARS (\$1,969,290.00)** as security for the faithful performance of the work within the time set forth as required herein and for prompt payment to all persons defined in 713.01, Florida Statutes, who furnish labor, services, or materials for the completion of the work provided herein.

**SIGNATURES NEXT PAGE**



Contract No: C006493

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

**OWNER:**  
**CENTRAL FLORIDA TOURISM**  
**OVERSIGHT DISTRICT**

**CONTRACTOR:**  
**HARPER LIMBACH LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

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

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

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006493**

I. Project Description

The Project is briefly described as follows:

**SECTION 1. SCOPE OF SERVICES OVERVIEW**

- 1.1 The Scope of Services for the EPCOT Energy Plant (“EEP”) Boiler #1 replacement includes replacement of the existing Boiler #1 with four (4) modular condensing boilers and the addition of variable frequency drives (“VFDs”) to all three (3) primary hot water pumps (CHWP-1, CHWP-2, and CHWP-3).
- 1.2 The Scope of Services for the low temperature hot water (“LTHW”) valve automation includes replacement of manually operated isolation valves with electrically-controlled isolation valves on twenty (20) existing LTHW system valves located within the EEP Boiler Room servicing the EPCOT theme park.
- 1.3 Specific elements are generally summarized, but are not intended to be a complete description of the work. Any quantities or measurements, if included in the summaries, are approximate and are not to be used in estimating the work.
- 1.4 It is the intent of the Owner that the Contractor will perform all of the work of any kind and nature described in the drawings and specifications referenced in List of Drawings & Specifications (“Project Documents”), which is within the Contractor's Scope of Services unless specifically excluded or indicated as Owner-furnished and/or installed. Any work not specifically described in the Project Documents, but required to fulfill the intent of a "complete job" for the Contractor's Scope of Services will be considered to be included in the Contract.

**SECTION 2. SCOPE OF SERVICES (BOILER #1 REPLACEMENT)**

**2.1 WORK COVERED BY PROJECT DOCUMENTS**

- A. The work covered under these specifications shall include, but is not limited to, furnishing all equipment and materials, except those materials furnished by the Owner; providing all labor, supervision, administration and management; and supplying all construction equipment, tools, machinery, construction facilities and temporary controls, transportation and other facilities and services necessary to produce the construction required by the Project Documents, complete and ready for use.
- B. Location: The work is within the limits of the Central Florida Tourism Oversight District (“CFTOD”) as indicated on the Project Documents.
- C. Summary of the Work:

Replace existing Boiler #1 with four (4) modular condensing boilers and add VFDs to all three (3) primary hot water pumps (CHWP-1, CHWP-2, and CHWP-3). This scope of work includes, but is not limited to all required or indicated demolitions, equipment, piping, electrical, controls, insulation, line labeling and painting/coating as depicted in the Project Documents.

The purpose of the work is to:

1. Replace existing Boiler #1 with (4) modular condensing boilers and add VFDs to all three (3) primary hot water pumps (CHWP-1, CHWP-2, and CHWP-3). This scope of work includes, but is not limited to, all required or indicated demolitions, equipment, piping, electrical, controls, insulation, line labeling and painting/coating as depicted in the Project Documents.

The improvements will consist principally of the following:

**GENERAL:**

1. The Contractor shall supply all supervision, labor, materials, testing, commissioning and equipment controls hardware, programming and integration required to install the four (4) condensing boilers and three (3) VFDs as depicted in the Project Documents. Contractor is required to provide adequate material quantities needed to construct the systems as shown within the plans.
2. Contractor shall:
  - a. In addition to other permits that may be required, provide all mechanical and/or plumbing permits (fee waived) as required by section 301.1 of the Epcot Building Code.

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- b. Verify all dimensions and elevations prior to fabrication and installation.
- c. Provide temporary piping/hoses to assist with system draining.
- d. Provide temporary supports as necessary to facilitate the removal and replacement of all devices, equipment, etc. that are scheduled to be removed.
- e. Provide Inpro/Seal Smart Current Diverter Ring (“CDR”) at pump motor. The Contractor shall employ Hudson Pump, Tony DeJesus (863-860-0276) for all CDR installation support.
- f. Comply with breathing air requirements of OSHA for welding/soldering and duct controls.
- g. Provide temporary exhaust fans and blowers to remove the fumes caused by welding/soldering to an area outside the mechanical room.
- h. Phase the demolition/reconstruction work of the project (see "Sequence of Work”).
- i. Schedule work so as to minimize the total duration of time required by the project and minimize critical path activities.
- j. Furnish all supplementary steel supports as required or as requested for the proper support of mechanical piping and appurtenances, electrical raceway, gear, devices, etc.; supports shall be hot dipped galvanized following fabrication.
- k. Phase work based upon plant needs, electrical operations availability and overall construction sequence managed by RCES Project Management.
- l. Coordinate with Owner for scheduled access to existing systems and facilities.
- m. Install equipment according to manufacturer's instructions/recommendations and all additional requirements specified within these Project Documents.
- n. Install equipment labeling/identification shall be legible and shall be mechanically secured to the equipment with non-corroding fasteners.
- o. Locate all equipment per Project Documents. Coordinate with RCES Mechanical Engineering if Project Documents differ from field conditions.
- p. Equipment Pad:
  - i. Using a diamond grinder or other approved means, lightly scarify the top of the concrete foundation removing all oil, grease and other contaminants.
  - ii. Surface shall be roughened to promote a good bond between the grout and the concrete foundation.
  - iii. Inspect concrete surface for cracks or any other imperfections; report all findings to RCES Mechanical Engineering.
  - iv. Point up foundation walls with non-shrink grout in full compliance with manufacturer's recommendations.
  - v. The top of all equipment curbs and housekeeping pads shall be level. All corners shall have a 3/4" chamfered edge, and all exposed-to-view surfaces dressed smooth.
  - vi. Paint in accordance with PNT-60.
- q. Coordinate the installation of all mechanical and electrical equipment, piping and appurtenances to fit within the space allowed by the existing conditions, including maintenance requirements. Cutting or otherwise altering any structural members shall not be permitted without written permission from RCES Mechanical Engineering and Engineer of Record.
- r. Fabricate and install required concrete pedestals and foundations and steel/copper pipe hangers as depicted in the Project Documents.
- s. Make all roofing modifications as shown or as required for the installation of all elements associated with this project. Repair all areas that are impacted as a result of demolition or installation activities. Coordinate means and methods with warranty.
- t. Protect the existing roof from all forms of damage when performing work on this surface. Contractor shall make all repairs to RCES Project Management satisfaction and in accordance with any warranties as a result of demolition or installation activities.
- u. Provide all demolition as shown or as required to install the new systems. This includes, but is not limited to, the removal of the existing Boiler #1, piping, electrical and control wiring and conduit back to the panels or gear from which they originate. Completely remove all elements of any system or portion thereof that becomes obsolete as a result of this project. Owner has the right to salvage any elements of the system prior to removal from site. Salvaged elements to be coordinated with RCES Project Management.
- v. Protect all existing equipment during demolition.



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- w. Comply with welding/fire watch and notification requirements.
- x. Restore all site conditions:
  - i. Remove temporary piping and other provisions implemented for the performance of this work.
  - ii. Provide a thorough cleaning of all work areas that were impacted by the performance of this work.
- 3. All painting shall be executed in accordance with the painting specifications provided.

**MECHANICAL:**

- 1. The low temperature hot water ("LTHW") system is a thermal piping system that is subject to expansion and contraction. Therefore, once flow has been stopped, in the work section of the piping, the work must continue in an uninterrupted manner until the piping has been restored to service.
- 2. Contractor shall:
  - a. Furnish and install new valves as shown or as required. Situate all valves for safe access for operation.
  - b. Provide flushing and cleaning of piping systems. Refer to SECTION 9. WATER TREATMENT – CHEMICAL CLEANING.
  - c. Remove existing insulation only to the extent necessary to allow the replacement of the piping and equipment.
  - d. Re-insulate all lines impacted by construction. Insulate per Project Documents.
  - e. Provide all insulation as specified for all equipment, piping and appurtenances and install per Project Documents.
  - f. Make hydronic piping modifications as shown or as indicated to allow the new piping element to be installed in the section of pipe where the existing element was removed. Verify that the element can operate freely throughout its full range of motion.
  - g. Provide high point vents and low point drains including but not limited to locations indicated in the Project Documents. Vents and drains shall serve as injection and discharge for all piping flushing and cleaning activities. All high point vents shall have a valve at the connection and a second valve located at 4'-0" above finish floor.
  - h. Valves in field-routed lines shall be located to allow accessibility without ladders or other personnel elevators to the greatest extent possible. Where high access is required, location shall be chosen with regard to access means.
- 3. Pressure Test: Low temperature hot water carrier piping shall be tested at 150 psig for eight (8) hours with no loss of pressure. Chart recorders furnished by RCES shall be used to verify compliance with these requirements. Piping must be tested prior to being tied into the existing system or connected to any equipment. Pressure test for tapping fittings, equipment, etc. shall be tested in accordance with the manufacturer's recommendations and shall not be tested less than the operating pressure of the system.
- 4. Piping shall not be supported by the equipment it is serving. All supports shall be installed such that pipe connections at equipment can be removed without the use of temporary supports.

**ELECTRICAL:**

- 1. Contractor shall:
  - a. Provide new electrical service as shown on the E series drawings.
  - b. Furnish and install all electrical equipment and appurtenances as shown or indicated throughout the Project Documents.
  - c. Make all modifications to existing electrical gear as shown or as required for a complete, fully functioning electrical distribution system.
  - d. Install all owner furnished electrical equipment and devices; coordinate with all other aspects of the electrical/control systems as required or as necessary.
  - e. Coordinate electrical characteristics and requirements of all mechanical equipment with electrical contractor and shall furnish equipment wired for available voltages.
  - f. Coordinate conduit routing and electrical disconnect locations, programmable logic controller ("PLC") locations, starter locations to motors with RCES Operations to verify that proper access

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to equipment is maintained and/or provided. Submit final locations with service clearances identified to Engineer of Record for review and approval prior to the commencement of work.

**CONTROLS:**

1. Contractor shall:
  - a. Install new instrumentation as indicated throughout the Project Documents.
  - b. Provide all control raceway and wiring as shown on the Project Documents.
  - c. Provide all controls/interlink communication cabling between all pieces of equipment and associated PLCs. Refer to Piping and Instrumentation Diagram (“P&ID”) and controls specification for more information.
  - d. Provide sequencing/programming, system graphics, test and balance (“TAB”), etc. as indicated in the Project Documents. Refer to specification for control sequence.

**2.2 SEQUENCE OF WORK**

**A. General:**

1. Perform field verification of all dimensional data provided and field coordinate the installation of all of the elements and systems that are associated with this project.
2. Report any dimension and/or elevation deviations from the plans to the Engineer of Record.
3. Coordinate with General Contractor, RCES Operations, RCES Project Management, RCES Gas Department, Epcot Engineering Services, and RCES Network Services and the sequence and phasing of the installation of this work.
4. Schedule/coordinate the mechanical/electrical natural gas shutdown and demolition work with RCES Operations.
5. Demolish and remove all components scheduled for demolition from the project site. Refer to Project Documents for limits of removal and 'Demolition' section below.
6. Prefabricate piping and supports.
7. Clean and perform non-destructive weld test and pressure test all piping prior to making final connection to existing system.
8. Schedule tie-ins with General Contractor, RCES Operations, RCES Gas Department, Epcot Engineering Services, and RCES Project Management.
9. Schedule/coordinate the electrical startup and reconnection work with RCES Operations and RCES Project Management.
10. Disconnect and remove Boiler #1 and associated piping and appurtenances within the limits of removal as depicted in the Project Documents, and removal of grout from each concrete pad.
11. Install the four (4) condensing boilers, piping, appurtenances, network/controls cabling, etc. in the agreed to sequence until the new boilers, piping, and appurtenances have been installed, cleaned, tested/commissioned and aligned per Project Documents and 'Boiler Installation' section below.
12. Install the three (3) VFDs on the primary pumps and associated controls in such a way that two (2) pumps shall be available for use at all times.
13. Restore site conditions.

**B. Demolition:**

1. Review all valves that will be used to isolate the system for demolition of Boiler #1.
2. Disconnect all utilities associated with Boiler #1. Demolish utilities as indicated on Project Documents, including but not limited to mechanical, electrical, and plumbing floor plans, details, and specifications. Provide temporary caps at future points of connection as required.
3. Demolish and remove Boiler #1 in its entirety including piping, valve, etc. as indicated on Project Documents.
4. Demolish and remove existing flue through roof in its entirety. Protect existing roof penetration from water intrusion into plant during construction per architectural details. Patch roof penetration and provide new roofing per architectural details.

**C. Boiler Installation:**

1. Prepare existing housekeeping pad for new work.

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2. Boilers shall be installed in pairs to allow for additional redundancy in system. Two (2) boilers shall be installed in their entirety and brought into service prior to the remaining two (2) boilers.
  3. Install two (2) new, owner-furnished boilers as indicated on Project Documents.
  4. Provide new heating hot water piping, drain piping, and condensate piping. Provide all valves, instrumentation, insulation, and labeling.
  5. Provide new gas piping, regulators, and valves. Paint and label in accordance with Project Documents.
  6. Provide new disconnects at boilers as indicated.
  7. Clean, flush, and test all piping prior to making final connections to existing systems.
  8. Provide control system and sequence of control as indicated on the Project Documents, both plans and specifications.
  9. Calibrate all sensors and meters.
  10. Test, align, label, and ready boilers for service. Provide complete testing, adjusting, and balancing. Boilers shall require a primary pump with VFD for testing, adjusting, and balancing. Refer to section "VFD Installation" below for work that should occur simultaneously to allow for testing, adjusting, and balancing per construction schedule.
  11. Repeat process for remaining two (2) boilers.
- D. Natural Gas Installation:
1. A natural gas outage for the building is required to install new CNG connection at existing exterior meter set and regulator and new shut-off valve at interior gas main to new boilers. Both installations shall occur under a single outage to minimize plant down time. Coordinate scheduling of outage with RCES operations.
  2. Natural gas outage shall be coordinated in advance so as to not delay construction schedule or disrupt the work of other trades.
- E. VFD Installation:
1. New VFDs on primary pumps shall be installed in such a way that two (2) pumps shall be available for use at all times.
  2. De-energize first primary pump (CHWP-1). Close valves as needed to isolate pump and ensure boilers are being fed from the remaining two (2) pumps. Coordinate valves with RCES operations as needed.
  3. Install new owner-furnished VFD at first primary pump (CHWP-1) per electrical drawings and specification.
  4. Provide associated controls for VFD and pump operation.
  5. Label VFD.
  6. Test and ready pump for service. Provide complete testing, adjusting, and balancing of pump.
  7. Repeat process for remaining two (2) pumps (CHWP-2 & CHWP-3). Open and close header valves to isolate pump under construction and ensure boilers are being fed from the remaining two (2) pumps. Coordinate valves with RCES operations as needed.
- F. Commissioning:
1. Upon completion of all of the above tasks, system shall be commissioned per commissioning specification. Coordinate commissioning with RCES operations, RCES project management and necessary manufacturer's representatives.

**SECTION 3. SCOPE OF SERVICES (LTHW VALVE AUTOMATION)**

**3.1 WORK COVERED BY PROJECT DOCUMENTS**

- A. The Work covered under these specifications shall include, but is not limited to, furnishing all equipment and materials, except those materials furnished by the Owner; providing all labor, supervision, administration and management; and supplying all construction equipment, tools, machinery, construction facilities and temporary controls, transportation and other facilities and services necessary to produce the construction required by the Project Documents, complete and ready for use.
- B. Location: The work is within the limits of the Central Florida Tourism Oversight District ("CFTOD") as indicated on the Project Documents.

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- C. Summary of the Work: The purpose of the work is to replace manually operated isolation valves with electrically controlled isolation valves on twenty (20) existing valves located within the Boiler Room located at the EEP serving LTHW needs to Disney's EPCOT park. This scope of work includes, but not limited to, all required or indicated mechanical/electrical equipment, controls equipment, programming and integration, etc. mounting hardware and painting/coating as depicted in the Project Documents.

The improvements will consist principally of the following:

1. The Contractor shall supply all supervision, labor, materials, equipment and testing to convert twenty (20) manually operated control valves to electrically-controlled and operated control valves located within the LTHW Boiler Room.
2. The Contractor shall make repairs to all insulation that was damaged by the work of this project. Insulation repairs shall be completed in accordance with RCES specifications.
3. Contractor shall:
  - a. In addition to other permits that may be required, provide all mechanical permits (fee waived) as required by section 301.1 of the EPCOT Building Code.
  - b. Verify all dimensions and elevations prior to fabrication and installation.
  - c. Furnish and install new valve actuator on existing valve body as shown or as required. Based on the new valve actuator stem and installation bracket, actuator will have a 7" clearance from valve body. Valve actuator does not require an adapter or stem extension. Situate all components for safe access for operation.
  - d. Touch-up paint on all walls and other surfaces damaged by the work of this project.
  - e. Provide temporary supports as necessary to facilitate the removal and replacement of the valve actuators.
  - f. Phase the demolition/reconstruction work of the project. See "sequence" section.
  - g. Schedule work so as to minimize the total duration of time required by the project.
  - h. Verify that the control valve can operate freely throughout its full range of motion. Coordinate with RCES Operations for all testing and verification. See "sequence" section.
  - i. Install new instrumentation as indicated throughout the Project Documents.
  - j. Install all electrical equipment and devices; coordinate with all other aspects of the electrical/control systems as required or as necessary.
  - k. Provide new electrical wire and conduit to the new electric actuator. Power and controls shall be routed in separate conduits.
  - l. Provide all electrical/controls power, control cabinet and associated controls programming as indicated throughout the Project Documents. Controls shall be setup for on/off operation with the fully modulating capability in the future.
  - m. Work will be phased based upon plant needs, electrical operations availability, and overall construction sequence managed by RCES Project Management and RCES Operations.
  - n. All equipment shall be installed according to manufacturer's instructions/recommendations and all additional requirements specified within these Project Documents.
  - o. Contractor shall make necessary valve installations outside normal plant operation unless otherwise directed. Methods and schedule shall be reviewed and approved by RCES Project Management and RCES Operations.
  - p. Locate all equipment per Project Documents. Coordinate with RCES Engineering if Project Documents differ from field conditions.
  - q. Contractor shall verify existing actuator mounting pattern with valve vendor (SISCO) prior to procurement. SISCO shall field verify existing valve body make/model for all valves within this scope of work. SISCO contact information (Jim Smith (904) 219-2612).
  - r. Contractor shall coordinate the installation of all valves, conduit and appurtenances to fit within the space allowed by the existing conditions, including maintenance requirements.
  - s. Provide and install valve actuator and associated components as indicated within these Project Documents. Provide all electrical and control wiring for proper operation and in accordance with all codes and standards.
4. Contractor shall coordinate conduit routing to valve actuator with RCES Operations to verify that proper access to the valve is maintained and/or provided.
5. Provide all cleaning and testing required to provide a complete project.

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6. The work area will be in a back-stage area. It may or may not be behind a construction fence provided by others. The work area and tasks shall be managed with sufficient controls to protect WDW Cast Members, as well as the general public who may transit the area. Areas and features not directly impacted by the scope of project shall be protected.
7. Comply with confined space entry and lock out/tag out safety requirements.
8. Comply with welding/fire watch and notification requirements.
9. Comply with breathing air requirements of OSHA for welding/soldering.
10. Coordinate with Owner for scheduled access to existing systems and facilities.
11. Remove existing insulation only to the extent necessary to allow for the replacement of the actuator brackets and assemblies. All new actuators and sections of pipe where insulation was removed shall be re-insulated in accordance with INS-8.
12. Restore all site conditions:
  - a. Provide a thorough cleaning of all work areas that were impacted by the performance of this work.

**3.2 WORK BY OTHERS**

N/A

**3.3 WORK SEQUENCE**

**GENERAL:**

1. Report any dimension and/or elevation deviations from the plans to the Engineer of Record.
2. Coordinate with Contractor, RCES Operations and RCES Project Management the sequence and phasing of the installation of this work.
3. Perform field verification of all dimensional data provided and field coordinate the installation of all of the elements and systems that are associated with this project.
4. Demolish and remove all components scheduled for demolition from the project site. Refer to Project Documents for limits of removal.
5. Install new 120V power from existing UPS to new distribution panel.
6. Install new 120V power from new distribution panel to new control panel.
7. LTHW plant shall remain in continuous operation without interruption to the system during valve actuator replacement. Prior to completing step #8 in the Sequence of Work, the contractor shall phase the scope of work as follows: Valve actuator replacement shall be phased per Boiler and associated Pump. For example, B-1 and CHWP-1 will be considered as one (1) phase. During each phase, the sequence described in #8 shall be performed until all valves in the respective phase have been replaced. This work shall be repeated for Phase 2 and Phase 3.
8. Prior to the removal and replacement of the LTHW valve actuator the following shall occur:
  - a. Close nearest isolation valve upstream and downstream of the valve actuator being replaced. Operate valve to full open position based on the existing valve stops prior to removing and replacing valve actuator and associated components.
  - b. Return isolation valve upstream and downstream to original position after valve actuator components are installed.
  - c. If valve cannot be isolated without shutting down the system, operate valve to the full open position based on the existing valve stops prior to removing and replacing valve actuator. Match valve position when installing new actuator to confirm actuator and positioner are installed correctly.
  - d. Verify valve closes 100% or passes 0% water. Confirm using stethoscope. Adjust travel stops, accordingly. SISCO shall be on-site during the testing and adjustment process.
  - e. Extend new power from distribution panel to new valve actuator. Outage of the UPS will be required to install the new circuit breaker. Coordinate outage with Contractor, RCES Operations, and RCES Project Management.
  - f. Extend new low voltage from control panel to new valve actuator.
  - g. Energize valve open/close from the new control panel to confirm operation. Re-verify valve closes 100% or passes 0% water. SISCO shall be on site for the final testing and adjustment process.
  - h. Repeat the process for each valve (qty. of 20).
9. Schedule tie-ins with Contractor, RCES Operations, and RCES Project Management.

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10. Schedule/coordinate the mechanical/electrical disconnect, shutdown, demolition, startup and reconnection work with RCES Operations. RCES Operations will perform electrical and control wiring disconnect and reconnection.
11. Restore all site conditions.
12. Test all control valves once integrated into the system and verify all graphics in i-Fix.

**SECTION 4. EMPLOYEES**

The following applies to ALL contract work:

- 4.1 The Contractor shall perform the basic services outlined within this Scope of Work between the hours of 7:00 AM and 5:00 PM, Monday through Friday, with the exception of mechanical/electrical tie-ins which may necessitate third shift sequencing to minimize impact to park operations. All mechanical/electrical tie-ins shall be coordinated with Owner prior to proceeding. All work hours are subject to change depending on the time of year and as a result of special events or holidays.
- 4.2 Owner will designate where Contractor's crew will take breaks, lunches, and use restroom facilities. Employee personal vehicles will be parked only in areas designated by the Owner.
- 4.3 Owner reserves the right to refuse any Contractor's employee who does not meet or conform to Owner's policies. Contractor's employees shall be required to maintain a level a professional appearance at all times while performing required tasks in or out of guest view. This includes a level of professional hygiene that includes all Contractor provided uniforms.
- 4.4 Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the services, and shall provide all protection to prevent injury to all persons involved in any way in the Services.
- 4.5 Any and all complaints or calls for assistance from Owner or its agents or representatives shall be responded to by Contractor within twenty-four (24) hours of Owner's issuance of such complaints or calls and all repairs or work which precipitated such complaint shall be diligently and professionally completed by Contractor.
- 4.6 Contractor shall cause all of its employees to behave in a friendly, respectable, and courteous manner towards Owner, guests, staff, and management. In the event the Owner believes that any of Contractor's employees are acting other than as herein required, or Owner or its agents determine that any of such employees are not performing their duties in a competent manner, Owner shall so advise Contractor and Contractor shall promptly arrange to correct the deficiencies or to replace such employee as reasonably approved by Owner. Contractor shall maintain continuous and regular communications with Owner concerning safety and other factors that relate to the performance requirements hereunder and concerning any injury or damage to guests or Contractor's employees that may result or occur in connection with the services to be provided by Contractor hereunder.
- 4.7 All services shall be approved by and scheduled through the Owner or its authorized representative.
- 4.8 Contractor shall make walk/ride-through reviews of the entire site related to visual observations and shall make repairs and adjustments necessary. Owner may attend the walk/ride-through.
- 4.9 Contractor shall be required to provide response correspondence to any service requests sent via the Owner.
- 4.10 All services, whether performed by the Contractor, its subcontractors, or anyone directly or indirectly employed by any of them, and all applicable equipment, machinery, materials, tools, and like items used in the services, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other governmental authority; and (b) all codes, rules, regulations, and requirements, of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.
- 4.11 The Contractor shall at all times keep the general area in which the services are to be performed clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by performance of the services, and shall continuously throughout performance of the services remove and dispose of all such materials. The Owner may require the Contractor to comply with such standards, means, and methods of cleanup, removal, disposal as the Owner may make known to the Contractor and/or as required by any applicable laws. In the event the Contractor fails to keep clean of such rubbish and waste in the affected

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areas, and the Owner incurs the clean-up cost, the Owner will deduct the expenses incurred from any sums then or thereafter due the Contractor.

**SECTION 5. QUALITY CONTROL**

- 5.1 Contractor shall establish a quality control/quality assurance program specific to this contract scope and shall maintain and monitor the program throughout the life of the contract.
- 5.2 Owner will have the right at any stage of the operation to reject any or all work and material that in the Owner's opinion does not meet the requirements of this scope of services.

**SECTION 6. DAMAGE**

- 6.1 Any damages caused by the Contractor shall be repaired by the Contractor within twenty-four (24) hours, or shall be repaired by the Owner and back-charged at the current rate per man-hour plus material plus twenty percent (20%) on material only. Any materials required to correct damages caused by the Contractor shall be the responsibility of the Contractor.
- 6.2 Should the Owner elect to have the Contractor perform any work outside the scope of services, the Owner may request a lump sum proposal for the work or may direct the Contractor to proceed on a time and material basis.
- 6.3 Contractor shall report all damages to the Owner immediately.

**SECTION 7. SAFETY**

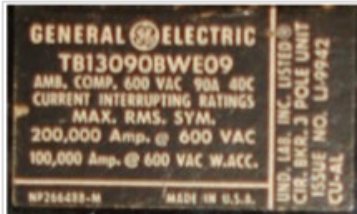
- 7.1 All Contractors' equipment shall be properly maintained with all safety equipment intact and operational.
- 7.2 Contractor shall acquire all necessary certifications and ensure all employees hold such certifications as applicable for their work on the project.
- 7.3 Contractor shall be responsible for the safety of its employees and shall, at a minimum, require applicable personal protective equipment ("PPE") including, but not limited to, hardhat, safety vest, eye and hand protection.
- 7.4 Contractor shall provide a Project Specific Safety Plan ("PSSP") to Owner's Construction Safety Consultant prior to start of any work to include the following:
  - Contractor company name and contact information;
  - Project number and name;
  - Summary of work to be performed;
  - Job hazards present and how to mitigate;
  - Personnel names to be working onsite;
  - Equipment to be utilized in performance of the work; and
  - Job hazard analysis ("JHA").

**SECTION 8. ADDENDA CLARIFICATIONS**

- 8.1 Drawing ID-103: the designation V-1017 describes the Bray actuator (120 vac, power; 4-20 ma signal).
  - A. Upon loss of power, the actuator will fail in last position.
  - B. Travel limit switches are internal and are not wired to any external device.
- 8.2 Valve actuators shall be set up to fail in last position.
- 8.3 One (1) new single pole 20A breaker, and one (1) new 50A breaker are being supplied in ULP-1 for the Boiler Control Panel power supply, and Panel ULP-5 respectively. The balance of the wire conduit and equipment is being supplied as shown for the Boiler Control Panel power supply, and Panel ULP-5. Nothing is required for Panel LBD, or the Leibert UPS. Panel ULP-1 is an existing panel.
- 8.4 On Drawing E-501, all breakers shown bolded are intended to be new. The two (2) breakers with the keynotes provide the Contractor an option to reuse the existing breakers currently serving those pumps in the new designated MCCs indicated on plan, if deemed compatible and in proper working condition in lieu of buying new.

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8.5 See below for breaker information:



Breaker being replaced with 20A  
 breaker for MCC-BRA for B1.1



Breaker being replaced with 20A  
 breaker for MCC-BRA for B1.2



Breaker being replaced with 20A  
 breaker for MCC-RFF for B1.3

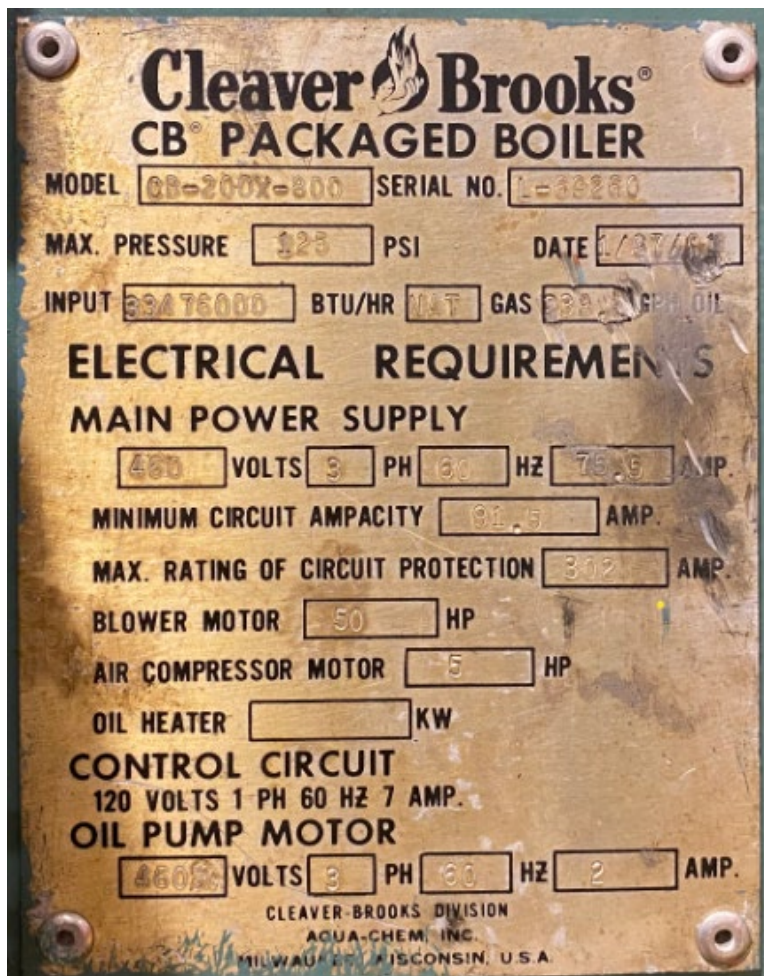


Breaker being replaced with 20A  
 breaker for MCC-RFF for B1.4



Existing spare MCC-RFF-7 50A  
 breaker being used for relocated  
 CHWP#1 pump.

8.6 Boiler #3 nameplate below, this information will be similar to Boiler #1.





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- 8.7 TI-7. BC 450R series: 4610-06-67AKKAAAA (Use for pipes ranging from 4" to 6").
- 8.8 TI-8. BC 450R series: 4610-09-67AKKAAAA (Use for pipes ranging from 8" to 12").
- 8.9 4X Specification Section 13500, 3.04 E states, "All outdoor panels shall be NEMA white painted 304 stainless steel. All indoor panels shall be NEMA 4X 304 stainless steel for process areas, or NEMA 12 painted steel for non-process areas. All panels shall be provided with the appropriate quantity of corrosion-inhibiting vapor capsules."
- 8.10 Item #7 on drawing ID-108 refers to an Analog Output Module, P/N BMXAMO0410, or the 4-point module is the correct device.
- 8.11 Item #11 on drawing ID-108 is a Schneider Electric automation server used for multiple integration segments for future, and for panel touch screen graphics. Network switches are provided by the District (Owner).
- 8.12 Item #5 on drawing ID-108 refers to a Digital Input Module, Part Number BMXDD1602 is correct.
- 8.13 Item #10 on drawing ID-108 refers to a Redundant Processor, P/N BMEH584040. However, there is not a second rack or power supply. No redundancy is needed.
- 8.14 Regarding Redundant Power Supply BMEXBP0602 (6 slots) and BMEXBP1002 (10 slots); and Item #9 on drawing ID-108 P/N BMXCPS4022 no redundancy is needed.
- 8.15 No redundancy is needed for processors or power supplies.
- 8.16 A flat top enclosure is acceptable for Valve PLC Control Panel on drawing ID-109.
- 8.17 Sample screen shots of existing SCADA™ graphics and iFIX files will be provided to the Contractor.
- 8.18 The Contractor will provide a temperature sensor for equipment control. Temperature sensor will be integrated into the control panel for monitoring through iFix.
- 8.19 Contractor (Prime) will be held accountable to the contract and any deficiencies that may occur.
- 8.20 Contractor is responsible for 3rd party commissioning.
- 8.21 Contractor is responsible for the relocation of all electrical switchgear located directly behind the primary boiler pumps with the Epcot Energy Plant ("EEP"). The Contractor shall relocate the electrical switchgear to the utility yard located adjacent to the EEP.
- 8.22 Contractor shall follow SECTION 9. WATER TREATMENT – CHEMICAL CLEANING, which supersedes Section 3.14.B.2 and 3.14.B.3 and provides clarification on both the flushing and chemical cleaning.

**SECTION 9. WATER TREATMENT – CHEMICAL CLEANING**

- 9.1 Contractor shall employ the services of a third-party entity that specializes in the flushing and cleaning of piping systems. Flushing Contractor shall submit a plan for review and approval. Contractor shall provide as needed, pumps, tanks chemical mixing vessel, hoses, tubing/piping, valves, manifolds, fittings, flanges, reagents, safety gear, filters, tools, etc. All equipment sets shall include calibrated analysis instrumentation and all calibration reports shall be submitted to RCES Engineering. Contractor shall provide all utilities required for the execution of this working including but not limited to, compressed air, steam, electrical power, etc.
  - A. Contractor shall provide a thorough 'Pre-Flush' of the piping systems as follows;
    - 1. Fill, flush and/or dump the loop in a manner which removes loose mill scale, slag and other debris accumulated during the Construction process.
    - 2. Once main debris flush is complete, ensure all air is out of the system.
    - 3. Contractor shall test on-site domestic water confirming that the water that is being provided will meet the specified criteria for flushing.
  - B. Contractor shall provide a thorough 'Chemical Cleaning' of the piping systems as follows;
    - 1. Formulate the chemical cleaning solution to remove carbon, organic deposits from the wetted interior surfaces. Ferroclean shall be used and added at a rate of 1600-2400 ppm based on system volume. The final polymer level should be between 350-550 FAU. Ferroclean should be recirculated through the

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006493**

- system for a minimum of 24 hours. Both Iron and FAU should be recorded. Once the system has seen 24 hours of circulation the system should be flushed and drained. All chemicals used for cleaning shall be compatible with all existing and proposed system materials and chemicals additives that are currently used in the system.
2. Once the Ferroclean step is complete, an alkaline formulation with penetrants and dispersants and Ortho Phosphate (Towerclean 819 or equivalent) shall be added to the system to remove any foulants and passivate the steel piping surfaces. The alkaline solution shall be fed at a rate of 1600 ppm or based on the manufacturers recommendations and circulated for 24 hours. Once this is completed, the system shall be flushed until the quality of the water is the same as the city water. Send waste cleaning solution to an approved effluent collection or disposal locations.
  3. Introduce the chemical cleaning solution into the system through a filter (equal to or less than 100 micron) located on the discharge side of the injection pump.
- C. Contractor shall provide a thorough 'Final Flush' of the piping systems as follows;
1. Provide and install any additional equipment, piping, etc. as needed for the execution of the 'Final Flush'.
  2. Fill system with detergent free water (potable water) and purge all air.
  3. Continue to flush with potable water at a minimum velocity of 8 ft/s throughout the system for a minimum of 24 hours. A minimum of three (3) flushes is required, however the process will need to be repeated until the water is 'clear' and all of the following conditions have been met. During the bleed process the Contractor shall verify that the bleed is never be greater than the systems make-up rate.
  4. Flushing activities will continue until all of the following conditions have been met;
    - i. All steps of the approved flush plan have been met.
    - ii. Iron content is less than 0.5 ppm.
    - iii. pH is between 7.2 and 8.5.
    - iv. Conductivity is between 260-280 mmhos (matches the ICW).
    - v. Acceptance by RCES Operations.
    - vi. Acceptance by RCES Mechanical Engineer/Engineer of Record (EOR).
  5. If the system is not immediately placed into service after analysis the following shall be performed;
    - i. The system shall be preserved in a manner to prevent degradation of the piping and components through chemical additives.
    - ii. The system shall be tested and accepted by RCES Engineering that the above specification has been met prior to placing the system into service.
  6. Contractor shall show compliance with all items described within this specification prior to the system being placed into service.

**SECTION 10. CONTRACTOR EXCLUSIONS, CLARIFICATIONS AND QUALIFICATIONS**

- 10.1 Temporary facilities, utilities, air conditioning or ventilation is excluded.
- 10.2 The following electrical items are excluded: Data cable, drops and IP addresses.
- 10.3 All work associated with hazardous materials including, but not limited to asbestos, lead, petrochemicals, arsenic, mold, or any other hazardous material sampling, abatement, handling, and/or remediation is excluded.
- 10.4 Payment and performance bond (Construction bond) is included.
- 10.5 Contractor assumes owner furnished VFDs and boilers will come with factory start up.
- 10.6 General Conditions:
  - A. Protection of existing finishes.
  - B. Dumpster.
  - C. General cleanup.
  - D. Permit, tax and one year warranty.
  - E. Full time on site supervision.

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
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II. List of Contract Documents

- A. Drawings: Drawings are separately bound. For the List of Drawings, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.
- B. Specifications: For the List of Specifications, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.
- C. Owner-Furnished Products: For the information and specifications on the Owner-Furnished AERCO Benchmark Platinum Condensing Boilers (4) and Yaskawa Variable Frequency Drive (VFD) refer to <https://pbsystem.planetbids.com/hub/bm/bm-detail/112619#bidAddendaAndEmails>. All specifications listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.
- D. This Exhibit A, Project Description and List of Contract Documents, 13 pages
- E. Exhibit B, Project Milestone Schedule, 1 page
- F. Exhibit C, Recap of Contract Sum, 1 page
- G. Exhibit D, Pending Alternates, 1 page
- H. Exhibit E, Schedule of Unit Prices, 1 page
- I. Special Contract Conditions, 15 pages, June 2023 Ed.
- J. General Conditions of the Contract for Construction, 26 pages, including table of contents, March 2023 Ed.
- K. Payment Bond, 2 pages
- L. Performance Bond, 2 pages
- M. Consent of Surety for Partial Payment Application, 1 page
- N. Dual Oblige Rider, 1 page
- O. Contractor's Interim Affidavit (SAMPLE), including Schedule A, 2 pages
- P. Contractor's Request for Information (SAMPLE), 1 page
- Q. Directive (SAMPLE), 1 page
- R. Change Order (SAMPLE), including Exhibit A, 2 pages
- S. Close-Out Change Order (SAMPLE contains Certificate of Substantial Completion), including Attachments A through G, 10 pages
- T. Punch List (SAMPLE), 1 page

**End of Exhibit A**

**EXHIBIT B**  
**PROJECT MILESTONE SCHEDULE**  
**Contract No.: C006493**

The Contractor agrees to commence and complete the Work in strict accordance with the Project Milestone Schedule for performance of the work, as provided below:

<b>MILESTONE DESCRIPTION</b>	<b>START DATE</b>	<b>COMPLETION DATE</b>
Notice-to-Proceed	Day 1	Day 1
Substantial Completion	Day 1*	230 Days from Notice-to-Proceed
Final Completion	Day 230	240 Days from Notice to Proceed

\*Contractor must submit a Project Specific Safety Plan (“PSSP”) before commencing work.

**End of Exhibit B**

**EXHIBIT C**  
**RECAP OF CONTRACT SUM**  
**Contract No.: C006493**

The Contract Sum is based on the Contractor's proposed Base Bid Lump Sum Fixed Price of \$1,898,715.00 and add alternates for a lump sum total of \$70,575.00 for a TOTAL CONTRACT SUM of \$1,969,290.00 as itemized below.

BASE BID				
Item	Description	UOM	Qty	Total
1	Contaminated Material Disposal	LS	1	\$59,688.00
2	Demolition (Electrical)	LS	1	\$21,317.00
3	Boiler Installation (Plumbing)	LS	1	\$165,786.00
4	Boiler Installation (Mechanical)	LS	1	\$524,111.00
5	Boiler Installation (Electrical)	LS	1	\$112,214.00
6	VFD Installation & Pump Relocation	LS	1	\$25,581.00
7	Controls Installation	LS	1	\$414,926.00
8	Commissioning	LS	1	\$11,042.00
<b>Part A. Boiler #1 Replacement Subtotal</b>				<b>\$1,334,665.00</b>
9	Electrical Materials & Equipment	LS	1	\$53,975.00
10	Electrical Installation	LS	1	\$53,975.00
11	Controls Materials & Equipment	LS	1	\$202,043.00
12	Controls Installation, Start-up & Commissioning	LS	1	\$202,043.00
13	Commissioning	LS	1	\$11,042.00
<b>Part B. LTHW Valve Automation Subtotal</b>				<b>\$523,078.00</b>
14	Permitting/Inspections	LS	1	\$0.00
15	Warranties	LS	1	\$21,434.00
16	Bonds	LS	1	\$19,538.00
<b>Part C. General Subtotal</b>				<b>\$40,972.00</b>
<b>LUMP SUM GRAND TOTAL</b>				<b>\$1,898,715.00</b>

ADD ALTERNATES				
Item	Description	UOM	Qty	Total
17	Replace (2) 3-way valves if actuator retrofit cannot be completed	LS	1	\$29,403.00
18	Astropak pipe flushing services (Contractor included self-performed flushing in base scope)	LS	1	\$41,172.00
<b>Add Alternates Subtotal</b>				<b>\$70,575.00</b>
<b>GRAND TOTAL (BASE BID &amp; ADD ALTERNATES)</b>				<b>\$1,969,290.00</b>

End of Exhibit C

**EXHIBIT D**  
**PENDING ALTERNATES**  
**Contract No.: C006493**

THERE ARE NO PENDING ALTERNATES

**End of Exhibit D**

**EXHIBIT E**  
**SCHEDULE OF UNIT PRICES**  
**Contract No.: C006493**

THERE ARE NO UNIT PRICES

**End of Exhibit E**

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**SPECIAL CONTRACT CONDITIONS**

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Table of Contents:

- (i) Definitions
  - I. General Safety Requirements, Contractor Parking and Access, Break Areas
  - II. Construction Site Minimum Personal Protective Equipment (“PPE”) and Clothing Requirements
  - III. Reserved
  - IV. Asbestos/Cadmium or Lead/CFCs
  - V. Confined Spaces
  - VI. Hazardous and Chemical Waste Disposal
  - VII. Electrical Safety Policy
  - VIII. Lock out / Tag out
  - IX. Fall Protection
  - X. Aerial Work Platforms (“AWP”)
  - XI. Ladders
  - XII. Trenching and Excavation
  - XIII. Utility Locates
  - XIV. Mobile Cranes
  - XV. Heavy Equipment Operations
  - XVI. Diving Operations
  - XVII. Reserved

(i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs



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Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trashcans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trashcans must be provided for the disposable cups and/or bottles.

Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

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**II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS**

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

**III. RESERVED**

**IV. ASBESTOS/CADMIUM OR LEAD/CFCs**

**A. ASBESTOS**

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (ACM) and/or Presumed Asbestos-Containing Materials (PACM), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

**B. CADMIUM and/or LEAD**

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

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C. CHLOROFLUOROCARBONS (CFCs)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (CFCs) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor's work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner's property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space ("PRCS"), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space ("PRCS") entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor's Project Specific Safety Plan ("PSSP"). In support of the Contractor's preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner's experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor's personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner's job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.

Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such, despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated

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as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.

VII. ELECTRICAL SAFETY POLICY

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants

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and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment (“PPE”) and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6’) of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing (FRC).

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3’6”) away from the exposed fixed

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energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

**VIII. LOCK OUT / TAG OUT**

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers

Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

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If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

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**IX. FALL PROTECTION**

The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a "STOP WORK" condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards ("SRLs") must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn't feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer's instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor's qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System ("PFAS"), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25').

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5') or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40° require the use of fall protection.

Fall protection is required for work conducted six feet (6') or more above water. Where fall protection completely prevents falling into the water, personal flotation devices (PFDs) are not required.

**X. AERIAL WORK PLATFORMS ("AWP")**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner's request.

Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP's that are not in proper operating condition shall be



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immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as “out of service” the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer’s capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline (“SRL”) of appropriate length (e.g. 3 feet). If the AWP is being used at heights of 18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP’s are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

**XI. LADDERS**

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.
- f) Ropes/pulleys in good condition (extension ladders).

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Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

**XII. TRENCHING AND EXCAVATION**

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade. Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

**XIII. UTILITY LOCATES**

*Routine Locate Tickets:*

The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

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Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services (RCES) between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida (“SSOCOF”) by calling 811.

Call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.

Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the

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potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

**XIV. MOBILE CRANES**

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (NCCCO).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water's edge, Ground Bearing Pressures (GBP) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.

Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing.

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Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (PPE) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.

Remove keys from unattended vehicles.

Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

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**XVI. DIVING OPERATIONS**

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection. Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces
- f) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- g) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

**XVII. RESERVED.**

**END OF SPECIAL CONTRACT CONDITIONS**

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CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION  
March 2023 Edition

**ARTICLE 1**  
**DEFINITIONS**

1.1. **THE CONTRACT.** The Contract for Construction (referred to herein as the "Contract") is the sum of all Contract Documents. It represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification, as defined below.

1.1.1. The Contract Documents consist of those documents specified in Paragraph 1.2. of the Agreement or otherwise referred to in these General Conditions of the Contract for Construction. The Contract Documents do not include bidding documents, such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda as and to the extent that they may relate to any of the bidding documents or bidding procedure.

1.1.2. An Addendum is a written or graphic instrument issued by the Owner prior to the execution of the Agreement which sets forth additions, deletions or other revisions to the Contract Documents or clarifications thereof.

1.1.3. A Modification may be accomplished by: (a) a Change Order; (b) a Directive; or (c) any other written amendment to the Contract signed by both parties. A Modification may be made only after execution of the Agreement. No Directive shall be construed as a Change Order or other Modification unless it expressly so states.

1.1.4. A Change Order is a written Modification executed by both parties (except in the event of a unilateral Change Order as herein provided) and consisting of additions, deletions or other changes to the Contract. A Change Order may be accompanied by and/or may identify additional or revised Drawings, sketches or other written instructions, which become and form a part of the Contract Documents by virtue of the executed Change Order. Except as otherwise provided in Subparagraph 1.1.5., a Change in the Work, or a change in the Contract Time or the Contract Sum shall become the subject of a Change Order.

1.1.5. A Directive is a written document issued by the Owner and consisting of additions, deletions, clarifications or other written instructions issued by the Owner with respect to the performance of the Work or the activities of the Contractor on the Job Site or the property of the Owner. A Directive may include, but shall not be limited to, a bulletin, an engineering change, or other orders or instructions. Directives may become the subject of a Change Order, either singularly or collectively. Directives shall become the subject of a Change Order if they involve a Change in the Work, or a change in the Contract Time or the Contract Sum.

1.2. **THE OWNER.** The Owner is the person or organization identified as such in the Agreement. The term "Owner," whenever it appears in the Contract Documents, means the Owner and/or the Owner's Representative acting on behalf or for the benefit of the Owner (except as otherwise specified in the Contract Documents or as the context otherwise requires); provided, however, that with respect to any provisions of the Contract which require the Contractor to provide insurance for the protection of the Owner or to release the Owner from, or waive, any claims the Contractor may have against it, the term "Owner" shall mean the Owner and its supervisors, officers, employees, agents and assigns and the Owner's Representatives and its parent, related, affiliated and subsidiary companies, and the officers, directors, agents, employees and assigns of each.

1.3. **THE OWNER'S REPRESENTATIVE.** The Owner's Representative is the person or organization designated from time to time by the Owner to act as its representative as identified in Article 3 of the Agreement or the most current Modification thereto.

1.4. **THE CONTRACTOR.** The Contractor is the person or organization identified as such in the Agreement. The Contractor shall so designate a sufficient number of Project representatives that there shall be at least one authorized representative on the Job Site at all times in which the Work is being performed including, without limitation, a project manager (herein referred to as the "Project Manager") who shall at all times have authority to act (in all capacities necessary for the Work) for and bind the Contractor.

1.5. SUBCONTRACTOR; SUB-SUBCONTRACTOR.

1.5.1. A Subcontractor is a person or organization having a direct contract with the Contractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.5.2. A Sub-subcontractor is a person or organization having a direct or indirect contract (on any tier) with a Subcontractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.6. THE JOB SITE. The Job Site shall mean the area in which the Work is to be performed and such other areas as may be designated by the Owner for the storage of the Contractor's materials and equipment.

1.7. THE PROJECT. The Project is the total construction of which the Work may be the whole or a part.

1.8. WORK; CONTRACT TIME; CONTRACT SUM. The Work, the Contract Time and the Contract Sum are as defined in Articles 2, 5 and 6, respectively, of the Agreement.

1.9. PROVIDE. Except as the context otherwise requires, the term "provide" means to furnish, fabricate, complete, deliver, install and erect including all labor, materials, equipment, apparatus, appurtenances and expenses, necessary to complete in place, ready for operation or use under the terms of the Specifications.

1.10. PLANS. Wherever the words "Plan" or "Plans" are used in the Contract Documents, they shall be construed as having the same meaning as Drawing or Drawings (as referred to in the Agreement).

1.11. SPECIFICATIONS. The Specifications shall include those referred to in the Agreement.

1.12. THE ARCHITECT/ENGINEER. The person or entity having a direct contract with the Owner to design the Project or a portion thereof and to produce the Project Plans and Specifications or portion thereof, as identified in Article 4 of the Agreement or the most current Modification thereto, together with its subconsultants.

**Article 2**  
**THE CONTRACT DOCUMENTS**

2.1. EXECUTION, INTENT AND INTERPRETATIONS.

2.1.1. The Contractor warrants and represents that, in executing the Agreement and undertaking the Work, it has not relied upon any oral inducement or representation by the Owner, the Owner's Representative, the Architect/Engineer or any of their officers or agents as to the nature of the Work, the Job Site, the Project conditions or otherwise.

2.1.2. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. If the Contract Documents do not specifically allow the Contractor a choice as to quality or cost of items to be furnished, but could be interpreted to permit such choice, subject to confirmation or approval by the Owner, they shall be construed to require the Contractor to furnish the best quality. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.1.3. Where conflict exists within or between parts of the Contract Documents, or between the Contract Documents and either applicable industry standards or applicable codes, ordinances or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used: the Agreement; the Special Conditions; the General Conditions; the Specifications; the Drawings. If the Contractor is required to perform any extra or corrective Work to comply with the preceding sentence, it shall not be entitled to an increase in the Contract Sum or Contract Time, and no claim shall result from such compliance. Subject to confirmation or approval by the Owner, large scale Drawings take precedence over smaller scaled Drawings, figured dimensions on the Drawings take precedence over scaled dimensions, and noted items on the Drawings take precedence over graphic representations.

2.1.4. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, are not intended to influence the Contractor in its division of the Work among Subcontractors or its establishment of the extent of the Work to be performed by any trade.

2.1.5. The Contractor shall submit a written request to the Owner for any interpretations necessary for the proper execution or progress of the Work. Such interpretations shall be issued in writing.

2.1.6. The Contract Documents reflect conditions as they are believed to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute a representation by or on behalf of the Owner that such conditions actually exist. The Contractor shall inspect the Job Site and conduct any tests or surveys it deems necessary or desirable prior to the commencement of the Work and shall accept full responsibility for any loss sustained by it as a result of any variances between the conditions as shown on the Contract Documents and the actual conditions revealed during the progress of the Work or otherwise. The Contract Sum shall in no event be increased by reason of any such variance unless otherwise specifically provided herein.

2.1.7. The Contractor shall develop and maintain current "as-built" Plans to be provided to the Owner in accordance with Subparagraph 9.4.2. The Owner may inspect and copy such Plans at any time during the course of the Work.

2.2. COPIES FURNISHED; OWNERSHIP. All Contract Documents and copies thereof furnished by the Owner, the Owner's Representative or the Architect/Engineer are and shall remain the Owner's property. They are not to be published or used by the Contractor on any other project and, with the exception of one complete set for the Contractor, are to be returned to the Owner upon completion of the Work.

2.3. NO ORAL WAIVER. The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification signed by the Owner. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from, any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent. Despite any prior waiver, approval or consent as to any particular matter, the Owner may at any time require strict compliance with the Contract Documents as to any other matter.

### **Article 3 OWNER**

3.1. EASEMENTS. The Owner shall obtain and pay for any easements required for permanent structures.

3.2. ACCESS. The Owner shall at all times have access to the Work at each and every stage of preparation and progress. The Contractor shall provide facilities (including, without limitation, roadways) for such access.

### **Article 4 THE OWNER'S REPRESENTATIVE**

4.1. CONTRACTUAL RELATIONSHIPS. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner's Representative and the Contractor; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by the Contract Documents (including, but not limited to, the Owner's rights pursuant to Paragraph 7.2. and Articles 10 and 11 of these General Conditions).

4.2. ROLE. Except as otherwise provided in the Contract Documents, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder. If the Owner's Representative is an organization, then it shall, in turn, act through such person or persons as it may designate in writing from time to time. Only those so designated are authorized to grant on behalf of the Owner any approval, consent or waiver with respect to the Contract Documents or the Work, or to otherwise act for the Owner in any capacity whatsoever.

### **Article 5 CONTRACTOR**

5.1. REVIEW OF CONTRACT DOCUMENTS. In addition to the representations and warranties contained in Article 9 of the Agreement, the Contractor acknowledges that prior to execution of the Agreement it has thoroughly reviewed and inspected the Contract Documents. The Contractor further acknowledges that it has satisfied itself regarding any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or

explanation and has assured itself of the adequacy and accuracy of each of the Contract Documents, as well as the compatibility of any combination thereof, as they relate to one another and to the scope of Work and the Schedule. The Contractor hereby warrants and represents to the Owner that the Contract Documents are suitable and adapted for the Work and guarantees their sufficiency for their intended purpose. The Owner shall not be responsible or liable to the Contractor for, and the Contractor hereby waives, any claims for changes, delays, accelerations, inefficiencies, impacts, and any other costs, damages, losses, or expenses of any nature whatsoever, resulting from any error, inadequacy, inaccuracy, inconsistency, insufficiency, unsuitability, discrepancy, ambiguity, omission, or insufficiency of detail or explanation in the Contract Documents. The Contractor shall perform no portion of the Work at any time without approved Contract Documents or, where required, shop drawings, product data, or samples, for such portions bearing the A/E's appropriate action stamp. Work performed in violation of this provision shall be at the Contractor's risk. Nothing in this Paragraph 5.1 shall in any way limit the effects of Article 9 of the Agreement.

## 5.2. SUPERVISION AND CONSTRUCTION PROCEDURES.

5.2.1. The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, coordination, scheduling (subject to Article 8) and procedures, for all cleanup and for all safety and weather precautions and programs, in connection with the Work.

5.2.2. The Contractor shall employ a competent Project Manager and necessary assistants who shall be in attendance at the Job Site during the progress of the Work and who shall be satisfactory to the Owner. The Contractor shall remove any of its employees or agents (including, without limitation, the Project Manager) from the Project upon instruction from the Owner. The Project Manager shall not be changed except with the consent of the Owner unless the Project Manager ceases to be in the Contractor's employ.

5.2.3. The Contractor shall be responsible to the Owner for the acts and omissions of its employees. It shall also be responsible to the Owner for the acts and omissions of its Subcontractors and Sub-subcontractors, their agents and employees, and other persons performing any of the Work, in the same manner as if they were the acts and omissions of persons directly employed by the Contractor.

5.2.4. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Contract, including, without limitation, by any inspections or tests required or performed under Paragraph 5.7., or by approvals or other similar action with regard to shop drawings or submittals (of any type), or by the activities of persons other than the Contractor with respect to the Project. Further, notwithstanding the fact that a dispute, controversy or other question may have arisen between the parties hereto relating to the execution or progress of the Work, the interpretation of the Contract Documents, the payment of any monies, the delivery of any materials or any other matter whatsoever, the Contractor shall not be relieved of its obligations to pursue the Work diligently under the Contract Documents pending the determination of such dispute, controversy or other question.

5.2.5. The Contractor shall establish, implement and supervise the submission of shop drawings and other submittals (of any type) in accordance with the Schedule and any Milestones. The Contractor shall note any variances between any such shop drawings or other submittals and the Contract Documents for the benefit of the Owner at the time of submission.

## 5.3. MATERIALS AND EQUIPMENT.

5.3.1. The Contractor shall, if so directed by the Owner, cause any or all materials and equipment to be manufactured in advance, and be warehoused either at the factory or elsewhere at the Contractor's cost. The Contractor shall cause all materials and equipment to be delivered to the Job Site in accordance with any schedule or schedules therefor established from time to time and approved by the Owner and, in any event, in a manner which will assure the timely progress and completion of the Work but will not encumber the Job Site unreasonably. Materials delivered to the Job Site for incorporation in the Work shall not be removed from the Job Site without the consent of or unless directed by the Owner.

5.3.2. The Owner may, from time to time during the performance of the Work and without any liability or obligation whatsoever to the Contractor or any of its Subcontractors or Sub-subcontractors, direct the Contractor to relocate, or cause to be relocated, to any other location on or off the Job Site, as designated by the Owner, any materials, equipment, office or storage trailers, storage sheds or the like brought onto the Owner's property by the Contractor or any of its Subcontractors or Sub-subcontractors, with which directions the Contractor shall promptly comply. Should such relocation not be completed within the time therefor established by the Owner, the Owner may accomplish such relocation and offset the costs incurred by it in accomplishing the same against any amounts then or thereafter due to the Contractor.

5.3.3. The Contractor shall give, or shall require its Subcontractors and their Sub-subcontractors to give, full and accurate quality, performance and delivery status reports, in a form satisfactory to the Owner, regarding any materials and equipment, or such other data with respect thereto as may be requested by the Owner, and shall obtain for the Owner the written assurances of any manufacturer that its material or equipment is designed, and appropriate, for the use intended.

5.4. WARRANTY. The Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. This warranty is not limited by the provisions of Paragraph 14.2. of these General Conditions or Article 9 of the Agreement. All warranties and guarantees from Subcontractors or Sub-subcontractors (including, without limitation, manufacturers) shall be assignable to the Owner regardless of whether it is so stated therein, and the Contractor agrees to assign all such warranties and guarantees to the Owner and deliver them pursuant to Subparagraph 9.4.2. The Contractor's obligations under this Paragraph shall survive the expiration or sooner termination of the Contract.

#### 5.5. TAXES; FEES AND LICENSES; ROYALTIES AND PATENTS.

5.5.1. The Contractor shall pay, or cause to be paid, all import duties and sales, consumer, use, excise, value added and ad valorem taxes required to be paid in connection with the Work or upon materials, tools or equipment brought to the Job Site or used in the Work. If any of the foregoing taxes are not paid in a timely manner, the Owner may withhold the amount of any such taxes from any amounts owing to the Contractor under the Contract Documents, submit the amount so withheld to the appropriate taxing authority on behalf of the Contractor or its Subcontractors or Sub-subcontractors and offset said amount against the Contract Sum.

5.5.2. The Contractor shall secure and pay for all governmental fees, permits and licenses which the Owner is not specifically required to provide and pay for under the Contract Documents.

5.5.3. The Contractor shall pay all royalties and license fees incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others, all of which shall be deemed included in the Contract Sum. The Contractor shall not unlawfully use or install any patented or copyrighted article, and any such unlawful use or installation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions for infringement of, or otherwise related to, any patent rights or copyrights, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. In the event of any injunction or legal action arising out of any such infringement which has the effect of delaying the Work, the Owner may require the Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the Work, and all costs and expenses occasioned thereby shall be borne by the Contractor.

5.6. COMPLIANCE WITH LAWS. The Contractor shall, at its cost and expense, comply with each and every Federal, state and local law, ordinance, code, rule and regulation, as well as the lawful order or decree of any public or quasi-public authority, bearing on the performance of the Work specifically including, but not limited to, those specified in Subparagraph 10.1.2., and all applicable building codes. It shall be the responsibility of the Contractor to familiarize itself with all of the same, and any performance of the Work by or on behalf of the Contractor which is not in compliance therewith shall be at the Contractor's sole risk and expense. The Contractor shall notify the Owner prior to execution of the Contract (and, without limiting the duty of such prior notice, continuously thereafter) of any instances where the Contract Documents are, or where the Contractor believes the Contract Documents are, not in compliance with the same.

#### 5.7. TESTS.

5.7.1. If the Contract Documents, or any laws, ordinances, rules, regulations, or any orders or decrees of any public or quasi-public authority having jurisdiction, or common practice in the industry, require or dictate that the Contractor have any portion of the Work inspected, tested or approved, the Contractor shall advise the

Owner in a timely manner (in writing, if practicable) of its readiness and of the date arranged so that the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals except as otherwise specified.

5.7.2. The Owner may require any special inspection, testing or approval of the Work not included under Subparagraph 5.7.1., or any more stringent inspection, testing or approval thereof, in which event it shall instruct the Contractor to order such inspection, testing or approval, and the Contractor shall advise the Owner in a timely manner (in writing, if practicable) as in Subparagraph 5.7.1. If such inspection or testing reveals any failure of the Work or the performance thereof to comply with the more stringent of: (a) the requirements of the Contract Documents; (b) applicable industry standards; or (c) applicable laws, ordinances, codes, rules, regulations or orders or decrees of any public or quasi-public authority having jurisdiction, or reveals any defect in the Work, the Contractor shall bear the costs of such inspection or testing and all costs to correct the Work to the satisfaction of the Owner, which, if incurred by the Owner, may be offset by the Owner against any amounts then or thereafter due to the Contractor. If such inspection or testing proves that the Work was performed properly, the Owner shall bear the costs of such inspection or testing.

5.7.3. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Owner.

5.8. GENERAL. The duties and responsibilities of the Contractor as set forth in this Article 5 are in addition to, and not in lieu of, other duties and responsibilities of the Contractor enumerated elsewhere in these Contract Documents.

## **Article 6 SUBCONTRACTORS**

6.1. GENERAL. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor. However, it is acknowledged that the Owner and Owner's Representative are intended third party beneficiaries of the obligations of the Subcontractors and Sub-subcontractors related to the Work and the Project.

### 6.2. AWARD OF SUBCONTRACTS.

6.2.1. The Contractor shall, prior to awarding any subcontract, notify the Owner in writing of the names of all Subcontractors proposed for the several parts of the Work and shall include with any such notice the completed insurance information form and any insurance certificates required by this Contract for any proposed Subcontractor. The Owner may also require such lists and information regarding any proposed Sub-subcontractors. The Contractor shall also advise the Owner in writing of any Subcontractor or Sub-subcontractor with which it shares any business relationship or financial interest, and of the nature and extent of any such relationship or interest. No Subcontractor or Sub-subcontractor shall be engaged if objected to by the Owner; provided, however, that if the Owner does not take exception to a Subcontractor or Sub-subcontractor in writing within fifteen (15) days of its receipt of such notification, such Subcontractor or Sub-subcontractor shall be deemed acceptable to the Owner. The Owner shall not be liable to the Contractor in any manner arising out of the Owner's objection to a proposed Subcontractor or Sub-subcontractor. The Contractor shall not terminate the employment of a Subcontractor or Sub-subcontractor engaged in the Work prior to the expiration of that subcontract without good cause shown and the Owner's prior approval after reasonable notice of the Contractor's intent to so terminate.

6.2.2. The Owner may, without any responsibility or liability whatsoever, require the Contractor to utilize any person or organization for any portion of the Work as a Subcontractor or a Sub-subcontractor (herein referred to as a "Nominated Subcontractor" or "Nominated Sub-subcontractor") provided the Owner gave notice of its intention to so nominate any such Subcontractor or Sub-subcontractor prior to execution of the Agreement. The Contractor shall assume full responsibility for any such Nominated Subcontractor or Nominated Sub-subcontractor.

6.2.3. In the event the Owner and Contractor agree that the Owner may participate in any Subcontractor or Sub-subcontractor procurement activities, provided the Owner has informed the Contractor and allowed the Contractor the opportunity to participate and concur with such activities, the Contractor shall assume full responsibility for the results of any such activities including, without limitation, full responsibility for the Subcontractors' or Sub-subcontractors' awarded portions of the Work as a result thereof.

6.2.4. The Owner may assign to the Contractor any contracts or purchase orders entered into between the Owner and any other person or organization in any way related to the Project or the Work, at any time, in which event the Contractor shall assume full responsibility for such person or organization and its portion of the Work

as if such person or organization was originally a Subcontractor. Such assignment may occur by Change Order or other Modification to the Contract, and any increase in the Contract Sum shall be governed by Article 12.

### 6.3. SUBCONTRACTUAL RELATIONS.

6.3.1. All subcontracts and sub-subcontracts shall be in writing. Each subcontract and sub-subcontract shall contain a reference to this Contract and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by, and to require each of its Sub-subcontractors to be bound by, such terms and conditions to the full extent applicable to its portion of the Work.

6.3.2. Each subcontract shall provide for its termination by the Contractor if, in the Owner's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to its portion of the Work; and each Subcontractor shall be required to insert a similar provision in each of its sub-subcontracts. In the event of any such failure by a Subcontractor or Sub-subcontractor to comply with the requirements of the Contract Documents, such Subcontractor or Sub-subcontractor, as the case may be, shall, upon the Owner's request, be removed immediately from the Work and shall not again be employed on the Work. Any such failure (specifically including, without limitation, a failure to pay for labor (including applicable fringe benefits) or materials) by a Subcontractor or Sub-subcontractor shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

### 6.4. PAYMENTS TO SUBCONTRACTORS.

6.4.1. Unless the Owner otherwise agrees or the Contract Documents otherwise provide, the Contractor shall pay each Subcontractor, upon receipt of payments from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's portion of the Work, less a percentage thereof equal to the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments due to any Sub-subcontractor.

6.4.2. If the Owner fails to approve a Contractor's Application for Payment, as hereinafter provided, for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall nevertheless pay that Subcontractor for its portion of the Work to the extent completed, less the retained percentage, such payment to be made no later than the date payment to the Contractor would otherwise have been made by the Owner.

6.4.3. The Contractor shall pay each Subcontractor its proper share of any insurance monies received by the Contractor under Article 11, and it shall require each Subcontractor to make similar payments due to a Sub-subcontractor.

## **Article 7 SEPARATE CONTRACTS**

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS. The Owner reserves the right to award other contracts in connection with the Project or other work on the Job Site on any terms and conditions which the Owner may from time to time determine in its sole discretion (hereinafter referred to as "Separate Contracts"; and such other contractors are hereinafter referred to as "Separate Contractors").

### 7.2. MUTUAL RESPONSIBILITY OF CONTRACTORS.

7.2.1. The Contractor shall afford all Separate Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work and shall properly cooperate, connect and coordinate the Work with such other work as shall be in the best interest of the Project as determined by the Owner.

7.2.2. If the execution or result of any part of the Work depends upon any work of the Owner or of any Separate Contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any Separate Contractor that render it unsuitable for the proper execution or result of any part of the Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or Separate Contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or Separate Contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

7.2.3. Should the Contractor cause damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work, the Contractor shall be liable for the same; and, in the case of a Separate Contractor, the Contractor shall attempt to settle said claim with such Separate Contractor prior to such Separate Contractor's institution of litigation or other proceedings against the Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. Any such damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such damage, delay or interference, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

7.2.4. Should any Separate Contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present to such Separate Contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against such Separate Contractor prior to the institution of litigation or other proceedings against such Separate Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. In no event shall the Contractor seek to recover from the Owner, the Owner's Representative or the Architect/Engineer, and the Contractor hereby represents that it will not seek to recover from them, any costs, expenses or losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused or allegedly caused by any Separate Contractor.

7.2.5. If a dispute arises between the Contractor and any Separate Contractor as to the responsibility for cleaning as required by the Contract Documents, the Owner may clean and charge the cost thereof to the responsible contractor, or apportion it among the several responsible contractors, as the Owner shall determine to be just.

## **Article 8**

### **TIME**

#### **8.1. DEFINITIONS.**

8.1.1. Whenever the word "day" is used in the Contract Documents, it shall mean a calendar day unless otherwise specifically provided.

8.1.2. The Date of Commencement of the Work is the date established in a written notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established by the Owner in writing.

8.1.3. The Date of Substantial Completion of the Work (or "Substantial Completion") is the date, certified by the Owner, when all construction is sufficiently complete in accordance with the Contract Documents that the Owner may, if it so elects, occupy and use the Work or designated portion thereof for the purpose for which it was intended.



## 8.2. PROGRESS AND COMPLETION; SCHEDULING.

8.2.1. All times and dates stated in the Contract Documents including, without limitation, those for the Commencement, prosecution, Milestones, Substantial Completion and final completion of the Work and for the delivery and installation of materials and equipment, are of the essence of the Contract.

8.2.2. The Contractor shall begin the Work on the Date of Commencement and shall perform the Work diligently, expeditiously and with adequate resources so as to meet all Milestones and complete all the Work within the Contract Time. The scheduling of the Work shall be performed and monitored by the Contractor utilizing a method to be chosen by the Owner. The Contractor (and its Subcontractors, if the Owner requires) shall furnish all scheduling information requested by the Owner (in such form and detail as requested for the particular portion of the Work; herein referred to as the "Schedule" or "Schedules") within two (2) weeks of the Owner's request, shall revise the same from time to time thereafter when so requested by the Owner, and shall attend such meetings concerning scheduling as the Owner may call from time to time. The Contractor shall comply with any Schedule or Schedules established by it and approved by the Owner, or established by the Owner with respect to the Commencement, performance, Milestones or completion of the whole or various portions of the Work. With respect to any portion of the Work for which a Schedule has not been established, the Contractor shall commence such portion of the Work within three (3) days of the date on which the Owner directs such commencement and shall thereafter prosecute and complete the same with all due diligence or as otherwise directed by the Owner. Neither the scheduling information submitted by the Contractor or its Subcontractors, the acceptance or approval thereof by the Owner nor the establishment or implementation of, or failure to establish or implement, Schedules by the Owner shall relieve the Contractor of its obligation to perform and complete the Work in a timely manner or to otherwise perform in accordance with the Contract Documents.

8.2.3. Float or slack time associated with any one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as set forth in an approved Schedule for the Work (assuming the critical path method is used), including any revisions or updates thereto. Float or slack time is not for the exclusive use or benefit of either the Owner or the Contractor. However, if float time associated with any chain of activities is expended but not exceeded by any actions attributable to the Owner, the Contractor shall not be entitled to an extension in the Contract Time.

## 8.3. DELAYS, EXTENSIONS OF TIME AND OVERTIME.

8.3.1. The time during which the Contractor is delayed in the performance of the Work by the acts or omissions of the Owner, the Owner's Representative, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for such delays shall be considered unless made in accordance with Paragraph 13.1.

8.3.2. The Owner and the Owner's Representative shall not be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against them, on account of, any damages, costs or expenses of any nature whatsoever which the Contractor, its Subcontractors or Sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the Owner, or any of the events referred to in Subparagraph 8.3.1. above, it being understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time, but only if claim is properly made in accordance with the provisions of Paragraph 13.1.

8.3.3. Whenever, in the opinion of the Owner, the Work falls behind Schedule due to the fault of the Contractor, the Contractor shall, to the extent necessary to meet said Schedule, increase its labor force and/or provide overtime, extra shifts, Saturday, and Sunday and/or holiday work, and shall have each Subcontractor do likewise, all at no additional cost to or compensation from the Owner. Further, the Owner shall have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any additional costs the Owner may incur as a direct result of said increase in labor force or overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4. The Owner may, in its sole discretion and for any reason, direct the Contractor to accelerate the Schedule of performance by providing overtime, extra shifts, Saturday, Sunday and/or holiday work and/or by having all or any Subcontractors or Sub-subcontractors designated by the Owner provide overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4.1. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by the Contractor's own forces pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor

(except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Contractor of the premium time (or shift differential for any extra shifts) for all labor utilized by the Contractor in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time costs of such labor, together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time (or shift differential for any extra shifts).

8.3.4.2. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by a Subcontractor pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor (except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Subcontractor for the premium time (or shift differential for any extra shifts) of all labor utilized in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time cost of such labor), together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time.

8.3.4.3. Anything in the foregoing to the contrary notwithstanding, should the Owner's direction to the Contractor to accelerate the Schedule of performance pursuant to this Subparagraph 8.3.4. require the Contractor's or a Subcontractor's forces to work in excess of fifty (50) hours per week for a period in excess of four (4) consecutive weeks, the Owner shall pay to the Contractor, for each consecutive week after the fourth consecutive week in which the same forces are required to work in excess of fifty (50) hours, an additional amount equivalent to ten percent (10%) of the gross wages of Job Site labor, less payroll costs as defined in Subparagraph 12.2.1., paid to such forces on account of such overtime, Saturday, Sunday or holiday work pursuant to this Subparagraph 8.3.4. Such acceleration shall be referred to as "Extended Acceleration", and the payment described herein shall be the sole and exclusive remedy for such Extended Acceleration including, without limitation, all inefficiencies, impacts, added supervision and overhead, ripple effect or any other costs or expenses of any kind. Anything in this Subparagraph 8.3.4.3. to the contrary notwithstanding, the Owner shall have no obligation to make payments on account of overtime, Saturday, Sunday or holiday work ordered pursuant hereto unless: (a) the Contractor shall submit to the Owner, for the Owner's review and approval, duly authenticated time tickets evidencing the hours of overtime, Saturday, Sunday or holiday work performed pursuant to this Subparagraph 8.3.4.3. by the end of the day on which performed and recapped in summary form; and (b) the Contractor shall include with its request for reimbursement a duplicate of each of the foregoing time tickets and such other substantiation of costs reimbursable hereunder as the Owner may require. If overtime, extra shifts, Saturday, Sunday or holiday work is performed in part pursuant to Subparagraph 8.3.3. and in part pursuant to this Subparagraph 8.3.4.3., the provisions of this Subparagraph 8.3.4.3. calling for payments by the Owner on account thereof shall only apply to such work performed pursuant to this Subparagraph 8.3.4.3.

8.4. TEMPORARY SUSPENSION OF WORK. The Owner shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as it may deem necessary or desirable, in its sole discretion including, without limitation: (a) unsuitable weather; (b) other conditions considered unfavorable for the suitable prosecution of the Work; (c) special events; and/or (d) other conditions considered adverse to the best interests of the Owner. Any such suspension shall be in writing to the Contractor. The Contractor shall immediately obey such orders of the Owner and shall not resume the Work until so ordered in writing by the Owner. No such temporary suspension of the Work, for periods of time up to thirty (30) consecutive days, shall be the basis of a claim by the Contractor for any increase in the Contract Sum or for any other damages, losses, costs or expenses whatsoever, all of which claims the Contractor hereby expressly waives. The Contractor shall be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended provided the claim is submitted in accordance with Paragraph 13.1. and the suspension is not due to an act or omission of the Contractor, any Subcontractor or Sub-subcontractor.

## **Article 9 PAYMENTS AND COMPLETION**

### **9.1. APPLICATION FOR PAYMENT; PASSAGE OF TITLE.**

9.1.1. The "Payment Application Date" shall be that day of each calendar month designated in the Agreement when the Contractor shall deliver the "Application for Payment," as hereinafter defined, to the Owner.

9.1.2. The "Application for Payment" shall be an invoice prepared by the Contractor and submitted to the Owner in accordance with the Contract Documents. It shall show in detail all monies properly payable to the Contractor in accordance with the previously approved Schedule of Values, including those items of labor, materials and equipment used or incorporated in the Work (and, if the Owner has agreed in advance in writing, suitably stored at the Job Site) through and including the Payment Application Date. The Application for Payment shall have, as attachments, waivers of mechanics' and materialmen's liens by the Contractor and its Subcontractors and Sub-subcontractors as of the date of submission of the Application for Payment, which waivers shall conform in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor

thereto), and such other evidence of performance of the Work, the costs thereof and payment therefor as the Owner may deem necessary or desirable.

9.1.3. The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment shall pass to the Owner, free and clear of all liens, claims, security interests or encumbrances, upon the sooner occurrence of: (a) the delivery of any such materials or equipment to the Job Site; or (b) the tender of payment of the applicable Application for Payment by the Owner to the Contractor; and that no Work, materials or equipment covered by an Application for Payment shall have been acquired, whether by the Contractor or by any Subcontractor or Sub-subcontractor, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. The passage of title to the Owner as provided herein shall not alter or limit the obligations and duties of the Contractor with respect to the Work and the materials or equipment incorporated therein or used in connection therewith as set forth in the Contract Documents.

## 9.2. APPROVALS OF APPLICATIONS FOR PAYMENT.

9.2.1. If the Contractor has submitted an Application for Payment in the manner prescribed in the Contract Documents, the Owner shall, with reasonable promptness, approve the same (or such portions thereof covering amounts it determines to be properly due) or shall state in writing its reasons for withholding its approval (whether of all or a part).

9.2.2. The Owner's approval of an Application for Payment shall not constitute a representation by the Owner that the conditions precedent to the Contractor's entitlement to payment have been fulfilled, nor shall approval of an Application for Payment by the Owner be deemed a representation by the Owner: (a) that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) that it has reviewed the construction means, methods, techniques, sequences, coordination or procedures, or the cleanliness of the Job Site, or the safety precautions and programs, in connection with the Work; (c) that it has made any examination to ascertain how or for what purposes the Contractor has used the monies previously paid on account of the Contract Sum.

9.2.3. No approval of an Application for Payment, progress payment or any beneficial, partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any Work which is not in accordance with the Contract Documents; and regardless of approval of an Application for Payment by the Owner, the Contractor shall remain totally obligated and liable for the performance of the Work in strict compliance with the Contract Documents.

9.2.4. Subject to the Owner's rights to offset or withhold as set forth in these General Conditions, after the Owner has approved an Application for Payment, in whole or in part, it shall make payment of the amount approved to the Contractor as provided in the Contract Documents.

## 9.3. PAYMENTS WITHHELD; OWNER'S RIGHT TO MAKE DIRECT PAYMENTS FOR WORK.

9.3.1. The Owner may withhold its approval of an Application for Payment, in whole or in part, or nullify the whole or any part of an approval previously given, if it determines that the Application for Payment covers portions of the Work which have not, in fact, been completed, or that it includes amounts for claims allegedly made but not actually made (or subsequently withdrawn), and/or for which payment is not then due or if, and to the extent that, it deems it necessary or desirable to protect itself against loss or damage due to: (a) defective Work not remedied; (b) Contractor, Subcontractor, Sub-subcontractor or third party claims, disputes or liens or reasonable evidence indicating such claims, disputes or liens; (c) failure or alleged failure of the Contractor to make payments to Subcontractors (or of Subcontractors to make payments to Sub-subcontractors) as required by the Contract Documents, or failure to provide lien waivers for previous payments; (d) inability, or reasonable doubt as to the ability, of the Contractor to complete the Work within the Contract Time, for the unpaid balance of the Contract Sum or within the estimates prepared by the Contractor and submitted to and approved by the Owner; (e) damage to the Owner or a Separate Contractor; (f) unsatisfactory prosecution of the Work by the Contractor, its Subcontractors or Sub-subcontractors; (g) failure of the Contractor to maintain the Job Site in a clean and safe condition; (h) failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents; or (i) failure of the Contractor to comply with any other provision of the Contract Documents.

9.3.2. The Owner after giving the Contractor appropriate notice, may make payments on account of labor, materials and/or equipment for the Work directly to the Subcontractors, Sub-subcontractors or persons entitled to the same in lieu of paying the Contractor therefor or make joint payment to any such person and the Contractor. Any amounts so paid shall be credited against the Contract Sum. No such payment shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Contractor shall

cooperate with the Owner to facilitate any such direct payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid. If the Owner elects to make such payments as a result of a failure on the part of the Contractor to perform in accordance with the Contract, or as a result of a request from the Contractor that the Owner make such payments, then the Owner may offset or credit the amount of its administrative costs incurred in making said such payments against the Contract Sum or render an invoice to the Contractor for such administrative costs, which invoice the Contractor shall pay promptly.

#### 9.4. SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

9.4.1. At such time as the Contractor deems the Work to be Substantially Complete, the Contractor shall so notify the Owner and prepare and submit to the Owner a list of items to be completed and/or corrected and its final bill, including itemized projected amounts for any portions of the Work not yet completed. The failure to include any items on such list shall not alter the responsibility of the Contractor to complete and/or correct the Work in accordance with the Contract Documents. When the Owner, on the basis of an inspection, confirms the notification from the Contractor that the Work is Substantially Completed or, without being notified by the Contractor, determines that the Work is Substantially Completed, it shall prepare and deliver to the Contractor a Certificate of Substantial Completion which may state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities and insurance and it shall, within twenty (20) days from the date of the Certificate of Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, which sets forth those items determined by the Owner to require completion or correction, as applicable, and fix the time within which the Contractor shall complete or correct the items listed and complete all obligations required by the Contract Documents and submit to the Owner all documents and other matters required by the Contract Documents to be submitted by the Contractor upon completion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs, claims or fees for any outstanding Change Orders, or any other matter which the Contractor has not previously waived pursuant to the General Conditions, and itemized projections for any incomplete Work), and the Contractor shall be deemed conclusively to have waived the right to payment of any such item, fee or cost of any kind not billed to the Owner within thirty (30) days of delivery to the Contractor of the Certificate of Substantial Completion. The issuance of the Certificate of Substantial Completion shall not constitute a waiver of any rights of the Owner, including without limitation the right to those retainages permitted by the Contract Documents. If the Contractor does not complete and/or correct the items listed in the Punch List within the time fixed therein, the Owner shall have the right to accomplish the same and offset all costs thereof against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner. The Owner's decision as to the Date of Substantial Completion shall be final and binding.

9.4.2. Within a reasonable time following the Owner's receipt of written notification from the Contractor that the Work is ready for final inspection and acceptance and that the Contractor has completed all items set forth on the Punch List, including, delivery of the final Application for Payment, the Owner shall make such inspection and, when the Work is found to be acceptable under the Contract Documents and the Contract fully performed, shall certify completion of the Punch List, including approval of the final Application for Payment; provided, however, Owner shall not be required to certify completion of the Punch List and, therefore, neither final payment nor any retainage shall become due, until the Contractor submits to the Owner: (a) an affidavit, in a form approved by the Owner, that all payrolls, bills for materials and equipment and other indebtednesses connected with the Work for which the Owner or its property might in any way be responsible have been paid in full or otherwise satisfied; (b) consent of sureties, if any, to final payment; (c) all Contract Documents (except one set thereof to be retained by the Contractor), including, without limitation, a completed set of as-builts and record documents (as defined in and to the extent required by the Specifications); (d) such other data as the Owner may require establishing payment or satisfaction of all obligations of the Contractor in connection with the Work including, without limitation, receipt of final satisfaction and releases and waivers of lien and releases of any and all claims by the Contractor, Subcontractors and Sub-subcontractors, conforming in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor thereto) and evidencing performance of the Work in accordance with the Contract Documents; (e) a release of the Owner and its insurers from and against any claims under the insurance required to be provided by the Owner hereunder (except to the extent of any claims theretofore timely filed which are owing but unpaid) and a release of the Owner from and against any claims between the Contractor and a separate contractor; (f) any governmental certificates required by the Contract Documents or otherwise to evidence compliance of the Contractor and the Work with applicable laws, ordinances, rules, codes, regulations and the Contract Documents; and (g) warranties, guarantees, assignments thereof, and maintenance or other manuals, required by the Specifications in the forms approved by the Owner, in favor of the Owner and such other persons as the Owner may direct (notwithstanding the foregoing, by execution of the Agreement, the Contractor shall be deemed to have guaranteed to the Owner the matters contained in the attached form of guarantee incorporated by reference into the Agreement); and (h) a fully and

properly executed Close-out Change Order, with all of its fully and properly executed Exhibits, in the form attached to the Agreement.

9.4.3. The making of final payment shall not constitute a waiver of any claims or rights by the Owner.

9.4.4. The acceptance of final payment shall constitute a waiver of all claims by the Contractor and shall constitute a general release of the Owner, the Owner's Representative and the Architect/Engineer by the Contractor.

9.4.5. If any Subcontractor or Sub-subcontractor refuses to furnish any release, satisfaction or waiver of lien required at any time by the Owner under Paragraphs 9.1., 9.3. or 9.4., or files a claim of lien against the Owner's property, the Contractor shall, if requested by the Owner and at the Contractor's expense, furnish a bond (separate and apart from any other bond provided by the Contractor hereunder) satisfactory to the Owner to exempt the Owner and its property from and against any such lien. The Contractor authorizes the Owner, and shall cause its Subcontractors and Sub-subcontractors to authorize the Owner, to check directly with any suppliers of labor and material with respect to any item chargeable to the Owner's property, to confirm balances due and to obtain sworn statements and waivers of lien, all if the Owner so elects. If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall reimburse the Owner on account of all monies that the latter may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

#### 9.5. BENEFICIAL USE AND OCCUPANCY; PARTIAL SUBSTANTIAL COMPLETION.

9.5.1. The Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Project or equipment at any time prior to completion of the Work upon two (2) days written notice to the Contractor (referred to herein as "Beneficial Occupancy"). The Owner shall use its best efforts to prevent such occupancy from interfering with the performance of the remaining Work; provided, however, that the Owner shall not be liable for any delays or additional costs of any nature caused by such occupancy.

9.5.2. Beneficial Occupancy shall not constitute acceptance by the Owner or the Owner's Representative of the completed Work or any portion thereof, shall not relieve the Contractor of its full responsibility for correcting defective Work and repairing the Work, shall not be deemed to be the equivalent of completion of the Work, shall not relieve the Contractor from its obligation to complete the Punch List, and shall not entitle the Contractor to any increase in the Contract Sum.

9.5.3. Anything in this Paragraph 9.5. to the contrary notwithstanding, the Owner may certify any portion of the Work to be occupied or used hereunder to be Substantially Completed and shall prepare and deliver to the Contractor a Certificate of Partial Substantial Completion for such portion of the Work. The Owner shall, within twenty (20) days from the date of the Certificate of Partial Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, and, upon the Contractor's timely completion or correction of the items on the Punch List and the Owner's approval thereof, accept that portion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List, shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The provisions of Paragraph 9.4., except as they relate to the Contractor's obligations to complete or correct the Work in accordance with the Contract Documents, shall not apply to such Partial Substantial Completion, but the provisions of Subparagraph 14.2.2. shall apply to the portion of the Work which the Owner certifies to be Substantially Completed.

### **Article 10 PROTECTION OF PERSONS AND PROPERTY**

#### 10.1. RESPONSIBILITY FOR SAFETY AND HEALTH.

10.1.1. The Contractor shall be responsible for initiating, maintaining and supervising safety and anti-substance abuse precautions and programs in connection with the Work, and shall provide all protection to prevent injury to all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby. These precautions shall include, but in no event be limited to: the posting of danger signs and personal notification to all affected persons of the existence of a hazard of whatever nature; the furnishing and maintaining of necessary traffic control barricades and flagman services; the use, or storage, removal and disposal of required explosives or other hazardous materials only under the supervision of qualified personnel and after first obtaining permission of all applicable governmental authorities; and the maintenance of adequate quantities of both hose and operable fire extinguishers at the Job Site. The Contractor shall set forth in writing its safety and anti-substance abuse precautions and programs in connection with the Work and, if requested by the Owner, submit the same to the

Owner for review. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Contractor with respect thereto.

10.1.2. All Work, whether performed by the Contractor, its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

10.1.3. The Contractor shall designate a responsible member of its organization at the Job Site as the Project Safety Officer, whose duties it shall be to enforce the Contractor's safety and anti-substance abuse programs, to assure compliance with Subparagraph 10.1.2 and to prevent accidents. This person shall be the Contractor's Project Manager unless otherwise designated in writing by the Contractor and approved by the Owner. The Contractor shall further cause each of its Subcontractors and Sub-subcontractors to designate a responsible supervisory representative to assist the Contractor's Project Safety Officer Representative in the performance of his or her duties as aforesaid.

10.1.4. Should the Contractor fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature (including, without limitation, overtime pay) resulting from the suspension, by whomsoever incurred, shall be borne by the Contractor.

10.1.5. The Contractor shall provide to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Contractor to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices or anti-substance abuse policies, with which order the Contractor shall promptly comply.

10.1.6. Any failure of the Contractor, its Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be responsible, to comply with the provisions of Paragraph 10.1. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

10.1.7 The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

## 10.2. PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS.

10.2.1. The Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Work and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards. The Owner may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal security program. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities.

10.2.2. Until final acceptance of the Work by the Owner pursuant to Paragraph 9.4. (unless and to the extent otherwise set forth in a Certificate of Substantial Completion), the Contractor shall have full and complete charge and care of and, except as otherwise provided in this Subparagraph 10.2.2., shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever. The Contractor shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration: (a) is directly due to errors in the Contract Documents which were not discovered by the Contractor and which the Contractor could not have discovered through the exercise of due diligence; (b) is caused by the Owner (unless (i) the Contractor has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (ii) such loss or damage would be covered by any policy or policies of insurance which the Contractor is required to maintain hereunder, whether the Contractor actually maintains such insurance or not, or (iii) is otherwise covered by a policy or policies of insurance maintained by the Contractor, whether or not required hereunder); or (c) is caused by a hazard against which the Owner is required to insure under the provisions of Article 11 hereof; provided, however, that if the loss, injury or damage would not have occurred but for the negligent act or omission of the Contractor, any of its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the rebuilding, repair or restoration shall be at the Contractor's cost and expense to the extent of the deductible on said insurance.

10.3. SURFACE OR SUBSURFACE WATER. Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be submitted to the Owner for its prior written approval. All such work shall be done at the sole expense of the Contractor.

10.4. EMERGENCIES. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss or to remedy said violation, whichever is applicable, failing which the Owner may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in Paragraph 8.4. Any failure by the Contractor to so act or so remedy a violation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure to act or remedy a violation, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. If the Contractor shall be entitled to any additional compensation or extension of time claimed on account of emergency work not due to the fault or neglect of the Contractor or its Subcontractors or Sub-subcontractors, it shall be handled as a claim as provided in Article 13.

10.5. CLEANUP. The Contractor shall at all times keep the Job Site clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by his performance of the Work, and shall continuously throughout performance of the Work remove and dispose of all such materials from the Job Site and the Project. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the Job Site clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor. The Contractor shall notify the Owner in advance of the generation, importation, storage, transportation or disposal, of any hazardous waste, toxic materials or contaminants of any type in connection with the Project.

10.6. OWNER'S STANDARDS. The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the

Contractor shall comply, and to review the efficiency of all protective measures taken by the Contractor. The exercise of or failure to exercise any or all of these acts by the Owner shall not relieve the Contractor of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Contractor.

## **Article 11 INSURANCE**

- 11.1. **COMMERCIAL INSURANCE/INDEMNIFICATION.** The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:
- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with minimum combined single limits for bodily injury and property damage of **\$1,000,000** per occurrence;
  - ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with minimum combined single limits of **\$1,000,000** per occurrence;
  - iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with minimum limits of **\$1,000,000** per occurrence;
  - iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i., ii, and iii. above in an amount of at least **\$1,000,000** per occurrence;
  - v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
  - vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
  - vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be at least \$4 million.
  - viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.

Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

- A. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.



- B. CANCELLATION. All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.
- C. ADDITIONAL INSUREDS. Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.
- D. WAIVERS. The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.
- E. CLAIMS. The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.
- F. INDEMNIFICATION. The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by the negligence, recklessness or intentional wrongful misconduct (which includes, without limitation, any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to perform and complete the Work in strict compliance with the Contract Documents, unless such failure has been specifically waived by the Owner in writing upon final acceptance of the Work) of the Contractor or any persons employed or utilized by the Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

## **Article 12 CHANGES IN THE WORK**

12.1. CHANGE ORDERS AND DIRECTIVES. The Owner may, without affecting the validity of the Contract Documents or any term or condition thereof, issue Change Orders, or Directives, or give other orders and instructions regarding the Work which may have the effect of ordering extra work or other changes in the Work by altering, adding to or deducting from the Work, modifying the method or manner of its performance or otherwise (herein sometimes referred to as "Changes in the Work"). The Contractor shall comply with all such orders and instructions issued by the Owner. In any such event, the Contract Sum shall, where applicable, be increased or decreased in the manner hereinafter set forth; provided, however, that if the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Sum or extension of the Contract Time on account thereof. Upon receipt of any such Change Order, or Directive or other order or instructions, the Contractor shall promptly proceed with the Change in the Work, even though the amount of any resultant increase or decrease in the Contract Sum has not yet been determined. All Changes in the Work shall be performed in accordance with the Contract Documents.

12.2. CHANGES REQUIRING AN INCREASE IN CONTRACT SUM. If any Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described.

12.2.1. If the Owner elects to have any Change in the Work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a lump sum proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors or Sub-subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The portion of the proposal relating to labor, whether by the Contractor's forces or those of its Subcontractors or Sub-subcontractors, may only include

reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including Social Security, federal or state unemployment insurance taxes and fringe benefits in connection with such labor required by union and/or trade agreements if applicable) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for any such entity actually performing the Change in the Work or a portion thereof. The portion of the proposal relating to materials may only include the reasonably anticipated direct costs to the Contractor, its Subcontractors or Sub-subcontractors (as applicable) of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes, and up to fifteen percent (15%) of said direct material costs as overhead and profit for the entity actually supplying the materials. The proposal may further include the Contractor's or its Subcontractor's or Sub-subcontractor's reasonably anticipated direct rental costs in connection with the Change in the Work (either actual rates or discounted local published rates), plus up to six percent (6%) thereof as overhead and profit for the entity actually incurring such costs. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Documents, the Owner may elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices. The lump sum proposal may only include up to six percent (6%) of the amount which the Contractor will pay to any Subcontractor, and up to six percent (6%) of the amount which a Subcontractor will pay to any Sub-subcontractor, for the Change in the Work as overhead and profit to the Contractor or Subcontractor (only a maximum of two contractual tiers of such markup may be included).

12.2.2. If the Owner elects to have the Change in the Work performed on a unit price basis, its election shall be based on a unit price proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a unit price proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a unit price basis). The Contractor's proposal shall itemize the quantities of each item of the Change in the Work for which there is an applicable unit price contained in the Contract Documents. The quantities shall be itemized in relation to each specific Drawing. Unit prices shall be applied to net differences of quantities of the same item. Nothing herein contained shall preclude the Owner from requesting a lump sum proposal and a unit price proposal with respect to the same Change in the Work, in which event the Contractor shall submit both.

12.2.3. If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendents of any nature whatsoever, except foremen directly involved in the Change in the Work, or the cost, use or rental of small tools, defined as tools with a cost or value of less than \$1,000, or equipment owned by the Contractor or any of its related or affiliated companies), plus fifteen percent (15%) of gross wages (excluding payroll costs) of Job Site labor and direct material costs and six percent (6%) of rental costs (other than small tools or equipment owned by the Contractor or any of its related or affiliated companies) as the total overhead and profit. Only the entity actually performing the Change in the Work or a portion thereof shall be entitled to a mark-up as aforesaid for overhead and profit, but the Contractor may include up to six percent (6%) of the amount it will pay to any Subcontractor, and a Subcontractor may include up to six percent (6%) of the amount it will pay to any Sub-subcontractor (only a maximum of two contractual tiers of such markup may be included), for the Change in the Work as overhead and profit to the Contractor or Subcontractor. The Contractor shall submit to the Owner daily time and material tickets, to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification, names and social security numbers of the labor employed, the materials used, the equipment rented (not tools) and such other evidence of costs as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

12.2.4. The Owner shall have no obligation or liability on account of a Change in the Work except as specifically provided in this Paragraph 12.2. If the Contractor fails to render any proposal within ten (10) days after the date of the Owner's request pursuant to this Paragraph 12.2. or such longer period of time established by the Owner in its request, the Owner may issue a unilateral Change Order for any such Change in the Work giving the Owner's reasonable estimate of the cost of the Change, which shall become automatically binding upon the Contractor. Overhead and profit, as allowed under this Paragraph 12.2., shall be deemed to cover all costs and expenses of any nature whatsoever, including, without limitation, those for clean-up, protection, supervision, estimating, field operations, insurance, impacts, inefficiency, extended (Job Site and home office) overhead, unabsorbed (Job Site and home office) overhead, delays, acceleration (actual or constructive), ripple effect, small

tools and security, which the Contractor or any of its Subcontractors or Sub-subcontractors may incur in the performance of or in connection with a Change in the Work and which are not otherwise specifically recoverable by them pursuant to this Paragraph 12.2.

12.2.5. The Work pursuant to this Contract shall be performed by the Contractor at no extra cost to the Owner despite any order from the Owner which designates or contemplates a portion of the Work as a Change in the Work.

12.3. CHANGES REQUIRING A DECREASE IN CONTRACT SUM. If any Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days after the date of the Owner's request or such longer period of time established by the Owner therein and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner's Representative in its reasonable judgment. If the Contractor fails to render any proposal within the time required herein, the Owner may issue a unilateral deductive Change Order giving the Owner's reasonable estimate of the deductive Change, which shall become automatically binding upon the Contractor.

12.4. DISPUTES REGARDING CHANGES. If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum as a result of a Change in the Work, the Contractor shall not suspend performance of any such Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner may, however, notify the Contractor of its determination regarding any such Change and, in the case of an increase, may thereafter pay to the Contractor up to 50% of the Owner's reasonable estimate of the value of the Change in the Work as its sole obligation with respect to any such Change pending resolution of the dispute. The Contractor shall thereafter be subject to the terms of Paragraph 13.2. regarding its claim for any difference.

12.5. AUDIT RIGHTS. The Contractor shall afford, and shall cause its Subcontractors and Sub-subcontractors to afford, access to the Owner at all reasonable times to any accounting books and records, correspondence, instructions, invoices, receipts, vouchers, memoranda and other records of any kind relating to the Work, all of which each of them shall maintain for a period of at least four (4) years from and after the Date of Substantial Completion. The Contractor and its Subcontractors and Sub-subcontractors shall make the same available for inspection, copying and audit, in accordance with generally accepted accounting standards, within three (3) days following notification to the Contractor of the Owner's intent to audit, failing which any claims for an increase in the Contract Sum and/or extension of the Contract Time, as applicable, shall be waived.

### **Article 13 CLAIMS**

13.1. CLAIMS FOR EXTENSIONS OF CONTRACT TIME. No claim by the Contractor for an extension of the Contract Time or any Milestones shall be considered unless made in accordance with this Paragraph 13.1. The Contractor shall not be entitled to any extension of the Contract Time or any Milestones as a result of any condition or cause, unless it shall have given written notice to the Owner pursuant to Paragraph 16.3. promptly, but in any event within fourteen (14) days following the commencement of each such condition or cause and stating the probable duration of the condition or cause and the Contractor's request for an extension of time. The Contractor shall deliver to the Owner, within thirty (30) days after the commencement of each condition or cause for which the Contractor has submitted a request for extension of time, supporting data to substantiate and justify the Contractor's request, including, without limitation, an analysis showing the actual impact of the condition or cause on the Schedule and the critical path of construction activities, plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's request. The Contractor hereby waives any claims for any such extensions not timely made or timely substantiated in accordance herewith. If the Contractor timely makes any such claim and the parties are unable to agree as to whether or not the Contractor is entitled to an extension of time or the length of such extension regarding such claim, the Owner's Representative may, but shall not be required to, ascertain the facts and the extent of the delay and determine and fix an extension of the time for completing the Work.

13.2. CLAIMS FOR INCREASES IN CONTRACT SUM.

13.2.1. Except as otherwise provided in Paragraph 12.2., no claim by the Contractor for an increase in the Contract Sum shall be considered unless made in accordance with this Paragraph 13.2. The Contractor shall give

the Owner written notice pursuant to Paragraph 16.3. of any such claim promptly, but in any event not later than fourteen (14) days after the occurrence of the event giving rise to the claim (including, without limitation, any Owner determination pursuant to Article 12.4.), but (except in the event of emergencies pursuant to Paragraph 10.4.) prior to the incurring of any expenses by the Contractor. Failure to give such notice, or to provide substantiation thereof as required below, shall constitute a waiver of the claim including, but not limited to, any and all damages, cost, impacts, inefficiency, extended overhead, unabsorbed overhead, ripple effect, or expenses of any nature whatsoever which the Contractor, or its Subcontractors or Sub-subcontractors, may suffer or incur. Claims shall be made in writing and shall identify the instructions or other circumstances that are the basis of the claim and shall set forth the Contractor's best estimate of the dollar amount claimed. Within thirty (30) days after the occurrence of the event giving rise to the claim, the Contractor shall fix the amount of its claim with specificity and shall provide to the Owner supporting data to substantiate and justify the Contractor's claim, including, without limitation, substantiation of all costs plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's claim. No claim shall be considered by the Owner if the Contractor has otherwise waived its rights to file a claim pursuant to the Contract Documents.

13.3. NO OTHER CLAIMS. The parties acknowledge that the provisions of Paragraphs 13.1. and 13.2. are included herein for the purpose of fixing and limiting the time within which, and the manner in which claims must be made; and that Paragraphs 13.1. and 13.2. do not grant to the Contractor any right to increases in the Contract Sum, or extensions in the Contract Time or any Milestones, not otherwise permitted or provided by the other terms and provisions of the Contract Documents.

#### **Article 14 UNCOVERING AND CORRECTION OF WORK; OWNER'S RIGHT TO CARRY OUT WORK**

##### 14.1. UNCOVERING OF WORK.

14.1.1. If any portion of the Work should be covered contrary to the instructions or request of the Owner or the requirements of the Contract Documents, the Contractor shall, if required by the Owner, uncover such portion of the Work for the Owner's observation and shall replace such Work all at the Contractor's expense.

14.1.2. If any portion of the Work should be covered prior to a specific request for observation or instruction by the Owner, the Owner may request to see such Work, and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents and without defect, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall bear such costs; provided, however, that if it is found that the condition was caused by a Separate Contractor employed as provided in Article 7, the Contractor shall have the right to seek reimbursement of the costs it incurs as aforesaid from said Separate Contractor.

##### 14.2. CORRECTION OF WORK.

14.2.1. The Owner shall have the authority to reject any portion of the Work which is defective or does not conform to the Contract Documents, and the Contractor shall promptly correct all Work so rejected by the Owner, whether observed before or after the Date of Substantial Completion and whether or not fabricated, installed or completed. In order that such corrective Work shall not interrupt or delay the Owner's schedule for completion of the Project or, if applicable, disturb the occupants of the completed Project, the Contractor shall perform such Work according to a schedule therefor established by the Owner (which may provide that the same be performed on overtime, shiftwork, Saturdays, Sundays and/or holidays), utilizing in the performance thereof such manpower as is necessary to complete the corrective Work in accordance with said schedule. The Contractor shall bear all costs of correcting such rejected Work including, without limitation, compensation for any additional architectural and engineering services made necessary thereby.

14.2.2. If, within one (1) year after the Date of Substantial Completion of the Work (as determined by the Owner) or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty or guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of written instructions to that effect from the Owner unless the Owner has previously given the Contractor a written acceptance of such condition.

14.2.3. The Contractor shall remove from the Job Site all Work which is defective or non-conforming and not corrected under Paragraph 5.4. or Subparagraphs 14.2.1. or 14.2.2. unless removal is waived by the Owner.

14.2.4. The Contractor shall bear the cost of making good all work of Separate Contractors (and any of the Owner's other structures or facilities) destroyed or damaged by such removal or correction.

14.2.5. If the Contractor does not remove such uncorrected defective or non-conforming Work within a reasonable time fixed by written instructions to that effect from the Owner, the Owner may remove it and store the materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) additional days written notification to the Contractor, sell such materials and equipment at public or private sale and account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional architectural and engineering services and attorneys' fees made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such difference, the Contractor shall, upon demand, pay the same to the Owner. The obligations of the Contractor under this Subparagraph 14.2.5. shall be in addition to, and not in limitation of, any obligations imposed on it by law, by any other provision of this Contract or by any warranty or guarantee under this Contract.

14.2.6. If the Contractor fails to correct any defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 14.3. In the event of a defect found after final acceptance of the Work by the Owner which the Contractor is obligated to correct pursuant to Subparagraph 14.2.2., the Owner may, at its option, after giving the Contractor an opportunity to correct such defect, cause such corrective Work to be performed by others and charge the Contractor with the cost thereof. Such charge shall be due and payable by the Contractor upon demand.

14.3. OWNER'S RIGHT TO CARRY OUT WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of this Contract, and such default, neglect or non-performance shall continue for a period of 48 hours after written notification thereof from the Owner (or if such default, neglect or non-performance cannot be reasonably remedied within such 48-hour period, and Contractor does not (in the sole determination of Owner) undertake in good faith the remedy of the same within said period and thereafter proceed diligently to completion), then the Owner may, without prejudice to any other remedy the Owner may have, make good such deficiencies; provided, however, that in the event of an emergency, as determined by the Owner, no notification shall be required. The Owner shall have the right to take possession of such portion of the Job Site as will enable it to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, construction equipment and machinery of the Contractor located on the Job Site. If the Owner makes good any such deficiencies, the costs of correcting the same including, without limitation, compensation for additional architectural and engineering services made necessary by such default, neglect or non-performance, shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall, upon demand, pay the difference to the Owner.

14.4. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case an appropriate amount shall be offset against any amounts then or thereafter due to the Contractor; or, if the said appropriate amount of offset is determined after final payment (or if there is not then or thereafter due to the Contractor an amount sufficient to cover the offset available to the Owner), the Contractor shall, upon demand, pay the appropriate amount (or the difference after offset, as applicable) to the Owner.

## **Article 15 TERMINATION OF CONTRACT**

15.1. TERMINATION BY CONTRACTOR. If the Owner should, without notifying the Contractor of its cause for doing so, fail or refuse to approve an Application for Payment or make payment thereon for a period of thirty (30) days after the same is required to be approved or paid pursuant to the Contract Documents, then the Contractor shall have the right, as its sole and exclusive remedy and upon fourteen (14) days prior written notice to the Owner, to terminate this Contract and recover from the Owner payment for all unpaid Work executed up to the date of termination, including any proven loss of reasonable profits sustained, based upon the percentage of Work completed through the date of termination. If the Owner shall cure its said default within such fourteen (14) day period, then the Contractor's notice of termination shall thereby be rendered ineffective, and this Contract shall continue in full force and effect. Prior to termination as aforesaid, the Contractor shall not delay or suspend the Work in whole or in part. The Contractor may not terminate this Contract on the grounds that the cause given by the Owner for failing or refusing to pay is not in accordance with fact or law, it being understood and agreed that the Contractor's sole remedy in such event shall be to seek money damages. The Contractor acknowledges

that it can be adequately compensated by such money damages for any breach of this Contract which may be committed by the Owner. Accordingly, and except as hereinabove provided, the Contractor expressly agrees that no default, act or omission of the Owner shall entitle the Contractor to cancel or rescind this Contract or suspend or abandon its performance of the Work.

#### 15.2. TERMINATION BY OWNER FOR CAUSE.

15.2.1. If the Contractor should become insolvent, file any bankruptcy proceedings, make a general assignment for the benefit of creditors, suffer or allow appointment of a receiver, refuse, fail or be unable to make prompt payment to Subcontractors, disregard applicable laws, ordinances, governmental orders or regulations or the instructions of the Owner, or if the Contractor should otherwise be guilty of a violation of, or in default under, any provision of the Contract, then the Owner may, without prejudice to any other right or remedy available to the Owner and after giving the Contractor and its surety, if any, three (3) days written notice, terminate the Contract and the employment of the Contractor on the Project, take possession of the Job Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner may deem expedient. In addition, without terminating this Contract as a whole, the Owner may, under any of the circumstances set forth above, terminate any portion of this Contract (by reducing, in such manner the Owner deems appropriate, the scope of the Work to be performed by the Contractor) and complete the portion of this Contract so terminated in such manner as the Owner may deem expedient, taking possession of such part of the Job Site and utilizing such materials, equipment, tools, construction equipment and machinery owned by the Contractor as may be necessary to accomplish the same. The Contractor hereby grants to the Owner the further right: (a) to enter upon any premises or property other than the Job Site in order to take possession of any materials, tools, equipment, machinery or other items intended for incorporation in the Work (or any portion thereof) or for use in the performance thereof; and (b) to receive an assignment of such subcontracts as the Owner deems necessary or desirable at the time of termination of this Contract or a portion thereof.

15.2.2. If this Contract is terminated pursuant to Subparagraph 15.2.1., the Contractor shall not be entitled to receive any further payment until the Work is completed, and the Owner shall have the same right to retain monies owing to the Contractor as it would have to retain such monies from and against final payments. Upon the completion of the Work, the Owner shall make payment to the Contractor, or the Contractor shall reimburse the Owner, as the case may be, as provided in Article 10 of the Agreement. If a portion of this Contract is terminated pursuant to Subparagraph 15.2.1., such termination shall not be treated as a reduction in the scope of the Work pursuant to Article 12. Rather, in such event, the Owner shall offset against any monies then or thereafter due to the Contractor an amount determined by the Owner to be adequate to cover all costs and expenses it will incur in performing, or causing to be performed, the portion of this Contract so terminated. If the Owner's cost and expenses prove to be less than the amount offset, the Contractor shall be entitled to the difference unless otherwise provided herein. If the amount then or thereafter due to the Contractor is less than the amount to be offset and/or if the Owner's costs and expenses prove to exceed the amount offset, the Contractor shall pay the difference to the Owner upon demand.

15.2.3. The remedies provided to the Owner in this Paragraph 15.2. are in addition to, and not in lieu of, any other rights or remedies available to the Owner under the Contract Documents, at law or in equity. In the event of any breach of this Contract by the Contractor, and whether or not this Contract is terminated by the Owner, the Contractor shall be liable for all damages, losses, costs and expenses incurred by the Owner as a result thereof.

15.3. TERMINATION BY OWNER WITHOUT CAUSE. Without limitation to the provisions of Paragraph 15.2., the Owner shall have the right at any time, upon not less than three (3) days notice to the Contractor to terminate this Contract without cause and/or for the Owner's convenience. Upon receipt of such notice of termination, the Contractor shall forthwith discontinue the Work and remove its equipment and employees from the Job Site. In the event of termination under this Paragraph 15.3., the Contractor shall have the right, as its sole and exclusive remedy, to recover from the Owner payment for all unpaid Work executed up to the date of termination, including any proven loss of reasonable profits sustained based upon the percentage of Work completed through the date of termination. In addition, without terminating this Contract as a whole, the Owner may, for its convenience, terminate a portion of this Contract (by reducing, in such manner as the Owner deems appropriate, the scope of the Work to be performed by the Contractor), in which event such termination of a portion of this Contract shall be treated as a reduction in the scope of the Work pursuant to Article 12.

**Article 16**  
**MISCELLANEOUS PROVISIONS**

16.1. GOVERNING LAW. This Contract shall be governed by, and construed in accordance with, the laws of the State of Florida, to the exclusion of Florida rules of conflicts of laws.

16.2. ASSIGNABILITY; SUCCESSORS AND ASSIGNS.

16.2.1. This Contract may be assigned by Owner at any time without Contractor's consent; without limiting the generality of the foregoing, all warranties and guarantees in favor of Owner under the Contract Documents may be assigned without Contractor's consent by Owner to any party designated by Owner and such assignee may directly enforce any such warranty or guarantee. The Contractor shall not assign this Contract in whole or in part without the written consent of the Owner, which consent the Owner may withhold in its sole discretion; nor shall this Contract be assignable by the Contractor by operation of law. The Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of the Owner.

16.2.2. The Owner and the Contractor each binds itself and, to the extent permitted herein, its successors and assigns, to the other party and, to the extent permitted herein, the other party's successors and assigns, in respect to all covenants, agreements and obligations contained in the Contract Documents.

16.3. NOTICE. All notices (whether or not designated as such herein) which are required under this Contract to be given between the parties pursuant to this paragraph shall be in writing and deemed given and, unless otherwise provided herein, effective when delivered personally to an officer of the party to be served (including the Contractor's Project Manager, in the case of the Contractor), when deposited in the United States mail, or in a sealed envelope, with postage thereon prepaid, sent by registered or certified mail, return receipt requested, and addressed to the appropriate party at the address set forth in the Agreement or such other address as may be designated by either party hereto by notice to the other, or when transmitted by wire or facsimile to the appropriate party at the aforesaid address (a complimentary confirming letter shall also be mailed to the appropriate party on the same date).

16.4. PERFORMANCE AND PAYMENT BONDS. Unless waived or otherwise agreed by the Owner, the Contractor shall furnish (and if directed by the Owner shall require all or certain of its Subcontractors to furnish) a bond covering the faithful performance of this Contract (or any such subcontract), as revised or modified from time to time, and a bond covering the payment of all obligations arising thereunder in full compliance with the then current provisions of Section 713.23, Florida Statutes (or any successor thereto; or, if applicable, Section 255.05, Florida Statutes, or any successor thereto), each in the full Contract Sum, as revised or Modified from time to time, and with such sureties as may be approved by the Owner. Each bond shall contain the following language: "The provisions and limitations of Section 255.05 or of Section 713.23, Florida Statutes, whichever is applicable to the Contract, are incorporated herein by reference, provided, however, that in the event of any conflict between the provisions of said Section 255.05 or Section 713.23 and those contained in this bond, the provisions of said Section 255.05 or Section 713.23 shall govern." If such bonds, or either of them, are stipulated in the bidding documents or in the Contract Documents, the premium therefor shall be paid by the Contractor (or appropriate Subcontractors); but if required or increased in amount pursuant hereto subsequent to award of the Contract or due to Changes in the Work, the premium therefor shall be reimbursed by the Owner. The Contractor shall deliver promptly, and in any event no later than ten (10) days after notice of award, to the Owner any required bonds or amendments thereto. The Contractor's failure to timely obtain and deliver the required bonds or amendments thereto shall constitute cause for the Owner to terminate this Contract (or for the Contractor to terminate any subcontract). The Owner shall not be obligated to respond to, and the Contractor shall assure that the Owner is not sent, any job status inquiries from the Contractor, any surety, or any of their accountants or independent auditors.

16.5. MAINTENANCE OF HARMONIOUS RELATIONS. The Contractor is hereby advised that any portion of the Project, or other projects in proximity to the Project may be subject to, and governed by, certain union or trade agreements. It is the policy of the Owner to promote and maintain harmonious relationships in connection with the Project. The Contractor and its Subcontractors and Sub-subcontractors shall follow this policy; and shall utilize only qualified persons or organizations in the performance of the Work. A qualified person or organization is one: which is not likely to promote labor unrest on the Project; which shall abide by all local, state and federal labor and employment relation rules, regulations and laws; whose financial stability is reasonably assured throughout the duration of the Contract; and whose commitments to other projects are not likely to interfere with its ability to perform its portion of the Work efficiently and cost effectively. The Owner reserves the right to disapprove, or to require the removal of, any person or organization who is being considered for, or has received, an award to perform all or a portion of the Work but has failed to demonstrate the willingness or ability to follow this policy.

16.6. UNION AGREEMENTS. Regardless of the expiration of any collective bargaining agreement during the term of this Contract which may affect the Contractor in any of its activities including, without limitation, with respect to the Work or the Project, the Contractor is obligated to man the job and properly and timely perform the Work in a diligent manner. Upon notification of expected or actual labor disputes or job disruption arising out of any such collective bargaining negotiations, the expiration of any union or trade agreement or any other cause, the Contractor and its Subcontractors and Sub-subcontractors shall cooperate with the Owner concerning any legal, practical or contractual actions to be taken by the Owner in response thereto and shall perform any actions requested by the Owner to eliminate, neutralize or mitigate the effects of such actions on the progress of the Work and the impact of such actions on the public access to the Reedy Creek Improvement District or any of the properties or facilities located therein, irrespective of whether such properties are owned by the Owner or by a third party. It is the Contractor's obligation, at the Contractor's own cost and expense, to take all steps available to prevent any persons performing the work from engaging in any disruptive activities such as strikes, picketing, slowdowns, job actions or work stoppages of any nature or ceasing to work due to picketing or other such activities, which steps shall include, without limitation, execution of an appropriate project agreement with appropriate unions prohibiting all such activities on or about the Project. Notwithstanding any such occurrences, the Contractor shall not be relieved of its obligation to man the job and properly and timely perform the Work in a diligent manner.

16.7. USE OF OWNER'S NAME/CONFIDENTIALITY. Neither the Contractor nor its Subcontractors or Sub-subcontractors, by virtue of this Contract, shall acquire any right to use, and they shall not use, the name of the Owner, the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any of its related, affiliated or subsidiary companies: in any of their advertising, publicity or promotion; to express or imply any endorsement of their respective Work or services; or in any other manner whatsoever (whether or not similar to the foregoing uses hereinabove specifically prohibited). The Contractor may, during the course of its engagement hereunder, have access to, and acquire knowledge of or from, material, data, strategies, systems or other information relating to the Work, the Project, the Owner, the Owner's Representative, its parent, affiliated, or related companies, which may not be accessible or known to the general public. Any such knowledge acquired by the Contractor shall be kept confidential and shall not be used, published or divulged by the Contractor to any other person, firm or corporation, or in any advertising or promotion regarding the Contractor or its Work or services, or in any other manner or connection whatsoever without first having obtained the written permission of the Owner, which permission the Owner may withhold in its sole discretion. The Contractor shall not be allowed to undertake or allow any photography on or about the Job Site or the Project absent written permission of the Owner, which permission the Owner may withhold in its sole discretion. In the event of a breach by Contractor of its obligations under this Paragraph 16.7., Owner shall be entitled to an injunction restraining Contractor from disclosing or divulging in whole or in part any confidential information. Further, any failure by Contractor to comply with this Paragraph 16.7. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. The Provisions of this Paragraph shall survive the expiration or sooner termination of the Contract.

#### 16.8. GENERAL.

16.8.1. The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in the Contract Documents are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, paragraphs, subparagraphs, clauses and the like. The parties agree that the Contract Documents shall not be construed more strictly against any party regardless of the identity of their drafter.

16.8.2. Unless otherwise specified, article, paragraph and subparagraph references appearing in these General Conditions are to articles, paragraphs and subparagraphs herein.

16.8.3. Wherever this Contract obligates the Contractor hereunder to reimburse the Owner or others for attorneys' fees, such obligation shall not only include attorneys' fees incurred prior to and including litigation in the trial court, but also all attorneys' fees incurred in connection with any and all appellate proceedings, no matter to which court any appeal is taken and by whomever so taken.

16.8.4. Wherever this Contract obligates the Contractor to "indemnify" the Owner, such obligations shall include, but shall not be limited by, the following: (i) the Contractor shall indemnify the Owner and its supervisors, administrators, officers, directors, agents, employees, agents, successors and assigns and Owner's



Representative, and its parent, related, affiliated and subsidiary companies and the officers, directors, agents, employees and assigns of each; (ii) the Contractor shall defend (if requested by the Owner) and hold each indemnitee harmless; (iii) in the event of any such requested defense, the Owner may choose its legal counsel, control the litigation including, without limitation, determining legal strategy, settlement strategy and whether or not to file any appeals; (iv) the Contractor shall not raise as a defense to its obligation to indemnify any comparative or contributing negligence, recklessness or intentional wrongful misconduct of any of those indemnified pursuant to any such provision, it being understood and agreed that no such comparative or contributing negligence, recklessness or intentional wrongful misconduct shall relieve the Contractor from its liability to so indemnify nor entitle the Contractor to any contribution, either directly or indirectly, by those indemnified; (v) no indemnification obligation hereunder shall be limited in any way to any limit on the amount or type of damage, compensation or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under any Worker's Compensation Act, disability benefit acts or other employee benefit acts; and (vi) all such indemnity provisions shall survive the expiration or sooner termination of this Contract.

16.8.5. Unless otherwise specifically provided herein, the Owner may withhold any consents, approvals or waivers required of it pursuant to the Contract in its sole discretion.

16.9. IMMIGRATION REFORM CONTROL ACT. All Contractors, Subcontractors, and Sub-subcontractors must adhere to the Immigration Reform Control Act of 1986 and shall maintain I-9 forms regarding all employees. It is not the Owner's obligation to insure compliance with this law, however, the Owner reserves the right to inspect and copy the Contractor's records in this regard upon request.

16.10. ADJACENT LAND AND LANDOWNERS. To the extent the Work requires the Contractor to enter upon land owned by others than the Owner, or the Contractor is permitted to enter upon such land, then the Contractor shall, prior to entry, satisfy itself as to all conditions present upon such land and shall take all necessary precautions to protect all persons and property from injury or damage as a result of the Contractor's entry upon such land and shall promptly repair any damage to the land and any property located thereon. The Contractor shall defend, indemnify and hold harmless the owner(s) of such land from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by or arising out of the Contractor's entry upon such land. Nothing contained herein shall create any contractual relationship between the Contractor and the owner(s) of such land; however, it is acknowledged that the owner(s) of such land are intended third party beneficiaries of the obligations of the Contractor hereunder.

## **Article 17 EQUAL OPPORTUNITY**

17.1. POLICIES OF EMPLOYMENT. The Contractor shall maintain policies of employment as follows:

17.1.1. Neither the Contractor nor any of its Subcontractors or Sub-subcontractors shall discriminate against any employee or applicant for employment on the basis of race, religion, color, sex or national origin. The Contractor shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

17.1.2. The Contractor and its Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

17.2. MINORITY BUSINESS ENTERPRISE PARTICIPATION. The Contractor shall provide, and shall require its Subcontractors to provide, full and fair utilization of minority business enterprises in the performance of the Work.

17.3. PROCEDURES AND GUIDELINES. The provisions of this Article are in addition to any and all other policies, procedures or guidelines established by the Owner with respect to equal employment opportunities and minority business participation which are set forth elsewhere in the Contract Documents. The Owner may, at any time during the term of the Contract, issue Directives in furtherance of this Article and the obligations of the Contractor and its Subcontractors and Sub-subcontractors hereunder, and the Contractor and its Subcontractors and Sub-subcontractors shall comply with all of the foregoing as they relate to any Work performed under this Contract. No policies, procedures or guidelines established by the Owner pursuant hereto shall give rise to a claim by the Contractor for an increase in the Contract Sum or an extension of the Contract Time, nor shall they relieve the Contractor of its primary responsibilities to provide equal employment opportunities and to insure that

its Subcontractors and Sub-subcontractors do the same. Any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to provide equal employment opportunities as required by these Contract Documents or by law shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PAYMENT BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

HARPER LIMBACH LLC  
1251 Waterfront Place, Suite 201  
Pittsburgh, PA 15222 (hereinafter "Contractor")

**SURETY:**

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

Address: \_\_\_\_\_

\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024

Contract No. C006493

Project: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

Legal Description or Street Address of Project: Epcot Energy Plant, 751 Backstage Lane, Lake Buena Vista, FL 32830

Contract Sum: ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,969,290.00) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024

Amount: ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,969,290.00) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Oblige, to pay for labor, material, services, utilities, equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor promptly makes full payment to all Claimants, as hereinafter defined, for all labor, material, services, utilities and equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.

4. The Surety and the Contractor further agree that this bond shall inure to the benefit of, and may be sued directly upon by, any Claimant furnishing labor, materials, services, utilities or equipment or any other item for which a construction lien could be claimed if Ch. 713, Florida Statutes applied to this Project.
5. "Claimant" shall mean for purposes hereof all persons, firms, partnerships, corporations or other entities that would be entitled to claim a construction lien if Ch. 713, Florida Statutes applied to this Project.
6. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
7. The sum of this Payment Bond is in addition to the sum of the Performance Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
HARPER LIMBACH LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PERFORMANCE BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

HARPER LIMBACH LLC  
1251 Waterfront Place, Suite 201  
Pittsburgh, PA 15222 (hereinafter "Contractor")

**SURETY:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024  
Contract No. C006493  
Project: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

Legal Description or Street Address of Project: Epcot Energy Plant, 751 Backstage Lane, Lake Buena Vista, FL 32830

Contract Sum: ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,969,290.00) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024  
Amount: ONE MILLION, NINE HUNDRED SIXTY-NINE THOUSAND, TWO HUNDRED NINETY AND ZERO ONE-HUNDREDTHS DOLLARS (\$1,969,290.00) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Obligee, for the performance of the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor fully performs the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety further agrees that whenever the Contractor shall be, and is declared by Owner to be, in default under or in breach of the Contract (which shall include without limitation any breach by the Contractor of any of the provisions of the Contract) the Surety shall promptly remedy the default or breach and undertake to perform and complete the Contract in accordance with its terms and conditions. The Surety's obligations include, but are not limited to, (i) the responsibilities of the Contractor for correction of defective work, completion of the Contract and fulfillment of warranty obligations, (ii) additional legal, design professional and delay costs resulting from the Contractor's default or breach or from the Surety's failure to act as required under this paragraph, and (iii) liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of the Contractor or the Surety. The Surety shall fully indemnify and hold

harmless the Owner from all costs, damages, and expenses (including attorneys' fees), which the Owner may incur as a result of the Surety's failure to act as required under this paragraph.

4. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.
5. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
6. The sum of this Performance Bond is in addition to the sum of the Payment Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
HARPER LIMBACH LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CONSENT OF SURETY FOR PARTIAL PAYMENT APPLICATION**

(Date) \_\_\_\_\_

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869

Re: Consent of Surety  
Bond # \_\_\_\_\_  
Contract # C006493  
Payment Req. No.: \_\_\_\_\_

Dear Sir or Madam:

\_\_\_\_\_ (Surety) hereby consents to the payment of the amount of moneys due to \_\_\_\_\_ (Prime Contractor), by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT for which the necessary duly executed affidavits/releases of liens have not been provided.

This Consent of Surety is executed in lieu of the appropriated Affidavit and Release of Lien from \_\_\_\_\_ (Subcontractor/s - Supplier/s list if necessary) which the District's Prime Contractor has not submitted with its Partial Payment Application. The Surety executes this Consent for the amount of \_\_\_\_\_, encompassing Work and/or labor performed, the provision of materials, equipment, and supplies through the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, except for any applicable retainage.

\_\_\_\_\_ (Surety) further acknowledges that payment by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT shall not be construed as a waiver of any of the District's rights or those of any other named Obligee under the Payment and Performance Bonds; nor a determination by the District or those of any other named Obligee as to the merits of any controversy or dispute between the Prime Contractor and a Subcontractor/Supplier.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Attorney-in-Fact

**Note: Documentation must be provided that reflects the Attorney-in-Fact's authority to sign for the Surety.**

**DUAL OBLIGEE RIDER**

To be attached to and form a part of contract payment bond number \_\_\_\_\_ issued by \_\_\_\_\_ (Surety)

On behalf of \_\_\_\_\_ (Contractor)

In the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

and dated \_\_\_\_\_ in favor of CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT.

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. Walt Disney Parks and Resorts U.S. Inc. is hereby added to said bond as additional Obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligee, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligee is limited to the penal sum above stated Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against and other party liable to the payee on the discharged obligation.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor: **Harper Limbach LLC**

By \_\_\_\_\_

**Surety**

By \_\_\_\_\_



**CONTRACTOR'S INTERIM AFFIDAVIT**

From: HARPER LIMBACH LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No.: C006493, dated April 24, 2024, for EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to, or claimed by, all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of liens and waivers of claims through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

Contractor: Harper Limbach LLC

By: \_\_\_\_\_

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

\_\_\_\_\_  
Print Title

**CONTRACTOR'S INTERIM AFFIDAVIT - SCHEDULE A**

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

From: HARPER LIMBACH LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006493, dated April 24, 2024, between CENTRAL FLORIDA TOURISM DISTRICT and HARPER LIMBACH LLC

The following are ALL the amounts due and owing to, or claimed by, all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above-referenced Contract. All amounts represent the total amount due and owing, or claimed, as of the date hereof and any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

<u>Name</u>	<u>Amount Due and Owing</u>	<u>Notes</u>
-------------	---------------------------------	--------------

Please initial:

\_\_\_\_\_

Owner

\_\_\_\_\_

Contractor

**CONTRACTOR'S REQUEST FOR INFORMATION**

RFI NO: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE INFORMATION REQUIRED: \_\_\_\_\_

SUBMITTED BY: \_\_\_\_\_

SCHEDULE EFFECT IF THE RESPONSE IS NOT RECEIVED BY THE ABOVE REFERENCED

DATE: \_\_\_\_\_

CATEGORY \_\_\_\_\_ Information not shown on the Contract Documents  
\_\_\_\_\_ Interpretation of Contract Requirements  
\_\_\_\_\_ Conflict in Contract Requirements  
\_\_\_\_\_ Coordination Problems

Contract Drawing Ref. \_\_\_\_\_  
Shop Drawing Ref \_\_\_\_\_  
Specification Ref \_\_\_\_\_  
Other: \_\_\_\_\_

SUBJECT: \_\_\_\_\_

DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

ENGINEER/ARCHITECT ASSIGNMENT

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

From: \_\_\_\_\_

ENGINEER/ARCHITECT RESPONSE

REPLY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

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

RESPONSE TO CONTRACTOR

To: \_\_\_\_\_

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

Copy To: \_\_\_\_\_

From: \_\_\_\_\_

**DIRECTIVE NO.**

CONTRACT NO: C006493

DATE: \_\_\_\_\_

PROJECT: **EPP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION**

SUB-PROJECT: \_\_\_\_\_

CONTRACTOR: Harper Limbach LLC

ATTACHMENTS:

DESCRIPTION: \_\_\_\_\_

Pursuant to the General Conditions of the Contract for Construction, you are hereby directed to proceed to perform the Work described above as indicated below. All work is to be accomplished in accordance with the Contract Documents. Any time extension associated with this Directive should be identified and a separate price stated to incorporate this change within the Contract completion date. Accurate records of any additional work, which may result in a change to the Contract Sum or Contract Time must be maintained. The implementation of all work now in process must be coordinated with the proposed revised conditions associated with this Directive.

The following is applicable to this Directive as marked:

- \_\_\_\_\_ A. The work described above and in the accompanying attachments will not change the Contract Sum or Contract Time.
- \_\_\_\_\_ B. The Contract Sum shall be increased/decreased by the sum of \$ \_\_\_\_\_ as a result of this Directive and the Contract Time shall be increased/decreased by \_\_\_\_\_ calendar days and shall be reflected in a Change Order to be signed by the parties.
- \_\_\_\_\_ C. The amount of change, if any, to the Contract Sum or Contract Time is undetermined as of the date of the Directive. Any such change amount shall be determined in accordance with the provisions of Article 12 of the General Conditions of the Contract for Construction.
- \_\_\_\_\_ D. Proceed immediately with the changes on a time-and-materials basis. Time tickets shall be submitted daily to the Owner's Representative for verification. A formal Change Order will be issued for the actual costs based upon the signed time tickets and material invoices plus the Contractor's allowable mark-up as specified in the Contract Documents.
- \_\_\_\_\_ E. The parties are unable to agree at this time as to whether the work described above constitutes a change in the scope of the work of the Contractor. Such dispute shall be resolved in accordance with the applicable provisions in the Contract Documents.

Approved:

Recommended for Approval:

\_\_\_\_\_  
Central Florida Tourism Oversight District      Date

\_\_\_\_\_  
Engineer/Architect – (insert company name)      Date

Accepted:

\_\_\_\_\_  
Contractor: Harper Limbach LLC      Date

Copy: Contract File  
Engineer/Architect's Project Manager: \_\_\_\_\_  
Owner's Project Manager: Craig Sandt

PROJECT: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

CONTRACTOR: Harper Limbach LLC  
1251 Waterfront Place, Suite 201  
Pittsburgh, PA 15222

CONTRACT NO. C006493

CHANGE ORDER NO.  
DATE: «Change Order Date»

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CHANGE ORDER

The Owner and the Contractor hereby agree to this Change Order for all labor, services, materials, equipment and other items or things to be furnished, provided or performed, and all other obligations, terms and conditions, as described in Exhibit A hereto, all of which shall become part of the Work.

- |   |                              |
|---|------------------------------|
| 1. Original Contract Sum                                | \$1,969,290.00               |
| 2. Total net change by previous Change Orders           | «Prior Revisions Fee Amount» |
| 3. Contract Sum prior to this Change Order              | «Prior Contract Sum Amount»  |
| 4. Contract Sum will be adjusted with this Change Order | «Fee Amount»                 |
| 5. Adjusted Contract Sum including this Change Order    | «Total Contract Fee Amount»  |
| 6. Original Contract Time                               | «Original Completion Date»   |
| 7. Contract Time prior to this Change Order             | «Prior Completion Date»      |
| 8. Adjustment in Contract Time by this Change Order     | «Extended Days» days         |
| 9. Adjusted Contract Time including this Change Order   | «Current Completion Date»    |

Any funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor to be first applied to the payment of Subcontractors, laborers and materialmen, and other costs of construction, pursuant to law.

The total amount of this Change Order is fair, reasonable and mutually agreeable, and includes all applicable taxes, insurance, bond or corporate guarantee, delivery, supervision, overhead, profit, labor, labor impact, materials, changes, cardinal change, delays, acceleration, inefficiency and cumulative impact, or any claims, lawsuits, actions or causes of action therefor, and the Contractor hereby waives, releases and forever discharges any and all claims, lawsuits, actions or causes of action for such items associated with or related to the Work covered by this Change Order. Without limitation on the foregoing, the parties hereto specifically acknowledge that it is their intent to hereby waive, release and forever discharge any and all cardinal change or cumulative impact claims, whether known or unknown, whether in law or in equity, whether contingent or non-contingent, and whether past, present or future, arising out of or in connection with this Change Order and all previous Change Orders.

This Change Order represents the entire and integrated agreement between the parties, and supersedes all prior negotiations and qualifications, for this change in scope; but this Change Order and the Work contemplated herein is, except as otherwise specifically provided herein, subject to all the terms and conditions of the Contract including, without limitation, those concerning payment.

OWNER  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

CONTRACTOR  
**HARPER LIMBACH LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: S.C. Kopelousos

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

Title: District Administrator

Title: \_\_\_\_\_

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

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

EXHIBIT A

<u>Item</u>	<u>Description</u>	<u>Value</u>
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Sample

Please initial:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

PROJECT: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

CONTRACT NUMBER: C006493

CHANGE ORDER NUMBER: (C.O. No.)

**CLOSE-OUT CHANGE ORDER**

THIS CLOSE-OUT CHANGE ORDER, is made effective as of (Insert Change Order Date), by and between the Owner and the Contractor.

WHEREAS, the parties desire to close-out the above referenced Contract based upon the Contract Documents as, and to the extent, modified below.

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The current status of the Contract is as follows:

Original Contract Sum	<u>\$1,969,290.00</u>
Total net change by previous Change Orders	<u>\$(Insert Amount)</u>
Contract Sum prior to this Change Order	<u>\$(Insert Amount)</u>
Contract Sum will be increased/decreased with this Change Order	<u>\$(Insert Amount)</u>
Final Contract Sum including this Change Order	<u>\$(Insert Amount)</u>

2. The Contractor certifies that all Work covered by the Contract and Change Order No. \_ through \_ has been completed in accordance with the terms of the Contract, including all punch list items.

3. The attached Contract Close-out Documents, all of which are incorporated herein by reference, relate to all Work performed under the Contract and all Change Orders thereto (which are inclusive of all the Work in Contract No. C006493 and, along with the other terms of this Close-out Change Order, constitute material consideration and representations to the Owner to induce the Owner into execution of this Close-out Change Order.

CONTRACT CLOSE-OUT DOCUMENTS

Attachment A	General Release
Attachment B	Contractor's Affidavit
Attachment C	Contractor's Release and Waiver - Insurance
Attachment D	Waiver of Claim/Waiver of Lien/Litigation List
Attachment E	Contractor's Guarantee to Owner
Attachment F	Consent of Surety
Attachment G	Certificate of Substantial Completion

4. RETAINAGE: Within (15) working days after approval by Owner of the Contract Close-out Documents submitted by Contractor hereunder and satisfaction by Owner that Contractor shall have complied with all provisions of the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor.

5. The Contractor represents to the Owner that:

a. There are no outstanding claims, which the Contractor has against the Owner or Separate Contractors, their Subcontractors or Sub-subcontractors, on the Project, and to the best of

Please initial:

\_\_\_\_\_ Owner

\_\_\_\_\_ Contractor

its knowledge, there are no outstanding claims against Contractor, its Subcontractors or Sub-subcontractors, by Separate Contractors or their Subcontractors or Sub-subcontractors on the Project.

- b. Without limitation upon the indemnity provisions contained in the Contract and in addition thereto, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner's Representative, the parent, related, affiliated and subsidiary companies of each, and the officers, directors, agents, employees, successors and assigns of each from and against any and all claims, causes of action, liens, rights to claim a lien, suits, expenses, losses and damages (including, without limitation, any and all expenses, losses and damages, for or arising out of direct costs, indirect costs, expenses, overhead, profit, labor, labor impacts, materials, supplies, equipment, changes, cardinal changes, cumulative impacts, disruptions, hindrances, interferences, delays, acceleration, inefficiencies, lost productivity, taxes, insurance, bonds, deliveries, supervision, or any other costs, expenses, losses or damages of any nature whatsoever), judgments, and rights whatsoever, in law or in equity, known or unknown or which may hereafter accrue (hereinafter referred to collectively as "Claims") directly or indirectly (i) made or asserted by any Subcontractors or Sub-subcontractors arising out of, related to or in connection with the Contract or the Project, or (ii) arising out of or relating to any and all Claims asserted or made by any of such Subcontractors or Sub-subcontractors including, without limitation, any Claims made or asserted against any of the "Releasees" ("Releasees" being as defined in the General Release attached hereto as Attachment A), provided such Claim arises out of or relates to the Contract or the Project.
  - c. If requested by the Owner, the Contractor shall cooperate with the Owner in gathering and providing information to the Owner regarding any claims by or against Separate Contractors.
6. The Contractor hereby certifies and warrants that all charges for labor, materials, supplies, equipment, lands, licenses, and other expenses under the Contract incurred up to and including the date hereof, for which the Owner might be sued or for which a lien might be filed, have been fully satisfied, paid in full and released, except for those names listed on the attached Contractor's Affidavit and that those listed on the Contractor's Affidavit shall be fully satisfied, paid in full and released prior to final payment as provided herein.
7. All other obligations of the Contractor under the Contract Documents remain unchanged and shall survive the disbursement of final payment and the closing hereon.
- 
- 

OWNER:  
  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
  
Signature: \_\_\_\_\_  
Print Name: S.C. Kopelousos  
Title: District Administrator  
Date: \_\_\_\_\_

CONTRACTOR:  
  
**HARPER LIMBACH LLC**  
  
Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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GENERAL RELEASE

Attachment A

CONTRACT NO. C006493

FOR AND IN CONSIDERATION OF THE SUM OF \$ \_\_\_\_\_ (Insert Amount of Final Payment, including all retainage withheld), as FINAL PAYMENT, the receipt and adequacy of which is hereby acknowledged, HARPER LIMBACH LLC, the undersigned, hereby fully and forever releases, acquits and discharges CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, the Owner's Representative, the Architect/Engineer and their parent, related and affiliated companies, their agents, employees, consultants, architects, engineers, officers, directors, successors and assigns, all of whom are hereinafter referred to collectively as "Releasees", from all manner of action and causes of action, suits, claims, judgments, damages, liens, claims of lien and rights whatsoever, in law or in equity, now existing or which may hereafter accrue in favor of the undersigned including, without limitation, any and all liability arising out of or in connection with that certain construction Contract dated April 24, 2024, Contract No. C006493, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and HARPER LIMBACH LLC and all Work, labor and materials furnished, performed or provided pursuant thereto or otherwise for the project.

The undersigned covenants that except for actions and suits based upon breaches of the terms of this Release, it shall not commence or prosecute any action or suit in law or in equity, against the Releasees, either collectively or individually, on account of any action or cause of action which now exists or which may hereafter accrue in its favor.

In addition to any other liability which shall accrue upon the breach of the covenants contained herein, undersigned shall be liable to pay all reasonable attorneys' fees and costs incurred by the Releasees in the defense of any such action or suit.

Attested on this date \_\_\_\_\_

\_\_\_\_\_  
Harper Limbach LLC  
(Contractor)

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Print Title

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S AFFIDAVIT

Attachment B  
Page 1

From: HARPER LIMBACH LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No. C006493, dated April 24, 2024, for the EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION project.
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of lien through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

\_\_\_\_\_  
Harper Limbach LLC  
(Contractor)

By: \_\_\_\_\_

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

\_\_\_\_\_  
Print Title

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S AFFIDAVIT - SCHEDULE A

Attachment B  
Page 2

Date: (Insert Date)

From: Harper Limbach LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006493, dated April 24, 2024, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and HARPER LIMBACH LLC

The following are ALL the amounts due and owing to all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above referenced Contract. All amounts represent the total amount due and owing as of the date hereof AND any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

NAME

AMOUNT DUE AND OWING

OTHER

Sample

Please initial: \_\_\_\_\_  
Contractor

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S RELEASE AND WAIVER - INSURANCE

Attachment C

Project: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

Contract No.: C006493

Contractor: Harper Limbach LLC

Date of Contract: \_\_\_\_\_

In consideration of the final payment under the Contract shown above between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, as Owner, and the undersigned, as Contractor, for Work on the above-captioned Project, the undersigned hereby represents that all claims which the undersigned may have against the Owner-furnished insurance (as and to the extent provided pursuant to the Contract Documents) for the Project have been reported in writing to the Owner and the Owner's insurance representative. The undersigned hereby waives and releases CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, its insurance carriers pursuant to any such Owner-furnished insurance, the Owner's Representative, their respective parent, subsidiary, related and affiliated companies and the officers, directors, agents and employees of each from any and all claims for property damage which have not been timely reported in writing to the Owner's insurance representative. CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and its insurance carriers reserve the right to deny any claim which has not been timely filed.

Company: \_\_\_\_\_

(Harper Limbach LLC)

Signature: \_\_\_\_\_  
(Signature of Corporate Officer)

Title: \_\_\_\_\_

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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Attachment D

WAIVER OF CLAIM/WAIVER OF LIEN/LITIGATION LIST

CONTRACTOR: Harper Limbach LLC

CONTRACT NO. C006493

All of the following have filed one or more of the following Notices:

(NONP) NOTICE OF NON-PAYMENT  
(NOC) NOTICE OF CLAIM  
(COL) CLAIM OF LIEN

Pursuant to the General Conditions, provide such releases, waivers, or satisfactions of Claims and Liens (or other documentation) in such form as the Owner may require for the following:

TYPE                      COMPANY FILING NOTICE                      UNDER AN ORDER GIVEN BY:

Please initial: \_\_\_\_\_  
Contractor

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S GUARANTEE TO OWNER

Attachment E

Date: (Insert Date)

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Contract No: C006493

Project: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

In further consideration of the above-referenced Contract and pursuant to the provisions thereof, the undersigned hereby guarantees to the Owner, its successors and assigns, that all Work, as defined in the Contract Documents, whether performed or caused to be performed by the undersigned, shall be free from any defects in workmanship, materials and/or equipment and shall be in strict compliance with the Contract Documents. If, within a period of one (1) year from the date of acceptance of the Work by the Owner (or such longer period of time as may be prescribed by law or otherwise specified in the Contract Documents), the Work or any portion thereof shall prove to be defective in workmanship, material and/or equipment, or in any way not in strict compliance with the Contract Documents, then the undersigned shall repair and/or, at the option of the Owner, replace at its own cost and expense all such defective or non-complying Work, together with any adjacent structures or facilities which have been displaced or damaged by so doing or which have been damaged as a result of any defect in workmanship, material and/or equipment or the failure of the Work to comply with the Contract Documents. Such repairs and/or replacements shall be performed in accordance with all terms, conditions, covenants and provisions of the Contract Documents pursuant to which the Work was performed in the first instance, except that such repairs and/or replacements shall be without cost to the Owner, its successors or assigns.

Should the undersigned fail to perform its said repair and/or replacement obligations promptly after being given notice of its breach of this Guarantee, then the Owner may perform such corrective Work or cause it to be performed by others and charge the undersigned with the cost thereof, at Owner's option; provided, however, that if, in the sole judgment of the Owner, an emergency exists as a result of any such defective or non-complying Work which, in the Owner's opinion, requires more immediate corrective action than the undersigned is able to provide, then the Owner may, without notice to the undersigned, perform such corrective Work or cause it to be performed by others and charge the undersigned with the cost thereof.

\_\_\_\_\_  
Harper Limbach LLC

(Contractor)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Local Representative to be contacted for service:

Contractor: (Harper Limbach LLC)

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

Address: 1251 Waterfront Place, Suite 201  
Pittsburgh, PA 15222

Telephone No.: \_\_\_\_\_

CONSENT OF SURETY

Attachment F

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

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

Attention: Contracting Officer

Dear Ms. Kimball:

We are the surety for the "Contractor" under Performance and Payment Bonds issued in connection with Contract No. C006493, dated April 24, 2024, between the Contractor and the Owner pursuant to which Contract the Contractor is performing certain Work in connection with the construction of the EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION project. We understand that the Contractor desires to be paid, subject to our consent, the retainage held by the Owner under the aforesaid Contract and any Change Orders. Accordingly, please be advised as follows:

1. We hereby consent to the payment of the retainage as aforesaid.
2. Said payment shall in no way affect the aforesaid Payment and Performance Bonds or our obligations thereunder, all of which shall remain in full force and effect.

Very truly yours,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

THIS SPECIFIC FORMAT MUST BE SUBMITTED ON THE LETTERHEAD OF THE SURETY

CONTRACTOR: Harper Limbach LLC  
CONTRACT NUMBER: C006493  
CHANGE ORDER NO. (Insert C.O. Number)

---

Attachment G

CERTIFICATE OF SUBSTANTIAL COMPLETION

CONTRACT NO. C006493  
PROJECT: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION  
CONTRACTOR: Harper Limbach LLC  
DATE: \_\_\_\_\_

Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, this is to certify that the Work under the above referenced Contract has been substantially completed on \_\_\_\_\_ (Insert date of substantial completion) (the "date of substantial completion") and a Punch List shall be issued within twenty (20) days.

Commencing on the day following the date of substantial completion, the Owner shall have responsibility for maintenance of the Project, utilities serving the Project and casualty insurance covering the Project; provided, however, that nothing herein contained shall relieve Contractor of its responsibilities under Article 11 of the General Conditions of the Contract for Construction during the period following the date of substantial completion of the Work and final completion (or thereafter with respect to Section 11.8 of said General Conditions).

As provided in Section 9.4.1 of the General Conditions of the Contract for Construction, this Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs and/or fees for any outstanding Revision Orders and itemized projections for any incomplete Work), and the Contractor shall conclusively be deemed to have waived the right to payment of any item or fee or cost not billed within thirty (30) days of Contractor's receipt hereof. The issuance of this Certificate of Substantial Completion shall not constitute a waiver of any right of the Owner hereunder including, without limitation, the right to those retainages permitted by the Contract Documents.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



PUNCH LIST FOR THE  
PROJECT AREA KNOWN AS  
{Project Name}

CONTRACT NO.: C006493

PROJECT: EEP BOILER #1 REPLACEMENT & LTHW VALVE AUTOMATION

CONTRACTOR: Harper Limbach LLC

DATE: \_\_\_\_\_

1. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Owner has determined that the following items related to the Work require completion and/or correction:

SEE ATTACHED LIST ( \_\_pages), dated \_\_\_\_\_, 20\_\_

2. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Contractor shall submit to the Owner all items required by Section 9.4.2 of the General Conditions of the Contract for Construction, including, without limitation, the following items. All such items shall be delivered to the Owner and the Owner must approve all such items before the Contractor is entitled to receive payment from the Owner.

(i) Application for Payment;

(ii) As-Built Drawings; and

(iii) Retainage Reduction Change Order including all Exhibits attached thereto and all Waivers of Claim. **NOTE: THIS PROVISION WILL BE INCLUDED ONLY WHEN THE OWNER WILL RELEASE RETAINAGE.**

The items referenced in paragraph 1, above, shall be accomplished on or before \_\_\_\_\_ (insert completion date). In the event Contractor does not complete and/or correct such items set forth above within the time set forth above, then, in accordance with the provisions of Section 14.3 of the General Conditions of the Contract for Construction, the Owner shall have the right to complete and/or correct such items or to cause the same to be completed and/or corrected by others, and Owner shall have the right to offset such costs against any amounts then or thereafter due the Contractor. If the amounts then or thereafter are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

\_\_\_\_\_  
Owner's Representative

## Specification Section 00850 List of Drawings and Specifications

Contract: C006493  
Project: EEP Boiler #1 Replacement & LTHW Valve Automation

### DRAWINGS & SPECIFICATIONS

**DRAWINGS:**

The following list of drawings is incorporated into the Scope of Services.

SHEET NO.	SHEET TITLE	ISSUE DATE
<b>EEP BOILER #1 REPLACEMENT (ATTACHMENT 1)</b>		
<b>COVER MAP &amp; GENERAL NOTES</b>		
ID-100	Cover & Project Location	10/06/2023
ID-101	List of Drawings and Revision Status	10/06/2023
ID-102	Scope of Work and General Requirements	10/06/2023
ID-103	Mechanical Symbols and Abbreviations	10/06/2023
ID-104	Schedules	10/06/2023
ID-105	Schedules	10/06/2023
ID-110	Mechanical P & ID – Notes & Points	10/06/2023
ID-111	Mechanical P & ID – Diagram	10/06/2023
ID-112	Mechanical P & ID – Control Valve Sequence	10/06/2023
ID-113	Controls Enclosure	10/06/2023
ID-114	Controls Wiring	10/06/2023
ID-115	Controls Wiring	10/06/2023
ID-116	Controls Wiring	10/06/2023
ID-117	Controls Details	10/06/2023
<b>MECHANICAL</b>		
M-101	Floor Plan – Mechanical	10/06/2023
M-300	Mechanical Sections	10/06/2023
M-401	Enlarged Floor Plan - Mechanical	10/06/2023
M-501	Mechanical Details	10/06/2023
M-502	Mechanical Details	10/06/2023
M-503	Mechanical Details	10/06/2023
MD-401	Enlarged Demo Floor Plan - Mechanical	10/06/2023
<b>PLUMBING</b>		
P-100	Natural Gas Scope of Work and Notes	10/06/2023
P-101	Site Plan	10/06/2023
P-102	Floor Plan – Plumbing	10/06/2023
P-103	Plumbing Symbols and Abbreviations	10/06/2023
P-701	Plumbing Risers	10/06/2023
PD-101	Floor Plan – Plumbing	10/06/2023

## Specification Section 00850 List of Drawings and Specifications

Contract: C006493  
Project: EEP Boiler #1 Replacement & LTHW Valve Automation

ELECTRICAL		
E-100	Electrical Symbols and Abbreviations	10/06/2023
E-101	Floor Plan – Electrical	10/06/2023
E-401	Electrical Panel Schedules	10/06/2023
E-402	Electrical Panel Schedules	10/06/2023
E-501	Electrical One-Line Diagram	10/06/2023
E-601	Electrical Details	10/06/2023
ED-101	Demo Floor Plan – Electrical	10/06/2023
ED-501	Electrical Demo One-Line Diagram	10/06/2023
STRUCTURAL		
S-001	General Notes	10/06/2023
S-140	Typical Concrete Details	10/06/2023
S-150	Typical Steel Details	10/06/2023
S-201	Structural Roof Plan	10/06/2023
ARCHITECTURAL		
A-101	Enlarged Plans and Details	10/06/2023
LTHW VALVE AUTOMATION (ATTACHMENT 2)		
COVER MAP & GENERAL NOTES		
ID-100	Cover Sheet	06/14/2023
ID-101	List of Drawings and Revision Status	06/14/2023
ID-102	Scope of Work and General Requirements	06/14/2023
ID-103	Schedules and Specifications	06/14/2023
ID-104	Schedules and Specifications	06/14/2023
ID-105	Symbology and P&ID	06/14/2023
ID-106	Symbology and P&ID	06/14/2023
ID-107	Controls	06/14/2023
ID-108	Controls	06/14/2023
ID-109	Controls	06/14/2023
ID-110	Controls	06/14/2023
MECHANICAL		
M-200	Floor Plan – Boiler Room	06/14/2023
M-400	Mechanical Details	06/14/2023
ELECTRICAL		
E-100	Abbreviations, Symbols, Legend, and General Notes	06/14/2023
E-101	Electrical Specifications, Legend and Notes	06/14/2023
E-103	Equipment Location Plan – First Floor	06/14/2023
E-221	Electrical Plan	06/14/2023
E-401	Panel Schedule	06/14/2023
E-501	Partial One-Line Diagram	06/14/2023
E-601	Valve Wiring Detail	06/14/2023

## Specification Section 00850

### List of Drawings and Specifications

Contract: C006493  
Project: EEP Boiler #1 Replacement & LTHW Valve Automation

**SPECIFICATIONS:**

The following list of specifications is incorporated into the Scope of Services.

SECTION NO.	SECTION TITLE	ISSUE DATE
<b>EEP BOILER #1 REPLACEMENT (ATTACHMENT 3)</b>		
DIVISION 00 – CONTRACT & BIDDING DOCUMENTS		
000850	List of Drawings & Specifications	10/2023
DIVISION 01 – GENERAL REQUIREMENTS		
01019	Owner Purchased Products	08/2015
001110	Summary of Work	10/2023
01111	General Instructions to Contractor	08/2015
01230	Alternates	08/2015
01295	Schedule of Values	08/2015
01310	Project Coordination	08/2015
01314	Project Meetings	08/2015
01325	Scheduling of the Work	08/2015
01330	Submittal Procedures	08/2015
01350	Permitting Procedures	08/2015
01410	Regulatory Requirements	08/2015
01420	References	08/2015
01455	Testing & Inspecting Services	08/2015
01500	Temporary Facilities and Controls	08/2015
01575	Erosion and Sedimentation Control	08/2015
01630	Substitutions and Product Options	08/2015
01640	Owner-Furnished Products	08/2015
01660	Product Storage & Handling Procedures	08/2015
01710	Soils Investigation	08/2015
01721	Surveying – Third Party	06/13/2022
01722	Field Engineering	08/2015
01730	Execution	08/2015
01732	Cutting and Patching	08/2015
01740	Cleaning	08/2015
01750	Starting and Adjusting	08/2015
01770	Closeout Procedures	08/2015
01788	Project Documents	10/25/2019
DIVISION 22 – PLUMBING		
220500	Common Work Results for Plumbing - Facility	10/2023
220510	Plumbing Demolition and Alterations – Facility	10/2023
220529	Hangers and Supports for Plumbing Piping and Equipment - Facility	10/2023
227000	Fuel Gas Piping - Facility	10/2023

## Specification Section 00850 List of Drawings and Specifications

Contract: C006493  
Project: EEP Boiler #1 Replacement & LTHW Valve Automation

DIVISION 23 – MECHANICAL		
230500	Common Work Results for HVAC	10/2023
230510	HVAC Demolition and Alterations	10/2023
230523	General-Duty Valves for HVAC Piping	10/2023
230529	Hangers and Supports for HVAC Ductwork, Piping and Equipment	10/2023
230553	Identification for HVAC Piping and Equipment	10/2023
230593	Testing, Adjusting, and Balancing for HVAC	10/2023
230700	HVAC Insulation	10/2023
230800	Commissioning of HVAC	02/2024
230900	Instrumentation and Control for HVAC	10/2023
230910	Control System Software and Programming	10/2023
230994	Control Sequence - Waterside	10/2023
232113	Hydronic Piping	10/2023
232117	Hydronic Piping Specialties	10/2023
233005	BIM Coordination Drawings	10/2023
235123	Gas Vents	10/2023
235216	Condensing Boilers	10/2023
DIVISION 26 – ELECTRICAL		
260500	Common Work Results for Electrical	10/2023
260519	Low-Voltage Electrical Power Conductors and Cables	10/2023
260526	Grounding and Bonding for Electrical Systems	10/2023
260529	Hangers and Supports for Electrical Systems	10/2023
260533	Raceway and Boxes for Electrical Systems	10/2023
260544	Sleeves and Sleeve Seals for Electrical Raceways and Cabling	10/2023
260553	Identification for Electrical Systems	10/2023
<del>260573</del>	<del>System Studies</del>	<del>10/2023</del>
262813	Fuses	10/2023
262816	Enclosed Switches and Circuit Breakers	10/2023
262923	Variable-Frequency Motor Controllers	10/2023
LTHW VALVE AUTOMATION (ATTACHMENT 4)		
DIVISION 00 – CONTRACT & BIDDING DOCUMENTS		
00850	List of Drawings & Specifications	06/14/2023
DIVISION 01 – GENERAL REQUIREMENTS		
01019	Owner Purchased Products	08/2015
01110	Summary of Work	06/14/2023
01111	General Instructions to Contractor	08/2015
01230	Alternates	08/2015
01295	Schedule of Values	08/2015
01310	Project Coordination	08/2015
01314	Project Meetings	08/2015
01325	Scheduling of the Work	08/2015

## Specification Section 00850

### List of Drawings and Specifications

Contract: C006493  
Project: EEP Boiler #1 Replacement & LTHW Valve Automation

DIVISION 01 – GENERAL REQUIREMENTS (Continued)		
01330	Submittal Procedures	08/2015
01350	Permitting Procedures	08/2015
01410	Regulatory Requirements	08/2015
01420	References	08/2015
01455	Testing & Inspecting Services	08/2015
01500	Temporary Facilities and Controls	08/2015
01575	Erosion and Sedimentation Control	08/2015
01630	Substitutions and Product Options	08/2015
01640	Owner-Furnished Products	08/2015
01660	Product Storage & Handling Procedures	08/2015
01710	Soils Investigation	08/2015
01721	Surveying – Third Party	06/13/2022
01722	Field Engineering	08/2015
01730	Execution	08/2015
01732	Cutting and Patching	08/2015
01740	Cleaning	08/2015
01750	Starting and Adjusting	08/2015
01770	Closeout Procedures	08/2015
01788	Project Documents	10/25/2019
DIVISION 23 – MECHANICAL		
230800	Commissioning of HVAC	02/2024
230900	Instrumentation and Control for HVAC	10/2023
230910	Control System Software and Programming	10/2023

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 8.7**

**Board Meeting Date: 04/24/2024**

Subject: Award of Bid # C006503 Biological Nutrient Removal Train #3 Sediment Removal

Presented By: Chris Ferraro, Director, Reedy Creek Energy Services

Department: Utility Services

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.7 award of contract for sediment removal from Biological Nutrient Removal Train #3 with Handex Consulting and Remediation LLC in the amount of \$909,792

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** Bid released to the Public: December 13, 2023

**BACKGROUND:**

The Utilities Department operates the District’s Water Resource Recovery Facility which treats over four (4) billion gallons of wastewater each year. The facility includes a Biological Nutrient Removal treatment process that serves to reduce phosphorous and nitrogen in the waste stream to meet requirements outlined in the operating permit issued by the Florida Department of Environmental Protection.

The tank used for the Biological Nutrient Removal treatment process is divided into four (4) distinct flow paths referred to as treatment trains. Two (2) of the trains are required to be in service to satisfy normal operating conditions and demands. Train #4 was recently returned to service following a full rehabilitation. Train #3 was removed from service at that time and now requires cleaning in preparation for a full condition assessment and future rehabilitation project.

The cleaning scope includes the construction of four (4) sets of scaffolding stairs to maintain safe access to the basins and facilitate removal of built-up sediment from the basin floor.

**FINDINGS AND CONCLUSIONS:**

On December 13, 2023, Invitation to Bid # C006503 was released to vendors for cleaning and removal of all accumulated sediment from Train #3 of the Biological Nutrient Removal tank. One (1) bid was received as follows:

Vendor’s Legal Name	Location	Bid Amount
Handex Consulting and Remediation, LLC	Winter Park, FL	\$909,792.00

Handex Consulting and Remediation, LLC was the responsive and responsible bidder.

The Utilities Department is requesting approval of Contract# C006503 with Handex Consulting and Remediation, LLC cleaning and removal of all accumulated sediment from Train #3 of the Biological Nutrient Removal tank at the District’s Water Resource Recovery Facility. Staff recommends approving the contract for the period of **May 01, 2024** through **December 31, 2024**.

**FISCAL IMPACT:**

This contract will be funded by the FY25 Utility Expense Planned Work budget as follows:

Estimated Fiscal Impact	
Accounting Line	FY24
Planned Work (824E003)	\$909,792.00

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Handex Consulting and Remediation, LLC Contract



BNR TRAIN #3 SEDIMENT REMOVAL SERVICES AGREEMENT

THIS AGREEMENT, is made effective as of \_\_\_\_\_ by and between **Central Florida Tourism Oversight District** (herein referred to as the "Owner," "District" or "CFTOD"), whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, and **Handex Consulting & Remediation LLC**, (herein referred to as the "Contractor"), whose mailing address is 2211 Lee Road, Suite 110, Winter Park, Florida 32789.

W I T N E S S E T H

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid ("ITB") No. C006503 on December 12, 2023 for Biological Nutrient Removal-Train 3 Cleaning;

WHEREAS, one (1) bidder responded, and Handex Consulting & Remediation LLC was the lowest responsive and responsible bidder. The Contractor was subsequently selected as the intended awardee for these services; and

WHEREAS, Owner desires to employ the services of Contractor for a period beginning **May 1, 2024** and ending **December 31, 2024**, or as otherwise modified as set forth in this Agreement, to perform the hereinafter described Services, and Contractor desires to be so employed.

NOW THEREFORE, in consideration of the premises and the mutual covenants and obligations contained in this Agreement, the parties agree as follows:

1. DEFINITIONS.

a. Agreement. The Agreement represents the entire and integrated Agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Agreement may be amended or modified only as set forth below in Article 6.

b. Services. The term "Services" as used in this Agreement shall be construed to include all Services set forth in Exhibit A, all obligations of Contractor under this Agreement and where any Changed Service Authorizations have been issued pursuant to Article 6 of this Agreement, the changed Services set forth therein.

2. SCOPE OF SERVICES.

A description of the nature, scope and schedule of Services to be performed by Contractor under this Agreement in accordance with the Exhibits outlined in the Article 22 - Contract Documents.

3. BASIS FOR COMPENSATION AND PAYMENTS.

Lump Sum.

a. Provided that the Contractor shall strictly and completely perform all of its obligations under the Agreement, and subject only to additions and deductions by Changed Service Authorization as set forth in Article 6, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of **NINE HUNDRED NINE THOUSAND, SEVEN HUNDRED NINETY-TWO AND ZERO ONE-HUNDREDTHS DOLLARS (\$909,792.00)** (herein referred to as the "Lump Sum Amount") to cover the Contractor's profit, general overhead and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), and any increases in said costs and expenses, incurred by the Contractor in connection with the performance of the Services, all of which costs and expenses shall be borne solely by the Contractor.

b. The Contractor shall on the twenty-fifth (25th) day of each calendar month deliver to the Owner an Application for Payment in such form and with such detail as the Owner requires.

c. Based on the Contractor's Application for Payment, and the Owner's acceptance and approval thereof, the Owner shall make equal monthly payments to the Contractor on account of the Lump Sum Amount. Such monthly payments shall be made on or before the fifteenth (15th) day of each calendar month or the

twentieth (20th) day after receipt by the Owner of the Contractor's Application for Payment and of such documentation, to verify the amount owed as the Owner may require, whichever is later; provided, however, that the Owner shall have no obligation to make payment as aforesaid if it has withheld approval of any Application for Payment.

d. Contractor shall be compensated for any Services beyond those set forth in Article 2, in such an amount as the parties shall mutually agree in advance, such amount to be added to the Lump Sum Amount and invoiced and paid in accordance with the terms of Paragraphs b and c above; provided, however, that Contractor shall not be entitled to compensation for such Services unless Contractor has obtained prior written authorization of Owner to perform the same in accordance with the provisions of Article 6 of this Agreement.

e. Owner retains the right to reduce any portion of Contractor's Scope of Services as set forth in Article 2, or in any Changed Service Authorization, in accordance with the provisions of Article 6 of this Agreement. In such event Owner shall be entitled to a proportionate reduction to the Lump Sum Amount.

f. All invoices should reference the contract number and be submitted to the following address:

**Central Florida Tourism Oversight District**  
**C/O: Reedy Creek Energy Services – Utilities Division**  
**Attention: Accounts Payable**  
**P.O. Box 690519**  
**Orlando, Florida 32869**  
**All invoices shall be sent to [wdw.rces.billing@disney.com](mailto:wdw.rces.billing@disney.com)**

#### 4. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

Contractor hereby represents to Owner that: (a) it has the experience and skill to perform the Services as set forth in this Agreement; (b) that it shall comply with all applicable federal, state, and local laws, rules, codes, and orders of any public, quasi-public or other government authority; (c) it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed under this Agreement; (d) it has by careful examination satisfied itself as to: (i) the nature, location and character of the general area in which the Services are to be performed including, without limitation, the surface conditions of the land and all structures and obstructions thereon, both natural and manmade, the surface water conditions of the general area and, to the extent pertinent, all other conditions; and (ii) all other matters or things which could in any manner affect the performance of the Services.

#### 5. INSURANCE; INDEMNIFICATION.

a. The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:

- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with minimum combined single limits for bodily injury and property damage of \$1,000,000 per occurrence;
- ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with minimum combined single limits of \$1,000,000 per occurrence;
- iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with minimum limits of \$1,000,000 per occurrence;
- iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i, ii, and iii. above in an amount of at least \$1,000,000 per occurrence;

- v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be at least \$4 million.
- viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.
- ix. Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

b. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.

c. **CANCELLATION.** All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.

d. **ADDITIONAL INSUREDS.** Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.

e. **WAIVERS.** The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.

f. **CLAIMS.** The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.

g. **INDEMNIFICATION.** The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by the negligence, recklessness or intentional wrongful misconduct (which includes, without limitation, any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to perform and complete the Work in strict compliance with the Contract Documents, unless such failure has been specifically waived by the Owner in writing upon final acceptance of the Work) of the Contractor or any persons employed or utilized by the

Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

6. MODIFICATIONS, ADDITIONS, OR DELETIONS TO THE SERVICES.

a. A Changed Service Authorization shall be a writing by the Owner that shall consist of additions, deletions, or other modifications to the Agreement agreed to by the Contractor.

b. The Owner may, from time to time, without affecting the validity of the Agreement, or any term or condition thereof, issue Changed Service Authorizations which may identify additional or revised Scope of Services, or other written instructions and orders, which shall be governed by the provisions of the Agreement. The Contractor shall comply with all such orders and instructions issued by the Owner. Upon receipt of any such Changed Service Authorization, the Contractor shall promptly proceed with the Changed Service Authorization, and the resultant decrease or increase in the amount to be paid the Contractor, if any, shall be governed by the provisions of Article 3 in this Agreement.

7. PROTECTION OF PERSONS AND PROPERTY.

a. The Contractor shall be responsible for initiating, maintaining and supervising safety precautions and programs in connection with the Services, and shall provide all protection to prevent injury to all persons involved in any way in the Services and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby.

b. All Services, whether performed by the Contractor, its Subcontractors, or anyone directly or indirectly employed by any of them, and all applicable equipment, machinery, materials, tools and like items used in the Services, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

c. The Contractor shall at all times keep the general area in which the Services are to be performed clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by performance of the Services, and shall continuously throughout performance of the Services remove and dispose of all such materials. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the general area in which the Services are to be performed clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor.

8. BOOKS AND RECORDS.

Contractor shall maintain comprehensive books and records relating to any Services performed under this Agreement, which shall be retained by Contractor for a period of at least four (4) years from and after the completion of such Services. Owner, or its authorized representatives, shall have the right to audit such books and records at all reasonable times upon prior notice to Contractor. The provisions of this paragraph shall survive the expiration or early termination of this Agreement.

9. PROMOTION/CONFIDENTIALITY.

The Contractor, by virtue of this Agreement, shall acquire no right to use, and shall not use, the name of the Owner or the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any related, affiliated or subsidiary companies: in any advertising, publicity or promotion; to express or imply any endorsement of the Contractor's Work or services; or in any other manner whatsoever (whether or not similar to the uses hereinabove specifically prohibited). Contractor may, during the course of its engagement hereunder, have access to and acquire knowledge regarding plans, concepts,

designs, materials, data, systems and other information of or with respect to Owner or Owner's Representative, or any subsidiaries or affiliated companies thereof, which may not be accessible or known to the general public ("Confidential Information"). Confidential Information that is specific as to techniques, equipment, processes, products, concepts or designs, etc. shall not be deemed to be within the knowledge of the general public merely because it is embraced by general disclosures in the public domain. Any knowledge acquired by Contractor from such Confidential Information or otherwise through its engagement hereunder shall not be used, published or divulged by Contractor to any other person, firm or corporation, or used in any advertising or promotion regarding Contractor or its services, or in any other manner or connection whatsoever without first having obtained the written permission of Owner, which permission Owner may withhold in its sole discretion. Contractor specifically agrees that the foregoing confidentiality obligation applies to, but is not limited to, any information disclosed to Contractor in any document provided to Contractor pursuant to or in connection with this Agreement, including but not limited to, a Request for Proposal, Request for Estimate, Request for Quotation or Invitation to Bid, except to the extent Contractor must disclose such information to compile and prepare its proposed price for work or services performed hereunder. The provisions of this Article shall survive the expiration or earlier termination of this Agreement.

10. ASSIGNMENT.

This Agreement is for the personal services of Contractor and may not be assigned by Contractor in any fashion, whether by operation of law, or by conveyance of any type including, without limitation, transfer of stock in Contractor, without the prior written consent of Owner, which consent Owner may withhold in its sole discretion. Owner retains the right to assign all or any portion of this Agreement at any time. Upon such assignment, and provided the Assignee shall, in writing, assume Owner's obligations under this Agreement, Owner shall be automatically released and discharged from any and all of its obligations under this Agreement, and Contractor shall thenceforth look solely to the Assignee for performance of Owner's obligations under this Agreement.

11. SUSPENSION OR TERMINATION.

Anything in this Agreement to the contrary notwithstanding, Owner shall, in its sole discretion and with or without cause, have the right to suspend or terminate this Agreement upon seven (7) days prior written notice to Contractor. In the event of termination, Owner's sole obligation and liability to Contractor, if any, shall be to pay to Contractor that portion of the amount earned by it, plus any earned amounts for extra Services performed pursuant to Articles 3 and 6, through the date of termination.

12. SUBCONTRACTORS.

If the Contractor desires to employ Subcontractors in connection with the performance of its Services under this Agreement:

a. Nothing contained in the Agreement shall create any contractual relationship between the Owner and any Subcontractor. However, it is acknowledged that the Owner is an intended third-party beneficiary of the obligations of the Subcontractors related to the Services.

b. Contractor shall coordinate the services of any Subcontractors, and remain fully responsible under the terms of this Agreement, Contractor shall be and remain responsible for the quality, timeliness and the coordination of all Services furnished by the Contractor or its Subcontractors.

c. All subcontracts shall be in writing. Each subcontract shall contain a reference to this Agreement and shall incorporate the terms and conditions of this Agreement to the full extent applicable to the portion of the Services covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by such terms and conditions to the full extent applicable to its portion of the Services.

13. NOTICE.

a. Notices required or permitted to be given under this Agreement shall be in writing, may be delivered personally or by mail, telex, facsimile, cable, or courier service, and shall be deemed given when received by the addressee. Notices shall be addressed as follows:

If to Owner: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
10450 Turkey Lake Road, Box #690519  
Orlando, FL 32869  
Attention: Contracting Officer

If to Contractor: HANDEX CONSULTING & REMEDIATION LLC  
2211 Lee Road, Suite 110  
Winter Park, FL 32789  
Attention: Andy Shoulders

or to such other address as either party may direct by notice given to the other as hereinabove provided.

b. Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered under this Agreement shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice.

14. OWNERSHIP OF WORK PRODUCT.

a. All drawings, data, ideas, concepts, molds, models, tooling, improvements, inventions, or other tangible or intangible work product in whole or in part conceived, produced, commissioned or acquired by Contractor hereunder (“Work Product”) shall be and remain the sole and exclusive property of Owner when produced, whether or not fixed in a tangible medium of expression, except that Contractor may retain copies of such Work Product for its permanent reference, but shall not use such copies in any manner whatsoever without the express written consent of Owner and shall keep same confidential in accordance with the requirements of Article 9 entitled Promotion/Confidentiality. In the event of early termination of this Contract, in whole or in part, Contractor shall deliver to Owner all Work Product whether complete or not.

b. Without limiting the forgoing, Contractor agrees that any and all Work Product shall be deemed to be "works made for hire" for Owner as the author, creator, or inventor upon creation; provided, however, that in the event and to the extent that such Work Product is determined not to constitute "works made for hire" as a matter of law, Contractor hereby irrevocably assigns and transfers such property, and all right, title and interest therein, whether now known or hereafter existing including, but not limited to, patents and copyrights, to Owner and its successors and assigns. Contractor grants to Owner all rights including, without limitation, reproduction, manufacturing and moral rights, throughout the universe in perpetuity and in all languages and in any and all media whether now or hereafter known, with respect to such Work Product. Contractor acknowledges that Owner is the motivating force and factor, and for purposes of copyright or patent, has the right to such copyrightable or patentable Work Product produced by Contractor under this Contract. Contractor agrees to execute any and all documents and do such other acts as requested by Owner to further evidence any of the transfers, assignments and exploitation rights provided for herein.

15. LEGAL PROCEEDINGS.

a. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

b. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, the Contract Documents or the Work to be performed hereunder (a “Proceeding”), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as

provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

c. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

16. MISCELLANEOUS PROVISIONS.

a. Any failure by Owner to require strict compliance with any provision of this Agreement shall not be construed as a waiver of such provision, and Owner may subsequently require strict compliance at any time, notwithstanding any prior failure to do so.

b. The acceptance of final payment under this Agreement, or the acceptance of final payment upon early termination hereof, shall constitute a full and complete release of Owner by Contractor from any and all claims, demands and causes of action whatsoever which Contractor may have against Owner in any way related to the subject matter of this Agreement and Contractor shall as a condition precedent to receipt of final payment from Owner, submit to the Owner a fully and properly executed General Release, in the form attached to this Agreement. Neither the Owner's review, approval or acceptance of, nor payment for, any of the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Contractor shall be and remain liable to Owner in accordance with law for all damages to Owner caused by the Contractor's performance of any of the Services furnished pursuant to this Agreement.

c. It is understood and agreed that Contractor is acting as an independent contractor in the performance of its Services hereunder, and nothing contained in this Agreement shall be deemed to create an agency relationship between Owner and Contractor.

d. The rights and remedies of Owner provided for under this Agreement are cumulative and are in addition to any other rights and remedies provided by law.

17. THE OWNER'S REPRESENTATIVES.

**Reedy Creek Energy Services**, whose designated representative is **Randall Sims**, and whose mailing address is 10450 Turkey Lake Road, Box #690519, Orlando, Florida 32869, shall act as the Owner's authorized representative (herein referred to as the "Owner's Representative"); provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.

Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

18. PUBLIC RECORDS.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING**

**TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX # 690519, ORLANDO, FLORIDA 32869.**

a. THE CONTRACTOR SHALL:

- i. Keep and maintain public records required by the public agency to perform the service.
- ii. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
- iv. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. REQUEST FOR RECORDS; NONCOMPLIANCE:

- i. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
- ii. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

c. CIVIL ACTION:

- i. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:



1. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
  2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
- ii. A notice complies with subparagraph c.2. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
  - iii. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

19. NON-FUNDING.

In the event that budgeted funds for this Agreement are reduced, terminated, or otherwise become unavailable, Owner may terminate this Agreement upon written notice to Contractor without penalty to Owner. Owner shall be the final authority as to the availability of the funding.

20. E-VERIFY COMPLIANCE.

The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of this Section hereof, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

21. SCRUTINIZED COMPANIES.

a. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.

b. Specifically, by executing this Agreement, the Contractor certifies that it is **not**: on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

c. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:

- i. On the "Scrutinized Companies with Activities in Sudan List" or the "Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List," created pursuant to Section 215.473 Florida Statutes; and/or
- ii. Engaged in business operations in Cuba or Syria.

d. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:

- i. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes, and/or
- ii. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.

e. If this Agreement is terminated by the Owner as provided in paragraph d above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.

f. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner's termination.

g. Unless explicitly states in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

22. CONTRACT DOCUMENTS.

a. The Contract Documents which comprise the entire understanding between the Owner and Contractor shall only include this Agreement and those documents listed in this section as Exhibits to the Agreement. Each Exhibit is incorporated herein by reference for all purposes.

- Exhibit A: Scope of Services (A-1 through A-2)
- Exhibit B: Special Contract Conditions (B-1 through B-15)
- Exhibit C: Confined Space Guidelines (C-1 through C-3)
- Exhibit D: Confined Space Permit (D-1 through D-2)
- Exhibit E: BNR Train 3 Dimensions (E-1 through E-6)

b. If there is a conflict between the terms of this Agreement and the Exhibits, then the terms of this Agreement shall control, amend, and supersede any conflicting terms contained in the Exhibits.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

OWNER

CONTRACTOR

**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**

**HANDEX CONSULTING & REMEDIATION LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

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

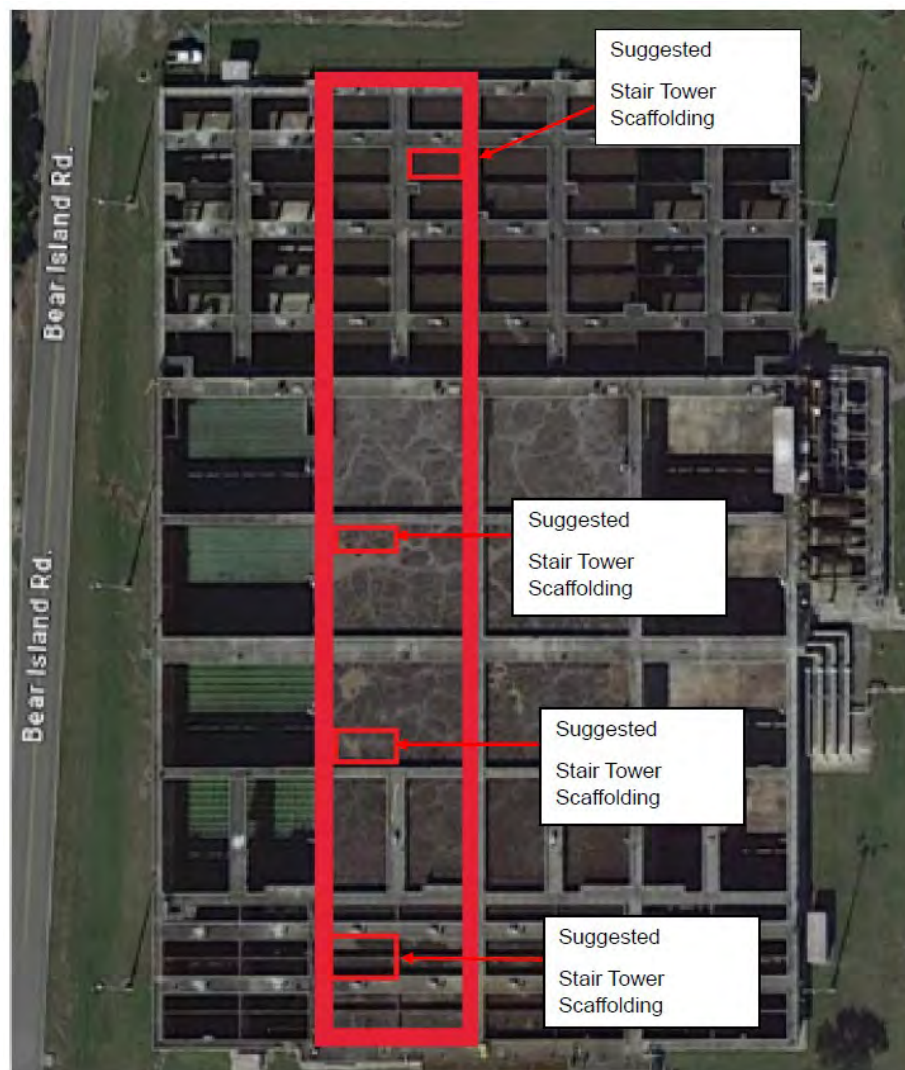
Date: \_\_\_\_\_

**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006503**

Contractor shall provide all labor, material, equipment, supervision, transportation, tools, and all other things necessary for the removal, mechanical dewatering/separation, transportation, and disposal of all sludge, grit accumulations, rags, hair, grease, plastics, and debris present in the biological nutrient removal basins.

**SECTION 1. SCOPE OF SERVICES OVERVIEW**

- 1.1 The Biological Nutrient Removal (“BNR”) Process located at 2151 South Services Lane, Lake Buena Vista, FL 32830 was constructed in 1993 during an expansion that increased treatment capacity from nine (9) million gallons per day (“MGD”) to fifteen (15) MGD. The BNR consists of four (4) trains of which two (2) are in service simultaneously. Once a BNR train is removed from service, the mixed liquor suspended solids (“MLSS”) can and will be transferred to another train to be put into service. A large amount of sediment such as sand, grit, rags, debris, as well as biological sludge remain in the train that has been removed from service. To protect the integrity of the train, this material must be removed as soon as possible. Prior to any necessary rehabilitation efforts, this material must be removed, transported off site, and properly disposed.
- 1.2 Contractor shall be responsible for removing all sediment from BNR Train #3. This includes all five (5) stages of the train. This is an interior train with limited access for cranes and vactor services/pump trucks, therefore cleaning efforts will be more challenging than if it were located on the exterior of the structure.
- 1.3 The below picture is a representation of BNR Train 3 for cleaning:



**Exhibit A**  
**SCOPE OF SERVICES**  
**Contract No. C006503**

**SECTION 2. TANK CLEANING**

- 2.1 The Contractor shall install temporary stair tower scaffolding in three (3) strategic locations specified by Central Florida Tourism Oversight District (“CFTOD”) Utilities Department’s Project Management for the means of entering and exiting the BNR basins. Access to this scaffolding shall be designed and installed in accordance with all applicable Occupational Safety and Health Administration (“OSHA”) regulations and any state, federal, or local codes.
- 2.2 The Contractor shall remove all of the existing tank contents including, but not limited to, sludge, grit accumulations, hair, plastics, rags, scum, debris, and grease accumulations from the biological nutrient removal train. Contractor should note that large accumulations of grit may be encountered in the process of cleaning the tanks. The Contractor shall be solely responsible for removing all biological treatment unit contents encountered, regardless of nature or composition.
- 2.3 While conducting residuals removal operations, the Contractor shall always have a superintendent responsible and in charge at the removal site. This person shall have the authority to make management decisions pertaining to the Project.
- 2.4 The Contractor shall maintain work areas in a clean and “workmanlike” manner. Residuals, wastewater from the dewatering process, chemical, and fuel spills shall be cleaned up immediately and not allowed to enter storm water systems. Contractor shall notify CFTOD Utilities Department Project Management of any spills immediately. In the event of a spill resulting from the Contractor’s actions, the Contractor shall be responsible for all costs associated to clean up the spill and pay for any fines levied against the District as a result of any spills.
- 2.5 All biological nutrient tank contents, except acceptable wastewater from the dewatering process, shall be removed from the plant site. Wastewater may be returned to the process tank adjacent to the one being cleaned.
- 2.6 The Contractor shall limit the work area such as to cause a minimum conflict with the treatment plant’s operation as determined by the CFTOD Utilities Department’s Wastewater Plant Manager. All equipment and pipes shall be installed in an approved manner and route without interference to plant operation and traffic.
- 2.7 The equipment required for the removal and disposal of the biological nutrient tank contents shall be attended at all times while in operation.
- 2.8 Upon completion of work, the Contractor shall remove all equipment, materials, trash, debris, and other items resulting from the biological nutrient tank cleaning and disposal operations, repair any damaged piping materials or equipment, and restore grounds to pre-existing condition or better and to the satisfaction of the CFTOD Utilities Department.
- 2.9 The Contractor shall comply fully with all Owner safety information. These standards include all OSHA for General Industry and applicable standards set forth for the construction industry.
- 2.10 All safety materials, equipment, etc. shall be the sole responsibility of the Contractor.
- 2.11 The Water Resource Recovery Facility is a gated facility. All work will need to be scheduled and coordinated with CFTOD Utilities Department Wastewater Plant Manager for entry.
- 2.12 Project shall be completed by no later than December 31, 2024.

**SECTION 3. EXHIBITS**

- 3.1 EXHIBIT B: Special Contract Conditions
- 3.2 EXHIBIT C: Confined Space Guidelines
- 3.3 EXHIBIT D: Confined Space Permit
- 3.4 EXHIBIT E: BNR Train 3 Dimensions

**End of Exhibit A**

**Exhibit B**  
CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
SPECIAL CONTRACT CONDITIONS  
SEPTEMBER 2023 EDITION  
**Contract No. C006503**

Table of Contents:

- (i) Definitions
- I. General Safety Requirements, Contractor Parking and Access, Break Areas
- II. Construction Site Minimum Personal Protective Equipment (“PPE”) and Clothing Requirements
- III. Reserved
- IV. Asbestos/Cadmium or Lead/CFCs
- V. Confined Spaces
- VI. Hazardous and Chemical Waste Disposal
- VII. Electrical Safety Policy
- VIII. Lock out / Tag out
- IX. Fall Protection
- X. Aerial Work Platforms (“AWP”)
- XI. Ladders
- XII. Trenching and Excavation
- XIII. Utility Locates
- XIV. Mobile Cranes
- XV. Heavy Equipment Operations
- XVI. Diving Operations
- XVII. Reserved
- (i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs

Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task

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planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for Reedy Creek Fire Department. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trash cans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trash cans must be provided for the disposable cups and/or bottles.

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Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

**II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS**

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

**III. RESERVED.**

**IV. ASBESTOS/CADMIUM OR LEAD/CFCs**

**A. ASBESTOS**

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (“ACM”) and/or Presumed Asbestos-Containing Materials (“PACM”), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

**B. CADMIUM and/or LEAD**

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification

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pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

C. CHLOROFLUOROCARBONS (“CFCs”)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (“CFCs”) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor’s work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner’s property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space (“PRCS”), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space (“PRCS”) entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor’s Project Specific Safety Plan (“PSSP”). In support of the Contractor’s preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner’s experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor’s personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner’s job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.



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Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such, despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

**VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.**

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.

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VII. ELECTRICAL SAFETY POLICY

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment ("PPE") and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6') of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing ("FRC").

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

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A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3'6") away from the exposed fixed energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

VIII. LOCK OUT / TAG OUT

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers

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Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

**IX. FALL PROTECTION**

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The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a “STOP WORK” condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards (“SRLs”) must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn’t feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer’s instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor’s qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System (“PFAS”), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25’).

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5’) or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40<sup>0</sup> require the use of fall protection.

Fall protection is required for work conducted six feet (6’) or more above water. Where fall protection completely prevents falling into the water, personal flotation devices (“PFDs”) are not required.

**X. AERIAL WORK PLATFORMS (“AWP”)**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner’s request. Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP’s that are not in proper operating condition shall be

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immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as “out of service” the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer’s capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline (“SRL”) of appropriate length (e.g. 3 feet). If the AWP is being used at heights of 18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

**XI. LADDERS**

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.
- f) Ropes/pulleys in good condition (extension ladders).

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Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

## XII. TRENCHING AND EXCAVATION

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade.

Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

## XIII. UTILITY LOCATES

*Routine Locate Tickets:*

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The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services ("RCES") between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida ("SSOCOF") by calling 811.

Call the Reedy Creek Energy Services ("RCES") Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services ("RCES") Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office.

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office.

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.



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Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

#### XIV. MOBILE CRANES

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (“NCCCO”).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water’s edge, Ground Bearing Pressures (“GBP”) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.

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Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing. Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems.

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (“PPE”) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

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Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.  
Remove keys from unattended vehicles.

Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

**XVI. DIVING OPERATIONS**

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection.
- f) Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces
- g) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- h) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

**XVII. RESERVED**

END OF SPECIAL CONTRACT CONDITIONS

**End of Exhibit B**



# Contractor Safety Expectation

HAZARD SEVERITY

H-4/H-5

## Confined Spaces

3/13/2018

**Purpose:** To establish and communicate the minimum safety expectations for entering and working in confined spaces while working with Reedy Creek Energy Services (RCES). A confined space has a limited or restricted means of entrance/egress, is large enough and so configured that a worker can bodily enter and perform assigned work, and is not designed for continuous human occupancy.

**Who Needs to Know:** All contractors / operating partners working in or near confined spaces while working with RCES.

**Hazard Severity Ranking:** A hazard is a condition or practice with the potential to cause harm. Hazards classified as H4/H5 are those with high severity that have the potential to cause a fatality, total disability, dismemberment, and life-altering changes that are typically irreversible unless all proper precautions are taken.

**Standards:** Performing work in a confined space shall meet or exceed the requirements of 29CFR1926.1200 – Subpart AA – Confined Spaces in Construction.

**Critical 29 CFR 1926 Elements:** *(The designation of certain requirements as critical does not alleviate the Contractor from complying with ALL applicable aspects of 29CFR1926)*

1. Contractors shall determine what kinds of spaces their employees will be in, what hazards could be there, and how those hazards will be mitigated.
2. Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met.
3. Each employee whose work is regulated by this standard shall have proper training. Training shall be in a language and vocabulary that the employee understands.
4. Contractor shall have a written confined space program that meets OSHA requirements for employees that will enter permit-required confined spaces (PRCS).
5. Effective steps shall be taken to prevent employees from entering PRCS, if employees will not need to enter those spaces.
6. General contractor shall coordinate entry activities with both RCES and sub-contractors.
7. Contractor(s) shall have a competent person to evaluate the site and identify and classify confined spaces. The competent person shall be able to recognize those conditions that require a confined space permit:
  - Contains, or has the potential to contain, a hazardous atmosphere
  - Contains a material that has a potential for engulfing the entrant
  - Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or by a floor which slopes downward and tapers to a smaller cross-section
  - Contains any other recognized serious safety or health hazard
8. Provide continuous atmospheric monitoring and continuous monitoring of engulfment hazards during entry.
9. Contractor must have a rescue plan that meets the requirements established by 29 CFR 1926.1200. Contractor shall arrange for rescue and emergency services for employees who enter PRCS.

- If relying on the local fire department for emergency services, the contractor shall arrange for the fire department to provide advance notice if they will be unable to respond for a period of time.

**RCES Clarifications and Additional Requirements:**

1. Contractors, including subs, will have a written confined space program when performing PRCS entry at RCES. Site specific conditions related to confined space entry must be addressed in the Project Specific Safety Plan (PSSP).
2. Contractors and subs shall provide their own confined space permits when working with RCES.
3. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes:
  - Entrant
  - Attendant
  - Entry supervisor
  - Air monitoring
  - Rescue
  - Site-specific training for workers exposed to hazards posed by PRCS, but not performing work inside of confined space or supporting confined space entry
4. Confined spaces that have been evaluated and designated by RCES as permit required will be treated as such even if contractor disagrees with that designation. Trenches may be treated as confined spaces under certain conditions. Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met.
5. When certain conditions described in the OSHA standard are met, the employer may use alternate entry procedures for worker entry into a permit space. RCES must be involved in the decision to use alternate entry procedures.
6. RCES is responsible for providing information to Contractor on any known hazards associated with the space.
7. RCES is **NOT** responsible for providing additional services during entry, including but not limited to:
  - Atmospheric monitoring
  - Emergency response services including rescue
  - Attendants or Entry Supervisors
8. All equipment for atmospheric monitoring must be calibrated according to manufacturer's recommendations prior to use and must, at a minimum, test for oxygen deficiency and enrichment, flammable gases, hydrogen sulfide and carbon monoxide. Any other known or suspected atmospheric hazard must also be tested for prior to and during entry.
9. Atmospheric monitoring equipment will, at a minimum, have alarms set for the 8-hour time-weighted average (TWA) and short term exposure limit (STEL). Monitors shall have simultaneous and multiple alarm indicators, such as audible, visible and/or vibrating alarms to indicate hazardous conditions.
10. Atmospheric testing must be conducted prior to any attempt to ventilate the space and before entry. Monitoring shall be conducted every four feet to detect any possible layers or areas with higher vapor concentration than the rest of the space.
11. Ventilation may be utilized to control hazardous atmospheres and maintain acceptable entry conditions. General dilution ventilation and/or local exhaust ventilation may be used to maintain acceptable entry conditions, as verified by monitoring.
12. No one shall enter a confined space to attempt rescue unless they have been trained and equipped for confined space rescue operations. If it can be performed safely, attendants will only use **non-entry rescue** techniques to perform rescue if they have been trained to do so.
13. Spaces that have an internal configuration that would prevent non-entry rescue shall have a rescue plan. Entry rescue will be only performed by a rescue team able to perform the responsibilities and meet the qualifications outlined in the OSHA standard. Most contractors will not have the capability to perform entry rescue; they will have to partner with an outside organization to provide rescue. The rescue team must have the proper training and equipment and **be available to respond in a timely manner.**
14. RCES reserves the right to stop work being performed and remove contractor personnel from a confined space if an unsafe condition or behavior is observed. The space will be evacuated until concerns are resolved.

EXHIBIT C - Confined Space Guidelines

15. Contractors will debrief RCES about any hazards encountered or created during the confined space entry by either themselves or their subs.

Revision History			
Rev	Description of Change	Owner	Effective Date
0	Preliminary Draft	N/A	2017 Nov 09
A	Updated to reference RCES	Manager, Utility Integration	2018 Jan 30
B	Changes based on review and comments from RCID	Manager, Utility Integration	2018 Mar 13

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
 CONFINED SPACE ENTRY PERMIT**

Page 1 of 2

**POST AT POINT OF ENTRY - PERMIT IS VALID FOR ONE SHIFT ONLY**

Date: _____ Space to be entered: _____ Location of space: _____ Work to be Performed: _____	Time Started: _____ Department Name: _____ Contact: _____ Phone Number: _____
<p><b>1. Atmospheric Test:</b> Time _____</p> Oxygen (O <sub>2</sub> ) _____ % Flammability _____ % LEL Hydrogen sulfide _____ ppm Carbon monoxide _____ ppm Carbon dioxide _____ % Tester's Signature _____ Instrument Calibration Date _____ <p><b>2. Isolation of Confined Space (Pre-Entry):</b> N/A Yes</p> Lockout/Tagout procedures verified? ( ) ( ) Pumps or lines blanked or blocked and drained? ( ) ( ) Contents removed and space flushed? ( ) ( ) <p><b>3. Mechanical Ventilation:</b> Yes</p> Continuous supply ventilation provided? ( ) Source of supply air free of contaminants? ( ) <p><b>4. Atmospheric Test after isolation and ventilation:</b></p> Oxygen (O <sub>2</sub> ) _____ %      19.5% - 23% Flammability _____ % LEL      < 10% LEL Hydrogen sulfide _____ ppm      <10 ppm H <sub>2</sub> S Carbon monoxide _____ ppm      <35 ppm CO Carbon dioxide _____ %      <0.5% CO <sub>2</sub> Time _____ Tester's Signature _____ <p><b>5. Rescue Equipment:</b> Yes</p> Lifelines and mechanical retrieval system (i.e., tripod or davit with winch)? ( ) Full body safety harnesses worn by entrants? ( )	<p><b>6. Equipment (evaluate hazards to determine):</b> N/A Yes</p> Personal Protective Equipment (gloves, goggles, hard hats, etc.) provided? ( ) ( ) Fire extinguishers available? ( ) ( ) Electric tools provided with GFCI? ( ) ( ) Portable electric lighting properly rated for the environment? ( ) ( ) <p><b>7. Communication and Rescue Procedures:</b></p> Attendant and Entry Person to communicate by: Voice ( ) Radio ( ) Other (specify) _____ Emergency communications available: Cell Phone ( ) 407-560-1977 Telephone ( ) 911 Radio ( ) <p><b>8. Special Conditions:</b></p> Contact Safety (407-827-5272) if any of the following conditions apply: N/A Yes <ul style="list-style-type: none"> <li>• Welding, cutting, or open flames ( ) ( )</li> <li>• Atmospheric hazards that cannot be reduced by purging with ventilation ( ) ( )</li> <li>• Space to be entered is in roadway and involves traffic control plan ( ) ( )</li> </ul> <p><b>9. Notify Reedy Creek Fire Department:</b></p> Call (407-560-1977) prior to entry, if entry involves spaces in remote locations, spaces for which rescue may be difficult, or one of the special conditions listed above.

Atmospheric testing will be conducted continuously and logged every half hour on the back of this permit. Entry into this space will be documented on the back of this permit. This permit is valid when all appropriate items are completed. We have reviewed the work authorized by this permit and the information contained herein.

Signature \_\_\_\_\_  
 Qualified Person Authorizing Entry

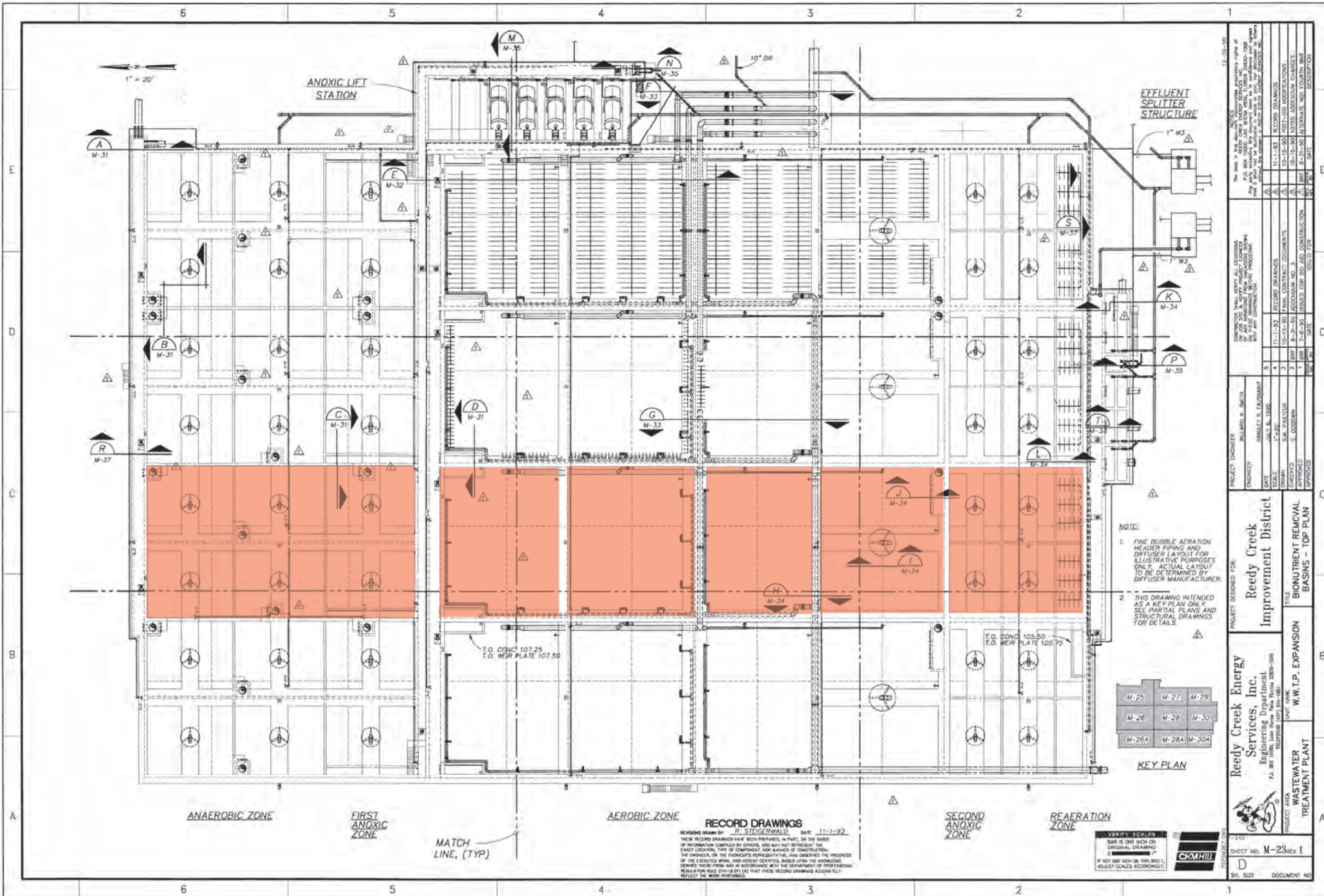
Signature \_\_\_\_\_  
 Attendant

*Please retain a copy of the completed permit for a minimum of one year. Also, send a copy of this permit to the District's project manager when job is complete. Scan and email to: [rsmith@oversightdistrict.com](mailto:rsmith@oversightdistrict.com) (Asst Chief, Fire Department, Operations)*

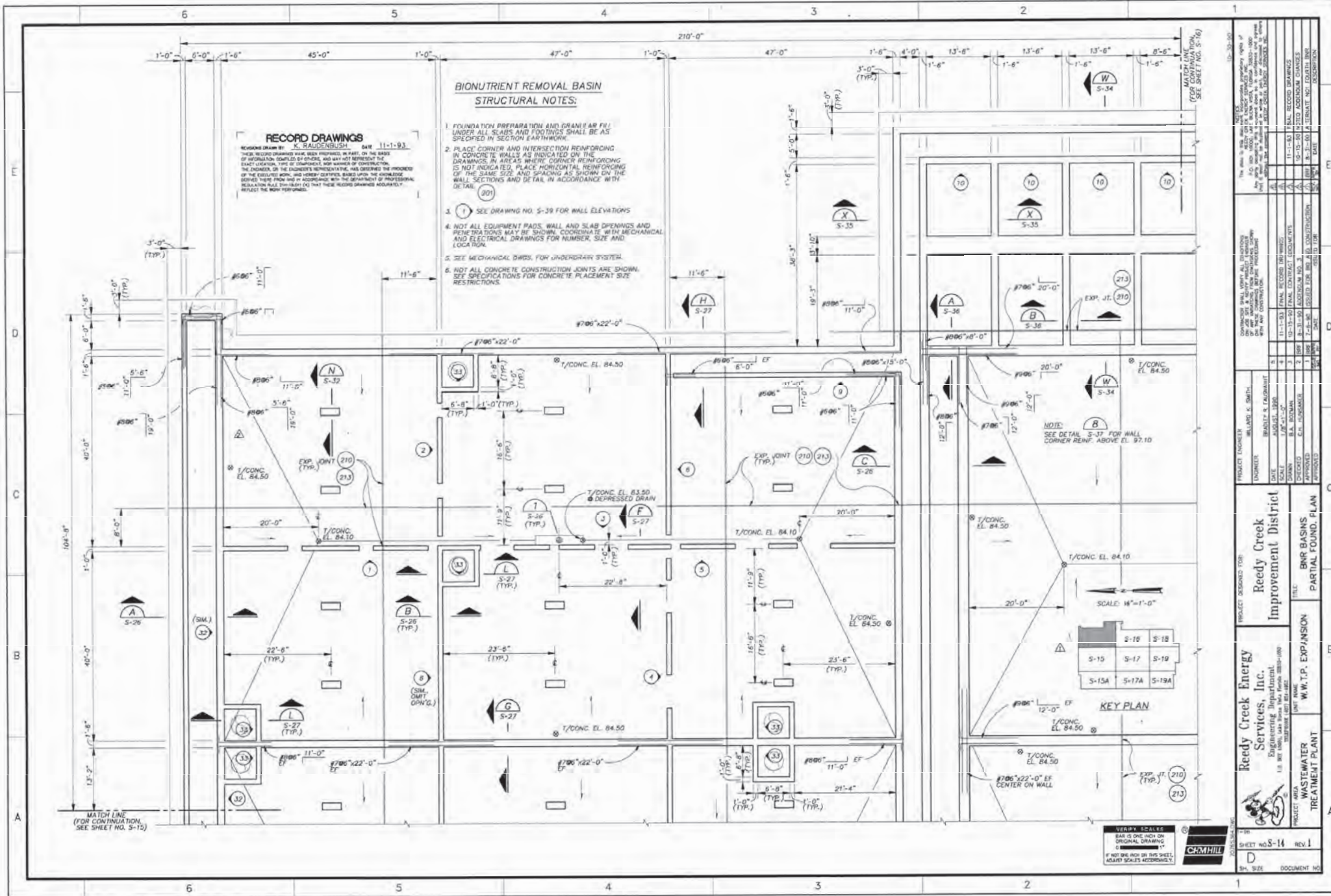




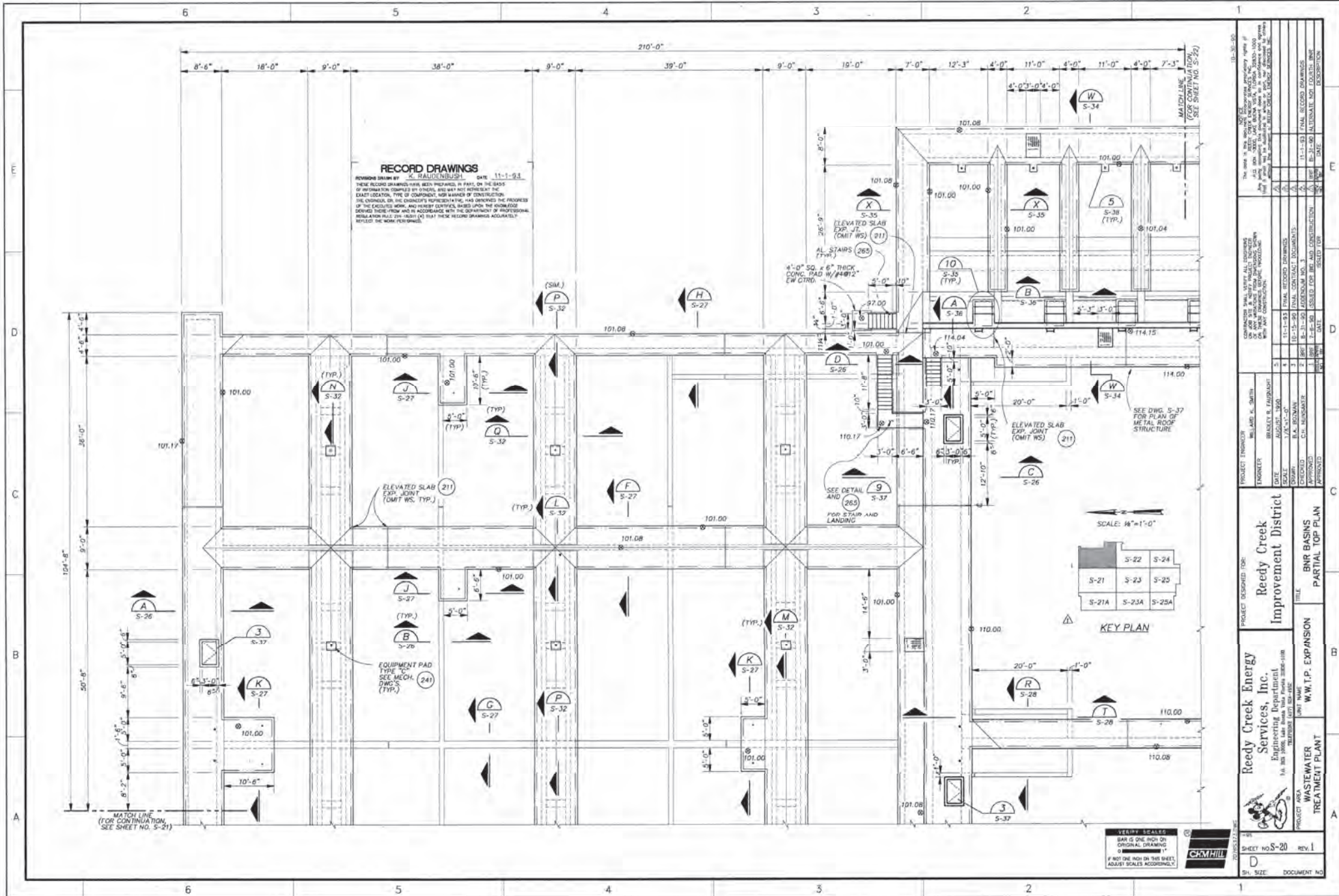
# EXHIBIT E - BNR Train 3 Dimensions



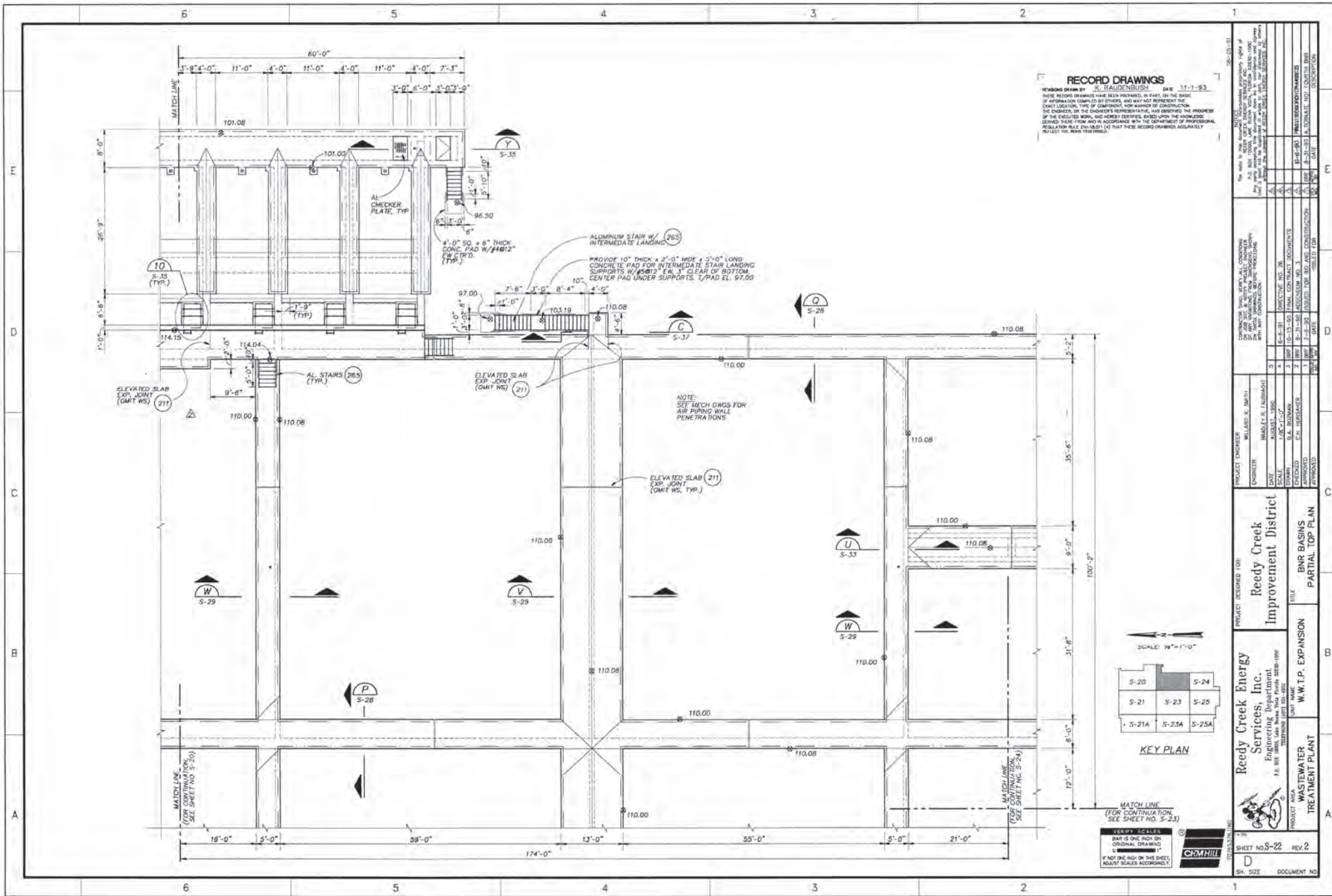
# EXHIBIT E - BNR Train 3 Dimensions



# EXHIBIT E - BNR Train 3 Dimensions



# EXHIBIT E - BNR Train 3 Dimensions





# EXHIBIT E - BNR Train 3 Dimensions

BNR Train #3 dimensions:

Lower First Anoxic Zone (6 sections)

47'.0" x 40'.0" x 16'.0"

Aeration zones (4 sections)

Zone A: 63'.6" x 80'.0" x 25'.0"

Zone B: 60'.0" x 80'.0" x 25'.0"

Zone C: 65'.0" x 80'.0" x 25'.0"

Zone D: 53'.6" x 80'.0" x 25'.0"

Second Anoxic zone (4 sections)

27'.0" x 34'.6" x 25'.0"

Reaeration zone (2 sections)

14'.0" x 34'.6" x 25'.0"

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 8.8**

**Board Meeting Date: 04/24/2024**

Subject: Award of Bid #C006426 Epcot Resorts Boulevard Phase II Area Development

Presented By: Craig Sandt, Principal Construction Manager

Department: Public Works

**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.8 award of contract for the Epcot Resorts Boulevard Phase II area development installation of landscaping plants, trees, shrubs and irrigation with Cepra Landscape, LLC in the amount of \$420,821.92

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** Bid released to the public: January 11, 2024.

**BACKGROUND:** This project supports the Epcot Resorts Boulevard Bridge Replacement Phase II project. The Area Development project replaces landscaping and irrigation in front of and adjacent to the Dolphin Resort. The scope of work includes, but is not limited to, maintenance of traffic (“MOT”)/temporary traffic control (“TTC”), erosion and sedimentation control, fine grading, installation of landscape plants, trees, shrubs, ground-cover, mulch, sod, and irrigation systems. The scope of work also includes directional drilling, connections to the existing systems, and installation of new controllers and communication cables.

**FINDINGS AND CONCLUSIONS:** On January 11, 2024, Invitation to Bid #C006426 was released to bid for the installation of area development amenities associated with the Epcot Resorts Boulevard Bridge Replacement Phase II project. Two (2) bids were received as follows:

<b>Contractor</b>	<b>Location</b>	<b>Bid Amount</b>
<b>CEPRA Landscape, LLC. **</b>	<b>Oakland, FL</b>	<b>\$380,821.92</b>
Green Construction Technologies, Inc.	Wilton Manors, FL	\$994,896.00

\*\*Buy Local bidder

Cepra Landscape is the lowest responsive and responsible bidder and is a Buy Local contractor. The Public Works Department is requesting approval for Contract #C006426 with Cepra Landscape, LLC for the installation of area development amenities associated with the Epcot Resorts Boulevard Bridge Replacement Phase II project.

The Construction Management (CM) Team had a post bid meeting with Cepra Landscaping, LLC and due a discrepancy in the soil amendments portion of the project specifications; the CM Team added a \$40,000.00 allowance to the contract for soil amendments.

**FISCAL IMPACT:** Funding for this project is through the 2016-2020 Transportation Projects Ad Valorem Bonds; the budget was approved by the Board of Supervisors on August 28, 2018.

**PROCUREMENT REVIEW:**

This contract has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Contract CEPRA Landscape, LLC.      Contract





EPCOT RESORTS BLVD. PHASE II AREA  
DEVELOPMENT

**Agreement: C006426**

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**PROJECT MANUAL**

**ISSUED FOR CONSTRUCTION**

**Date of Issuance: April 24, 2024**

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<b>Owner:</b>	Central Florida Tourism Oversight District 1900 Hotel Plaza Boulevard Lake Buena Vista, Florida 32830
<b>Owner's Representative:</b>	Central Florida Tourism Oversight District 1900 Hotel Plaza Boulevard Lake Buena Vista, Florida 32830
<b>Engineer/Architect of Record:</b>	Vanasse Hangen Brustlin, Inc. 101 Walnut Street Watertown, Massachusetts 02472
<b>Contractor:</b>	Cepira Landscape, LLC P.O. Box 865 Oakland, Florida 34760

## PROJECT MANUAL

Definition: The compilation of Documents listed herein is hereinafter referred to as the Project Manual.

The following listed documents comprise the Project Manual entitled:

### EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT **ISSUED FOR CONSTRUCTION**

Contract Number: C006426

#### **CONTRACT DOCUMENTS**

Agreement (Lump Sum)

- Exhibit A – Project Description and List of Contract Documents
- Exhibit B – Project Milestone Schedule
- Exhibit C – Recap of Contract Sum
- Exhibit D – Pending Alternates
- Exhibit E – Schedule of Unit Prices

Special Contract Conditions

General Conditions of the Contract for Construction

Payment Bond

Performance Bond

Consent of Surety for Partial Payment Application

Dual Obligee Rider

Contractor's Interim Affidavit (sample form), including Schedule A

Contractor's Request for Information ("RFI") (sample form)

Directive (sample form)

Change Order (sample form), including Exhibit A

Close-Out Change Order (sample form includes Certificate of Substantial Completion)

Punch List (sample form)

Specification Section 00850 - List of Drawings and Specifications

Specification Section 01021 - Allowances (Revised)

Drawings – Drawings are separately bound. For the List of Drawings, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

Specifications - For the List of Specifications, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT. All specifications listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

<b>END OF TABLE OF CONTENTS - PROJECT MANUAL</b>
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**EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT  
LUMP SUM AGREEMENT**

THIS AGREEMENT, made effective as of April 24, 2024, by and between **Central Florida Tourism Oversight District** (herein referred to as the “Owner,” “District” or “CFTOD”), whose mailing address is 10450 Turkey Lake Road, Box # 690519, Orlando, Florida 32869, and **Cepra Landscape, LLC** (herein referred to as the “Contractor”), whose mailing address is P.O. Box 865, Oakland, Florida 34760.

**WITNESSETH**

WHEREAS, references to Reedy Creek Improvement District (“RCID”) within the Agreement are referring to the Owner, now known as Central Florida Tourism Oversight District (“CFTOD”);

WHEREAS, Central Florida Tourism Oversight District issued an Invitation to Bid (“ITB”) No. C006426 on January 11, 2024 for Epcot Resorts Boulevard Phase II Area Development;

WHEREAS, two (2) bidders responded, and Cepra Landscape, LLC was the lowest responsive and responsible bidder. The Contractor was subsequently selected as the intended awardee for these services; and

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**Article 1**

**DEFINITIONS: THE CONTRACT DOCUMENTS**

1.1. The capitalized terms used herein shall have the meanings set forth in the General Conditions of the Contract for Construction (herein referred to as the “General Conditions”) unless a specific definition therefor is provided herein. Unless otherwise specified, references herein to numbered articles and paragraphs are to those in this Agreement. This Agreement shall be referred to throughout the Contract Documents as the “Agreement.”

1.2. The Contract Documents consist of this Agreement, the Conditions of the Contract (General and Special), the Drawings, the Specifications, all Addenda (except portions thereof relating purely to any of the bidding forms or bidding procedures), all Modifications and all other documents identified in the “List of Contract Documents” included in Exhibit A, which is attached hereto. Such documents form the Contract and all are as fully a part thereof as if attached to this agreement or repeated herein.

**Article 2**

**STATEMENT OF THE WORK**

2.1. The totality of the obligations imposed upon the Contractor by this Article and by all other provisions of the Contract Documents, as well as the structures to be built and the labor to be performed, is herein referred to as the “Work.”

2.2. Exhibit A, “Project Description and List of Contract Documents,” contains a brief description of the Project.

2.3. The Contractor shall provide and pay for all materials, tools, equipment, labor and professional and nonprofessional services, and shall perform all other acts and supply all other things necessary to fully and properly perform and complete the Work. The Contractor shall further provide and pay for all related facilities described in any of the Contract Documents, including all work expressly specified therein and such additional work as may be reasonably inferred therefrom, saving and excepting only such items of work as are specifically stated in the Contract Documents not to be the obligation of the Contractor.

**Article 3  
OWNER'S REPRESENTATIVE**

3.1. The Owner's authorized representative (herein referred to as the "Owner's Representative") shall be **Craig Sandt** whose mailing address is Post Office Box 690519, Orlando, Florida 32869; provided, however, that the Owner may, without liability to the Contractor, unilaterally amend this Article from time to time by designating a different person or organization to act as its representative and so advising the Contractor in writing, at which time the person or organization so designated shall be the Owner's Representative for purposes of this Agreement. Except as otherwise provided in this Agreement, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder.

3.2. Nothing contained in this Agreement shall create any contractual relationship between the Contractor and the Owner's Representative; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by this Agreement.

**Article 4  
THE ARCHITECT/ENGINEER**

4.1. The Architect/Engineer for the Project (herein referred to as the "A/E") is Vanasse Hangen Brustlin, Inc., whose mailing address is 101 Walnut Street, Watertown, Massachusetts 02472.

**Article 5  
TIME OF COMMENCEMENT AND COMPLETION**

5.1. The Contractor shall commence the Work promptly upon receipt of written Notice-to-Proceed ("NTP") from the Owner and **shall complete all Work within 150 Days** after issuance of said NTP (such period of time is herein referred to as the "Contract Time") and in accordance with such interim milestone dates (herein referred to as the "Milestones") as may be specified in the Contract Documents. The Contract Time and any such Milestones are of the essence of the Contract.

5.2. If any Work is performed by the Contractor prior to the execution of this Agreement based on receipt of written notice to proceed, all such Work performed shall be in accordance with and governed by the Contract Documents.

5.3. The Contractor acknowledges that the Owner has made no warranties to the Contractor, expressed or implied, that the Contractor will be able to follow a normal, orderly sequence in the performance of the Work or that there will be no delays in, or interference with, the Work.

**SUBSTANTIAL COMPLETION**

Substantial Completion of the Work shall be achieved no later than **120 DAYS from the Notice-to-Proceed**. The Notice-to-Proceed is defined as the date the Owner provides the Notice to Contractor to begin the project.

**FINAL COMPLETION**

Final Completion of the Work shall be achieved no later than **150 DAYS from the Notice-to-Proceed**.

**Article 6  
CONTRACT SUM**

6.1. Provided that the Contractor shall strictly and completely perform all of its obligations under the Contract Documents, and subject only to additions and deductions by Change Order or as otherwise provided in the General Conditions, the Owner shall pay to the Contractor, in current funds and at the times and in the installments hereinafter specified, the sum of **FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND**

**NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92)** (herein referred to as the “Contract Sum”) to cover the Contractor's profit and general overhead and all costs and expenses of any nature whatsoever (including, without limitation, taxes, labor and materials), foreseen or unforeseen, and any increases in said costs and expenses, incurred by the Contractor in connection with the performance of the Work, all of which costs and expenses shall be borne solely by the Contractor.

#### **Article 7 APPLICATIONS FOR PAYMENT**

7.1. The Contractor shall, on the twenty-fifth (25th) day of each calendar month (herein referred to as the “Payment Application Date”), deliver to the Owner an Application for Payment in accordance with the provisions of Article 9 of the General Conditions. Before submitting the first Application for Payment, Contractor shall submit (and resubmit until approval is obtained) to the Owner's Representative for approval the “Schedule of Values,” generally following the Uniform Construction Index (CSI) cost analysis format but further broken down by facility, labor and material, all as required by the Owner's Representative. Each item in the "Schedule of Values" shall only include its proper share of overhead and profit. The Schedule of Values, when approved by the Owner's Representative, shall be used as a basis for the Contractor's Application for Payment.

#### **Article 8 PROGRESS PAYMENTS AND FINAL PAYMENT OF THE CONTRACT SUM**

8.1. Based on the Contractor's Application for Payment, the Schedule of Values submitted by the Contractor and approved by the Owner, and the Owner’s approval of the Application for Payment pursuant to Article 9 of the General Conditions, the Owner shall make monthly payments to the Contractor on account of the Contract Sum. Such monthly payments shall be made on or before the twenty-fifth (25th) day of each calendar month or the thirtieth (30th) day after receipt by the Owner of such documentation as the Owner may require pursuant to Article 9 of the General Conditions to substantiate the amount owed, whichever is later; provided, however, that the Owner shall have no obligation to make payment as aforesaid if it has withheld approval thereof as permitted under Subparagraph 9.3.1. of the General Conditions or if the Contractor has not submitted to the Owner all documentation required to substantiate the Application for Payment. Each such monthly payment shall be in an amount equal to ninety-five percent (95%) of the net amount allowed the Contractor for labor, materials and equipment incorporated or used in the Work (or suitably stored at the job site if the Owner has agreed in advance to pay for such stored materials and equipment) through the Payment Application Date, as indicated in the Owner's approval of the Application for Payment, after deducting any sums withheld by the Owner pursuant to the Contract Documents and the aggregate of all previous payments to the Contractor on account of the Contract Sum. Upon Substantial Completion of the Work, as determined by the Owner, the Owner shall pay to the Contractor a sum sufficient to increase the aggregate payments theretofore made to the Contractor on account of the Contract Sum to ninety-five percent (95%) of the Contract Sum, less such retainage as the Owner shall determine is necessary for all incomplete Work, unsettled claims or other matters for which the Owner is permitted to withhold under the General Conditions.

8.2. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor within fourteen (14) days after completion of those items set forth in the Punch List, including, without limitation, approval by Owner of the final Application for Payment, and execution by the Contractor of the Close-out Change Order, in accordance with the General Conditions; provided, however, that final payment shall in no event be due unless and until the Contractor shall have complied with all provisions of the Contract Documents, including those contained in Subparagraph 9.4.2 of the General Conditions.

#### **LIQUIDATED DAMAGES**

Should the Contractor fail to substantially complete all Work under this Contract and make the project available for beneficial use on or before the date stipulated for Substantial Completion (or such later date as may result from extension of time granted by the District), the Contractor shall pay and/or the District may retain from the compensation otherwise to be paid to the Contractor, as liquidated damages, the following amounts by Phase, as outlined in Exhibit B, and Article 5, the sum of **\$1,000.00** for each consecutive calendar day that terms of the Contract remain unfulfilled beyond the date allowed by the Contract, which sum is agreed upon as a reasonable and proper measure of damages which District will sustain per diem by failure of the Contractor to complete work within the time

as stipulated; it being recognized by the District and the Contractor that the injury to the District which could result from a failure of the Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor.

Liquidated damages do not apply to final completion dates.

#### **Article 9 CONTRACTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 9.1. The Contractor hereby represents and warrants to the Owner that:
- a. it is duly licensed to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed hereunder;
  - b. it is experienced and skilled in the construction and work of the type described in, or required by, the Contract Documents;
  - c. all equipment and materials used in connection with the Work shall be new (except if otherwise required by the Specifications) and the equipment, the materials and the Work shall be of the best quality, free from faults and defects and shall strictly conform to the Contract Documents; and
  - d. it has, by careful examination satisfied itself as to: (i) the nature, location and character of the job site including, without limitation, the surface and subsurface conditions of the land and all structures and obstructions thereon, both natural and manmade, surface water conditions of the Job Site and the surrounding area and, to the extent pertinent to the Work, all other conditions; (ii) the nature, location and character of the general area in which the Job Site is located including, without limitation, its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (iii) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; and (iv) all other matters or things which could in any manner affect the performance of the Work. Without limitation on the foregoing, the Contractor recognizes the physical and operational restrictions on carrying on of the Work in or about the Project or the Job Site.
- 9.2. The Contractor accepts the relationship of trust and confidence established by this Agreement between it and the Owner. It covenants with the Owner that it shall: furnish its best skill and judgment and cooperate with the Owner in furthering the interests of the Owner; furnish efficient business administration and superintendence and an adequate supply of workmen, equipment, tools and materials at all times; and perform the work in the best and soundest way and in the most expeditious and economical manner consistent with the best interests of the Owner.

#### **Article 10 TERMINATION**

10.1. Termination of the Contract by the Owner, with or without cause, and by the Contractor are provided for in Article 15 of the General Conditions. If the Owner terminates the Contract pursuant to Paragraph 15.2. of the General Conditions, and the unpaid balance of the Contract Sum exceeds the costs and expenses incurred by or on behalf of the Owner in finishing the Work, including compensation for any additional architectural, engineering, management and administrative services, such excess shall, upon the completion of the Work, be paid to the Contractor. If such costs exceed such unpaid balance, the Contractor shall pay the difference to the Owner upon demand.

#### **Article 11 LEGAL PROCEEDINGS**

11.1. The Contract Documents shall be construed and interpreted in accordance with the laws of the State of Florida, to the exclusion of its rules concerning conflicts of laws, and shall constitute the entire and sole understanding of the parties hereto notwithstanding any prior oral or written statements, instructions, agreements, representations, or other communications.

11.2. Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Contract, or arising out of any matter pertaining to this Contract or the Work to be performed hereunder (a "Proceeding"), shall be submitted for trial, without jury, solely and exclusively before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; provided, however, that if such Circuit Court does not have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before the United States District Court for the Middle District of Florida (Orlando Division); and provided further that if neither of such courts shall have jurisdiction, then such Proceeding shall be so submitted solely and exclusively before any other court sitting in Orange County, Florida, having jurisdiction. The parties (i) expressly waive the right to a jury trial, (ii) consent and submit to the sole and exclusive jurisdiction of the requisite court as provided herein and (iii) agree to accept service of process outside the State of Florida in any matter related to a Proceeding in accordance with the applicable rules of civil procedure.

11.3. In the event that any provision of any of the Contract Documents is judicially construed to be invalid by a court of competent jurisdiction, such provision shall then be construed in a manner allowing its validity or, if this leads to an impracticable result, shall be stricken but, in either event, all other provisions of the Contract Documents shall remain in full force and effect.

## Article 12 PUBLIC RECORDS

**12.1. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE OWNER'S CUSTODIAN OF PUBLIC RECORDS AT TELEPHONE NUMBER 407-939-3240, EMAIL ADDRESS [PUBLICRECORDS@OVERSIGHTDISTRICT.ORG](mailto:PUBLICRECORDS@OVERSIGHTDISTRICT.ORG), MAILING ADDRESS CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, ATTN: PUBLIC RECORDS ADMINISTRATOR, P.O. BOX 690519, ORLANDO, FLORIDA 32869.**

a. THE CONTRACTOR SHALL:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

b. REQUEST FOR RECORDS; NONCOMPLIANCE:

1. A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public

- agency shall immediately notify the Contractor of the request, and the Contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.
2. If a Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.
  3. A Contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.
- c. CIVIL ACTION:
1. If a civil action is filed against a Contractor to compel production of public records relating to a public agency's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
    - i. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
    - ii. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the public agency and to the Contractor.
  2. A notice complies with subparagraph (c) ii. if it is sent to the public agency's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the public agency or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
  3. A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

### **Article 13 E-VERIFY COMPLIANCE**

13.1. The Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees. The Contractor agrees and acknowledges that the Owner is a public employer that is subject to the E-verify requirements as set forth in Section 448.095, Florida Statutes, and that the provisions of F.S. Sec. 448.095 apply to this Agreement. Notwithstanding the provisions of Article 10 hereof and Article 15 of the General Conditions of the Contract for Construction, which forms a part of this Agreement, if the Owner has a good faith belief that the Contractor has knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws of the Attorney General of the United States for employment under this Agreement, the Owner shall terminate the Agreement. If the Owner has a good faith belief that a subcontractor performing work under this Agreement knowingly hired, recruited or referred an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States for employment under this Agreement, the Owner shall promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. The Contractor shall be liable for any additional costs incurred by the Owner as a result of termination of a contract based on Contractor's failure to comply with E-verify requirements referenced herein.

### **Article 14 NON-FUNDING**

14.1. In the event that budgeted funds for this Agreement are reduced, terminated, or otherwise become unavailable, Owner may terminate this Agreement upon written notice to Contractor without penalty to Owner. Owner shall be the final authority as to the availability of the funding.



**Article 15**  
**SCRUTINIZED COMPANIES**

a. By executing this Agreement, the Contractor certifies that it is eligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for goods or services pursuant to Section 287.135, Florida Statutes.

b. Specifically, by executing this Agreement, the Contractor certifies that it is **not**: on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, Florida Statutes, or is engaged in a boycott of Israel.

c. Additionally, if this Agreement is for an amount of \$1,000,000 or more, by executing this Agreement, the Contractor certifies that it is **not**:

1. On the “Scrutinized Companies with Activities in Sudan List” or the “Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List,” created pursuant to Section 215.473 Florida Statutes; and/or
2. Engaged in business operations in Cuba or Syria.

d. The Owner reserves the right to terminate the Agreement immediately should the Contractor be found to:

1. Have falsified its certification herein pursuant to Section 287.1358, Florida Statutes; and/or
2. Have become ineligible to bid on, submit a proposal for, enter into or renew a contract with the Owner for good or services pursuant to Section 287.135, Florida Statute subsequent to entering into this Agreement with the Owner.

e. If this Agreement is terminated by the Owner as provided in paragraph d above, the Owner reserves the right to pursue any and all legal remedies against the Contractor, including, but not limited to the remedies described in Section 287.135, Florida Statutes.

f. If this Agreement is terminated by the Owner as provided in paragraph above, the Contractor shall be paid only for the work completed as of the date of the Owner’s termination.

g. Unless explicitly stated in this Section, no other damages, fees or costs may be assessed against the Owner for its termination of the Agreement pursuant to this Section.

**Article 16**  
**PUBLIC CONSTRUCTION BOND**

16.1. The Contractor must submit a recorded, Public Construction Bond in conformance with Florida Statute 255.05 for the Total Contract Sum Amount of **FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92)** as security for the faithful performance of the work within the time set forth as required herein and for prompt payment to all persons defined in 713.01, Florida Statutes, who furnish labor, services, or materials for the completion of the work provided herein.

**SIGNATURES NEXT PAGE**



Contract No: C006426

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed effective as of the day and year first above written.

**OWNER:**  
**CENTRAL FLORIDA TOURISM**  
**OVERSIGHT DISTRICT**

**CONTRACTOR:**  
**CEPRA LANDSCAPE, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: Board Chairman

Title: \_\_\_\_\_

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

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

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006426**

I. Project Description

The Project is briefly described as follows:

**SECTION 1. SCOPE OF SERVICES OVERVIEW**

The scope of work for the Epcot Resorts Boulevard Phase II Area Development project includes, but is not limited to, maintenance of traffic (“MOT”)/temporary traffic control (“TTC”), erosion and sedimentation control, fine grading, landscape plants (including trees, shrubs and groundcover), mulch, sod and irrigation systems (including directional drilling, connections to the existing systems, controllers and communication cables) developing designated areas adjacent to Epcot Resorts Boulevard.

**SECTION 2. SCOPE OF SERVICES**

**PART 1 – WORK COVERED BY CONTRACT DOCUMENTS**

**1.01 General**

- A. The Scope of Work for the Epcot Resorts Boulevard Phase II Area Development project is described by the drawings and specifications listed in Specification Section 00850 – List of Drawings and Specifications. Specific elements of the Scope of Work are generally summarized below but this Summary of Work is not intended to be complete descriptions of the Work. Any quantities or measurements, if included in the summaries, are approximate and are not to be used in estimating the Work.
- B. It is the intent of the Owner that the Contractor will perform all of the Work of any kind and nature shown on the drawings and/or described in the specifications, which is within the Contractor's Scope of Work unless specifically excluded or indicated as Owner-furnished and/or installed. Any Work not specifically indicated on the drawings and/or described in the specifications but required to fulfill the intent of a "complete job" for the Contractor's Scope of Work will be considered to be included in the Contract.

**1.02 General Summary**

The scope of work for the Epcot Resorts Boulevard Phase II Area Development project includes, but is not limited to, maintenance of traffic (“MOT”)/temporary traffic control (“TTC”), erosion and sedimentation control, fine grading, landscape plants including trees, shrubs and groundcover, mulch, sod, irrigation systems including directional drilling, connections to the existing systems, controllers and communication cables.

**1.03 Detailed Scope of Work**

- A. Mobilization and General Conditions:
  - 1. The Contractor shall provide a minimum dedicated full-time staff for the duration of the Contract Time including but not limited to the following staff positions:
    - a. Part-time dedicated project manager.
    - b. Full-time dedicated general superintendent.
    - c. Part-time field project engineer.
    - d. Part-time foreman and crew dedicated to MOT/TTC and Storm Water Pollution Prevention Plan (“SWPPP”) only.
    - e. Power broom on site at all times.
    - f. Water truck on site at all times.
- B. Permitting:
  - 1. The Contractor shall apply for a de-watering permit during the pre-construction phase. The Contractor shall prepare and submit the NOI to the Central Florida Tourism Oversight District prior to submitting to the Florida Department of Environmental Protection (“FDEP”) during the pre-construction phase. In addition, the Contractor shall apply for any and all permits that are required by CFTOD Building and Safety during the pre-construction period.
  - 2. Work must meet all requirements of the 2018 EPCOT Building Code with the 2018 or other most current supplement thereof in effect at the time of the effective Contract date.

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3. The Contractor shall provide all building permits. Because the project is owned by the same entity as that which will issue the building permits, the permitting fees normally applicable are waived. It is necessary, however, for any contractor applying for building permits through CFTOD to request exemption from payment of the permitting fees for the reason stipulated herein.
- C. Maintenance of Traffic (“MOT”)/Temporary Traffic Control (“TTC”):
1. The Contractor shall follow the Traffic Control Plans (“TCPs”) provided for the Project. Contractor is required to adhere to Florida Department of Transportation (“FDOT”) Standard Plans (Standard Design Index) 102-600 series and associated indexes for items not detailed in the TCPs. Contractor is required to submit for approval proposed MOT/TTC details when certain activities (i.e., structure component deliveries, excavations adjacent to traffic, overhead installations, etc.) require detailed operations to control traffic flow. Contractor shall include all such activities within their bid and expect to attend regular MOT/TTC Coordination meetings to discuss proposed operations. Should the Contractor request to deviate from the TCPs or request an alternate/additional detour or subphase, the Contractor shall hire a professional engineer licensed to do business in the State of Florida to provide a certified MOT/TTC individual plan prior to applying for the required permits from CFTOD Planning & Engineering. The MOT/TTC plans shall be in compliance with the Manual for Uniform Traffic Control Devices and applicable FDOT Standards. The Contractor shall maintain his traffic control devices for the entire duration of the project until the Owner certifies that the Punch List is complete.
  2. The Contractor shall provide a qualified traffic control crew to provide continuous maintenance of all traffic control systems at its expense, whenever traffic conditions warrant such control and whenever directed to provide such maintenance or adjustments by the Construction Manager. This requirement shall also apply to all events requiring a vehicle to back up on a lane maintained for traffic or any other situation considered by the Construction Manager to be dangerous.
  3. The Contractor shall provide a qualified traffic control crew at its expense to inspect all traffic control systems in the presence of the Construction Manager at the beginning and end of each work shift for a minimum of one hour after the start of the shift and a minimum of one hour before the end of the shift. The Contractor’s crew shall make immediate corrections or adjustments to the MOT/TTC systems as required to conform them to the approved MOT/TTC plans or as directed by the Construction Manager.
  4. All MOT/TTC devices shall be like new. They shall be freshly painted and free of scratches, dents, dirt, debris, and stains. The Contractor shall replace any MOT/TTC device that becomes damaged with a new device.
  5. The Contractor shall construct and remove all temporary pavement as indicated within the drawings or otherwise deemed as necessary by the Owner’s Representative.
- D. Lay Down Yard/Employee Parking Construction:
1. The designated lay down yard and employee parking area is anticipated to be located in the vicinity of the Project Site. The Contractor shall contain all trade parking, inclusive of the Contractor itself, to designated contractor parking areas. Staging and construction laydown is very limited within project limits. Contractor is responsible to maintain cleanliness of their assigned/approved area(s). No POV shall be parked within project limits.
  2. Contractor Employees shall be transported from assigned parking areas to work areas by means provided by Contractor.
- E. Erosion and Sedimentation Control:
1. The Contractor shall design, furnish, install and maintain, at its expense, all necessary erosion control and wetland protection systems, such as silt fences, temporary retention basins, silt screens, synthetic hay bales, floating turbidity barriers, inlet protection systems, filter fabric, sandbags, sheet piling or other approved devices required to prevent erosion and to protect the storm water systems and receiving waters. The Contractor shall be responsible for repairing and/or replacing any and all damage to the erosion protection devices. The Contractor shall maintain all erosion control systems until the Owner certifies that the punch list is complete.
  2. The Contractor shall prepare the Storm Water Pollution Prevention Plan (“SWPPP”) utilizing the forms included in the Specification Section 01560. The Contractor shall submit a completed SWPPP

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006426**

to CFTOD Planning and Engineering for review and the Contractor shall make all modifications and refinements to the plan requested by CFTOD Planning and Engineering. Once all of the modifications have been made to the satisfaction of CFTOD Planning and Engineering, then the Contractor shall sign and certify the SWPPP as the operator and implement the structural erosion control devices.

3. The Contractor shall prepare and submit the NOI to the FDEP and pay all filing fees and secure a permit authorization letter from the EPA and fully comply with all record keeping requirements.
4. The Contractor shall provide a qualified and dedicated erosion and sedimentation control team to inspect and maintain the erosion control and wetland protection systems on a daily basis. The Contractor acknowledges that daily inspection and maintenance requirement is more stringent than the periodic inspections required by the FDEP. The Owner requires more stringent daily inspection and maintenance by a dedicated crew. The Contractor shall remove all erosion and sediment control systems at the conclusion of its Work when authorized to do so by the Owner.
5. The Contractor will be required to maintain at all times, a clear, orderly construction site and ensure the implementation of good housekeeping practices as described in these Contract Documents within the SWPPP.
6. The Contractor shall maintain a power broom on site at all times throughout the Contract Time and sweep the roadways on a daily basis whenever its construction traffic cause dirt or debris to be deposited on the roads or whenever directed to sweep the roads by the Construction Manager.
7. The Contractor shall provide and maintain a water truck at all time during the Contract Time to provide dust control when conditions warrant or as directed by the Construction Manager.
8. The Contractor shall utilize lined trucks to haul muck or saturated soils off site.
9. The water quality within the various bodies of water located on the Owner's property is regularly monitored and compliance with environmental standards is rigidly enforced. The Contractor is advised that should any of the Owner's ponds, lakes or canals, (or those of adjacent landowner's) become contaminated due to the Contractor's actions or inaction, the cost to flocculate, or clean by any means as may be required, shall be paid for by the Contractor.

**F. Survey and Layout:**

1. The Contractor shall perform all survey and layout as required to complete the work within the specified tolerances.
2. After award of the contract and within fourteen (14) days of receiving a Limited Notice to Proceed, the Contractor shall complete all survey work required to verify and accept the accuracy of the grades noted as existing on the bid drawings. At the end of the fourteen-day discovery period, the Contractor shall provide written acceptance of the existing grades or provide written documentation of any material deviation it has discovered between the existing conditions and the conditions noted as existing on the bid drawings. All claims shall be made in strict accord with Article 13 of the General Conditions of the Contract for Construction. Failure to give such notice or to provide substantiation thereof shall constitute a waiver of the claim and acceptance of the existing grades.
3. Refer to the Drawings for information regarding bench mark datum and coordinate system.
4. The Contractor shall preserve and protect all existing survey monuments within the limits of construction.
5. The Contractor shall provide the following specific survey tasks:
  - a. All surveying, engineering and layout required for the Work including but not limited to: (i) the limits of standard clearing and grubbing and (ii) drainage structure, utilities, roadway layout, etc.
  - b. All "rough" and "finish" grade stakes as required to perform the Work. Any re-staking required due to his or any other contractor damaging, or removing original stakes shall be performed by the Contractor and will not be the responsibility of the Owner.
  - c. Coordination with the Owner's survey consultant for verification of the Contractor's survey including, but not limited to, Contractor's field notes and temporary horizontal and vertical control points.
6. It is the responsibility of the Contractor to generate survey control, layout, and as-built information as required in the contract documents. At no time will the project CAD design files be given to the Contractor.

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**G. De-Watering:**

1. Dewatering, defined as the act of temporarily removing groundwater for the purpose of achieving a dry condition during construction, renovation and the installation or removal of underground utilities or systems, shall require regulatory permits from both the South Florida Water Management District (“SFWMD”) and the Florida Department of Environmental Protection (“FDEP”). Dewatering may include the use of well points, pit pumps, deep wells, sock drains or any other means for lowering the water table or removing water seeping from the ground into a pit, excavation, trench, etc. SFWMD regulates removing the water from the ground and the FDEP regulates the discharge of the water to waters of the State or the US. The Contractor is required to obtain SFWMD permit coverage through CFTOD by completing the permit application listed below. The Contractor receives permit coverage for the discharge of produced groundwater through the FDEP Construction Generic Permit for Storm water Discharge from Large and Small Construction Activities as long as the ground water is not within 500 feet of a known contamination area. If the dewatering activities are within 500 feet of a known contamination area please contact CFTOD Compliance: Melissa Pulver, 407.828.2250 to obtain additional permit requirements.
2. De-watering pump activation (any size/capacity) shall be coordinated via request with CFTOD Planning & Engineering. Pre-Activation inspection is required by CFTOD Personnel for every activation. Advance requests are to be scheduled with CFTOD.
3. The Contractor shall apply for a de-watering permit(s) through CFTOD Planning and Engineering at least twenty-one (21) days prior to commencement of any de-watering activities. The Contractor shall not begin any dewatering activities until CFTOD Planning and Engineering has approved the proposed activity. The following information is required by CFTOD Planning and Engineering to apply for the permit:
  - a. Name of Contractor.
  - b. Site location plan showing task specific dewatering locations.
  - c. Records that indicate the presence or absence of known areas of contamination within the project, and in adjacent areas that could be impacted if dewatering operations are performed.
  - d. Proposed methods of construction.
  - e. Estimating pumping rates and duration of pumping.
  - f. Known volume to be discharged from vessels installed in the wet.
  - g. Estimated depth of drawdown.
  - h. Anticipated radius of the cone influence.
  - i. Proposed points of discharge.
  - j. Site water routing from excavation to storm water retention area.
  - k. Proposed groundwater and surface water monitoring plans.
  - l. Any other sites and tasks specific characteristics worthy of consideration.
  - m. Hydraulic information (i.e. normal pool and seasonal high-water elevations) of any wetlands and surface waters within of adjacent to the proposed dewatering activities.
  - n. Monthly withdrawals will need to be submitted to CFTOD the first of each month once the dewatering starts.
  - o. Information shall be submitted through BIM 360 for electronic review under the specific Project Folder, under Dewatering. Contractor shall notify Melissa Pulver and Sam Duhs via the Review Status form on BIM 360. For BIM 360 information, please contact CFTOD at 407- 828-2250.
  - p. If the Contractor utilizes a sock drain to accomplish its de-watering, then the Contractor shall remove the sock drain when the de-watering work is completed.

**H. Clearing:**

1. The Contractor shall provide all clearing and grubbing as needed in performance of the work. Tree pruning, as required, is to be performed/supervised by an approved certified arborist as deemed necessary by the Owner’s Representative.
2. No burning will be allowed on site. The Contractor shall remove all cleared vegetation (grasses, plants, bushes, shrubs, trees, etc) from the site and dispose of it legally off site. Existing grasses/sod removed (strippings), as required for construction, shall be disposed of off-site at the contractor’s expense and not utilized for embankment, backfill, or prepared soil layer of any kind unless approved by the

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Owner's Representative.

I. Utilities:

1. The Contractor shall coordinate all utility construction efforts with the utility owners – Reedy Creek Energy Services (“RCES”). RCES requires coordination for inspections of their new and existing utilities. RCES will also require 72-hour notice and planning when working around their existing utilities. Other utility owners may include, but are not limited to, Smart City Telecom (data and communications fiber optic and wire), CFTOD (traffic fiber optic), and WDW Telecom (Disney fiber optic), Spectrum, Duke, Summit Broadband, TECO, & AT&T.
2. The Contractor shall identify and protect all existing utilities within the limits of the work.
3. Except as otherwise explicitly indicated on Drawings or called for in the Specifications, do not cut, alter, remove or otherwise disturb any existing improvement or construction or disturb any existing utilities without the approval of the Construction Manager.
4. The Contractor shall immediately restore to service and repair any damage caused by it to any existing utilities which are not scheduled for removal, discontinuance or abandonment, or which have not been released by the Owner and jurisdictional agencies for removal, discontinuance or abandonment, even if so scheduled.
5. Temporary Supports for existing Utilities: The Contractor shall provide all necessary temporary supports required to protect any and all existing utilities prior to commencing Work. Any damage to existing in-service utilities during construction will be repaired at the Contractor's expense. Temporary supports shall be reviewed by representatives of RCES or appropriate utility company prior to installation by the Contractor.
6. The Contractor shall strictly adhere to utility notice and excavation permit provisions specified in Section 2.13 of Section 01010 of the specifications. The RCES Utility Locate Office will locate primary utility services. It will not locate secondary services. Secondary services include roadway lighting systems, irrigation systems, and electrical power systems for the existing lift station. All such services shall be maintained and/or relocated without interruption to existing services. The Contractor shall hire a private utility locate service to identify and locate all secondary utilities within the limits of the Work
7. Locating services provided by the RCES Locating Services Office, Sunshine 811 and by any private secondary locating technician are confined to surface markings and flagging only. The Contractor shall hand dig and soft dig as required to determine the depths of all utilities. All such hand digging and soft digging shall be included in the Lump Sum Contract amount.
8. In the case of a conflict between the RCES specifications and the CFTOD specifications, generally the CFTOD specifications shall supersede the RCES specifications. The final determination shall be made by the Construction Manager. This is notwithstanding provisions contained elsewhere in the general conditions.
9. Any temporary or permanent utility (potable water, reclaimed water, sanitary water, gas, chilled water, etc.) connection to existing facilities will require advance coordination between Contractor, Owner, Owner's Representative, and RCES in all cases.
10. Contractor is strictly prohibited from adjusting, closing, or opening any mechanical valves on RCES, CFTOD or Resort utility systems. Utilization/adjustment of valves for any reason requires advance coordination between Contractor, Owner, Resort Owner, Owner's Representative and RCES in all cases. The utility Owner(s) must be present to supervise/perform any and all valve operations.

J. Construction:

1. The Contractor shall construct all improvements as shown on the drawings.

K. Subsoil Excavation and Removal:

1. The project includes Subsoil excavation and removal. Subsoil removal shall be defined to include any excavated material unsuitable for construction (“muck”, peat, buried construction debris, rubbish, buried vegetation, buried trees, etc.).
2. Limits of removal will be governed using stationing and lines/grades as depicted within the contract documents, FDOT specifications, FDOT Standard Plans, and approved modifications thereto by the Construction Manager (CM).

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3. Measurement and payment will be governed by FDOT Specifications and the latest CPAM standards.
  4. Subsoil removal limits are anticipated to be extended in width, further than shown in the roadway cross sections in some areas to accommodate adjacent underground installations. The contractor is to anticipate subsoil removal beyond associated limits depicted within the plans.
  5. If unsuitable materials (as defined above) are encountered in other areas of the project, Unit Cost Rates for “Subsoil Excavation” and “Embankment” as submitted/approved will govern additional costs.
- L. Directional Boring/Jack and Bore:
1. Before any Boring operation can commence, all known utilities and underground infrastructure within the proposed path must be located with positive identification.
  2. A proposed bore path profile showing all identified infrastructure and their locations is to be submitted for approval prior to proceeding with installation.
- M. Soil Amendment:
1. Contractor shall engage the services of a qualified agricultural soils testing laboratory to perform soil testing services of all typical areas to be planted as stated. The Contractor shall pay for all costs and fees associated with the soils testing.
  2. The Contractor is responsible for all costs to amend the soil based upon the application rates.
- N. Landscape Work:
1. The Contractor shall guarantee all Work for a period of one (1) year after the Owner certifies that the Punch List is complete.
  2. When the Contractor has completed the Work as indicated on the drawings the Contractor shall notify the Owner and request its review. The Owner will provide art direction regarding the final adjustments of the landscaping, which may require additional plantings or relocations of plantings by the Contractor until the Owner is satisfied with the aesthetic appearance of the final landscape. The Contractor shall include reasonable equipment and man-power time to make field adjustments as specified by the Owner.
  3. The Contractor shall provide all trees, palms, shrubs, ground cover and sod shown on the drawings.
  4. The Contractor shall treat all of the soil with fertilizer as specified.
  5. The Contractor shall remove all weeds and undesirable vegetation from the landscaping areas. The Contractor shall keep the landscaped areas weed free until the project reaches final completion.
  6. The Contractor shall remove all rocks and small debris from the planter areas prior to planting landscaping.
  7. The Contractor shall schedule inspections at plant nurseries with the Owner prior to delivery (if applicable). The Owner shall determine the condition of the shrubs and trees. Inferior quality or non-compliant material shall not be installed. If installed, removal of such material will be performed at the Contractor’s expense.
  8. The Contractor shall field stake the location of all plant material and bed outlines prior to initiating installation for the review and approval of the Owner.
  9. The Contractor shall guarantee all landscaping, including grasses, sod, trees, palms, shrubs, and aquatics, to be alive and in satisfactory growth at the end of the maintenance period.
  10. The Contractor shall dig test holes in all planting beds prior to plant installation. The Contractor will verify the soil conditions and accept sole responsibility for all plant material installed.
  11. The Contractor shall bear all costs of soils, testing and amendments etc. associated with the Work and included in the Specifications. Prior to commencement of the landscape planting Work the Contractor shall provide complete soil tests as required.
  12. The Contractor shall field-adjust plant material as necessary to avoid damage to all existing underground utilities and/or existing above ground hardscape elements, roadway lighting, traffic signal poles and equipment, regulatory signs, and other elements of the infrastructure. All such changes required shall be completed at the Contractor’s expense and shall be coordinated with the Owner.
  13. The Contractor shall promptly provide all photo documentation, certificates, samples and other submittal data required by the Contract Documents and in accordance with the Milestone Schedule. The Contractor shall schedule inspections of the nurseries with the nurseries and with the Owner. The



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Contractor shall accompany the Owner to each nursery to assist in tagging the trees selected to be delivered to the site. In addition, the Contractor shall provide 48 hours advance notice to the Owner of each delivery from the nurseries and afford the Owner the opportunity to inspect the trees prior to their installation. All trees shall be subject to approval by the Owner before they are planted by the Contractor.

O. Sod:

1. Contractor shall replace all sod, with like kind, if damaged by its operations.

P. Irrigation:

1. The Contractor shall provide all irrigation systems as indicated on the Drawings.
2. The Contractor shall locate the existing main line and existing points of connection if any are existing at the beginning of its Work.
3. The Contractor shall tap into the existing irrigation main and construct the new points of connection as shown on the Drawings.
4. The Contractor shall provide electrical power and communication wire to all irrigation controllers. The Contractor shall provide the meter cans and electrical panels for all of the controllers. The Contractor shall extend all power wiring from the distribution panels to the irrigation controllers.
5. The Contractor shall install all tree irrigation as shown on the Drawings.
6. The Contractor shall install new sleeves as noted on the drawings. Where directional boring is required, the Contractor shall hire an experienced driller and licensed underground utility contractor to perform the directional bore work. The Contractor shall submit all bore logs upon completion of each bore and submit a final bore log package to go along with the as-builts at the completion of the project.
7. The Contractor shall repair and restore to new condition any and all grades, landscaping, sod, utilities, or sleeves that are damaged during the installation of the irrigation system. The Contractor shall coordinate its activities with the Separate Contractors to ensure all sleeves are installed in a timely manner consistent with the schedule provided by the Separate Contractors.
8. No landscape planting shall commence prior to the Contractor having the ability to adequately water such plantings either by hand or through the use of an irrigation system. The Contractor shall be responsible for watering all plantings if the irrigation system is not operational.
9. The Contractor shall be responsible to maintain the irrigation system in such a manner to prevent plant stress due to lack of water. Planted material that becomes stressed beyond recovery, shall be replaced by the Contractor at no additional charge. If temporary irrigation systems are required to meet the Milestone Schedule, the Contractor shall provide such temporary systems.
10. Contractor shall coordinate all planting work with irrigation work and shall be responsible for all hand watering as required to supplement irrigation watering and rainfall. The Contractor shall be responsible for supplemental hand watering in all planting areas, regardless of the status of the irrigation.
11. All irrigation pipe and control wire must be inspected by the Owner's Representative prior to backfilling on a daily basis. The irrigation mains shall be tested according to the Specifications and a Representative of the Owner must witness all pressure tests.

## **PART 2 – GENERAL INSTRUCTIONS & STANDARDS FOR THE CONSTRUCTION WORK**

### **2.01 General Requirements**

- A. The Contractor shall provide all services and necessary items of expense, including but not limited to, labor, material, trucking, transportation, equipment, hoisting, scaffolding, power, supervision, appliances, layout and all other services and items of expense required for the complete performance of all Work in accordance with the Contract Documents.
- B. Cost Loaded Schedule Not Used.
- C. Staffing Plan:
  1. Contractor staffing and organizational structure proposed must be able to accomplish the management,

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field work, and administrative services required. The Contractor shall identify the key person to be placed in responsible charge of the work.

*Note: The Contractor is required to have a certified inspector onsite for SWPPP and MOT/TTC at all times.*

**2.02 Job Site Access/Use of Job Site**

- A. Access to the project site shall come from Buena Vista Drive from the west intersection with Epcot Resorts Boulevard. No construction traffic is permitted on Epcot Resorts Boulevard from the east under the water bridge. A haul route will have to be provided by the Contractor for CFTOD Planning and Engineering review and approval. The Contractor shall utilize lined trucks to haul muck or saturated soils off site (if required) and shall utilize only those hauling routes prescribed or approved by the Construction Manager for hauling to and from the site. For each and every occurrence that the Contractor or its Subcontractor(s) utilize a haul route that is not prescribed by, or otherwise expressly approved by, the Construction Manager, the Owner shall deduct from the Contract Sum, the sum of \$500.00 each occurrence.
- B. Vehicular traffic to the Job Site is limited to vehicles required to deliver labor and materials. On-site parking for vehicles shall be limited to those areas designated by the Construction Manager and shall be limited to company work vehicles actively working on site. Vehicles not actively supporting Job Site operations are not permitted to remain on site. The Contractor shall create an engineered plan for review by the Owner that demonstrates how it will safely access the work zone and storage areas and how it will egress from the work zone and storage area.
- C. The Contractor is responsible for the routing of all construction personnel and traffic required in the performance of the Work and shall ensure compliance with any special instructions pertaining to such routing as established by the Construction Manager.
- D. Lunch and break areas are confined to the immediate job site area, within the limits of construction. Tradesmen shall be prohibited from patronizing the restaurants in the adjacent development.
- E. The Contractor shall confine its use of the job site to those activities directly relating to the performance of the Work. No other use of the job site will be permitted without the express written approval of the Construction Manager.
- F. The Contractor shall provide all necessary flagmen, barricades, and MOT/TTC devices necessary for safe and proper traffic control. The Contractor is advised that it is responsible for all construction personnel and traffic routing logistics required in the performance of its work.
- G. The Contractor shall provide all necessary temporary water retention basins, turbidity control, and silt fence, etc., for construction site water run-off control. The Contractor is advised that should any of the adjoining Central Florida Tourism Oversight District and Walt Disney World ponds, lakes, wetlands, or canals become contaminated due to the Contractor's actions or inactions, the cost to flocculate, clean, or restore by any other means, these ponds, lakes, wetlands, or canals shall be paid for by the Contractor. Any fines and/or penalties assessed for contamination of these water bodies, due to the Contractor's actions or inactions, shall be paid for by the Contractor.

**2.03 Coordination**

- A. The Contractor shall coordinate with the Construction Manager to allow for all materials testing. The Owner shall pay for costs associated with the initial testing but the Contractor shall be liable for costs associated with retesting as a result of initial test failure due to deficiencies in the Contractor's work efforts.
- B. The Contractor shall coordinate its work with the Construction Manager and with the Owner's Separate Contractors. The Contractor shall sequence its Work, as required by the Construction Manager, with the work of the Owner's Separate Contractors at no additional cost to the Owner.
- C. Contractor is required to coordinate its efforts with the Owner's Representative and Construction Manager for service connections for on-going development adjacent to this project, at no additional cost to the Owner.

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- D. The Contractor is required to coordinate with the delivery of any and all Owner Furnish, Owner or Contractor installed items.
- E. The Contractor shall coordinate with the Construction Manager for site access/control for the CFTOD Fire Department.
- F. The Owner, or appointed delegate, reserve the right of access to any part of the job site, at any time, for the purpose of observation, or to install other work, either with its own forces or with other contractors.

**2.04 Worker Conduct and Clothing**

- A. The Contractor is responsible at all times for the proper conduct of its personnel and that of its subcontractors and suppliers. The Contractor shall restrict its personnel to the job site and immediate vicinity thereof and shall endeavor to prevent discordant relationships between its personnel and that of any adjacent property owner or resident.
- B. The Contractor shall enforce strict discipline and good order among employees and other workers related to the performance of the Work. Under no circumstances will behavior offensive to building occupants or the general public be tolerated, and Contractor shall immediately remove and further ban from the job site any persons failing to comply with this standard.
- C. The Contractor shall ensure its personnel are properly dressed with O.S.H.A. approved clothing and safety gear, including but not limited to, hard hats, work shoes, shirts and long pants, as appropriate for the performance of the Work. Shorts, sleeveless shirts (tank tops) or clothing bearing offensive marks or wording are not permitted to be worn on the job site. The Owner's Representative shall solely determine whether any such clothing is or is not permissible.

**2.05 Surveying**

- A. Refer to Specification Section 01050 – Field Engineering, contained in the specifications, for specifications governing field engineering and surveying.
- B. The Contractor shall inspect the site, observe the existing conditions and grades, and make reasonable measurements to verify existing conditions prior to its bid.
- C. After award of the contract and within fourteen (14) days of receiving a Limited Notice to Proceed, the Contractor shall complete all survey work required to verify and accept the accuracy of the grades noted as existing on the bid drawings and the accuracy of the as-built drawings provided by the Owner's Separate Contractor. At the end of the fourteen-day discovery period, the Contractor shall provide written acceptance of the existing grades or provide written documentation of any material deviation it has discovered between the existing conditions and the conditions noted as existing on the bid drawings and as-built drawings. All claims shall be made in strict accord with Article 13 of the General Conditions of the Contract for Construction. Failure to give such notice or to provide substantiation thereof shall constitute a waiver of the claim and acceptance of the existing grades.
- D. The Contractor shall verify forms prior to pouring, or placing, critical components of structures.
- E. It is the responsibility of the Contractor to generate survey control, layout, and as-built information as required in the contract documents. At no time will the project CAD design files be given to the Contractor.
- F. The Contractor shall verify the location of all existing utilities or obscured existing improvements or construction indicated on Drawings to be proximate to or affected by the Work prior to commencement of excavation or demolition in any given area.

**2.06 Testing and Inspection**

- A. Refer to Specification Section 01410 – Testing Laboratory Services, contained in the specifications, for specifications governing soils and materials testing and inspection. The Owner reserves the right to re-test and approve or disapprove the results of the Testing and Inspection.

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**2.07 Surface Water Management and Environmental Controls**

- A. The Contractor shall provide and maintain all necessary erosion control in accordance with paragraph 1.3.5 above, the plans, and Specification Section 01560, entitled Erosion and Sedimentation Control, contained in the specifications.
- B. The Contractor shall submit for approval any and all Erosion and Sedimentation control measures necessary/required to remedy waterway conditions negatively impacted by or resulting from contractor operations. Contractor will implement such approved measures at no additional cost to the owner.

**2.08 Temporary Fencing**

- A. Geogrid Fencing and Silt Barriers:
  - 1. When required by the Contract Documents, geogrid fencing and silt barriers shall be provided and maintained along the boundaries of all designated tree preservation and protected wetland areas. The Contractor shall not disturb the trees or vegetation within such areas unless directed otherwise by the Owner's Representative.
  - 2. Geogrid fencing shall be provided and maintained along jurisdictional wetland buffers excluding those wetlands (if any) to be removed under this Contract. Silt barrier shall be provided and maintained along areas designated on Drawings.
  - 3. The Contractor shall inspect all geogrid fences and silt barriers daily and shall immediately make necessary repairs to any damaged or improperly functioning geogrid fences and/or silt barriers.

**2.09 Permits and Permit Fees**

- A. All Permits required for any part of the Contractor's Work (except those permits obtained directly by the Owner, as further enumerated below) shall be procured and paid for by the Contractor. This shall apply also to those permits required to be obtained by the Contractor in the name of the Owner or its Owner's Representative for the Owner's or Owner's Representative's own temporary construction office facilities, if any. The costs for the required permits (except those permits obtained directly by the Owner or the Owner's Representative) are included in the Contract Sum. Before applying for any permit, the Contractor shall present a draft application to the Owner's Representative for review.
- B. The Contractor shall submit to the Owner's Representative a copy of ALL permits required to be obtained by this Contractor, which are required for the performance of this Work.

**2.10 Job Site Cleanliness, Construction Operations Upon and Affecting the Use of the Project Site**

- A. Refer to Specification Section 01710 – Cleaning, contained in the specifications, for specifications governing cleaning and job site cleanliness.
- B. The Contractor shall cause no dirt or debris to be deposited on any public or private roadways and must clean up same in an expeditious manner if such dirt or debris occurs due to this Contractor's operation. If the Contractor fails to perform, clean-up will be performed by others and all costs for same will be deducted from monies due or owing the Contractor.
- C. The Contractor shall clean the tires of all vehicles as they exit the job site and enter onto the public roadway or private driveways. The Contractor shall provide rotary power broom equipment on site for daily sweeping as needed and as requested by the Owner's Representative.
- D. The Contractor shall use "whisperized" construction equipment. Noise levels shall be within those levels acceptable by the authorities having jurisdiction.
- E. Material deliveries shall generally be made during normal working hours. Where special deliveries must be made at other times Contractor shall request approval of same. If such request is approved Contractor shall arrange for the proper labor force to receive and unload materials promptly.
- F. The Contractor shall be responsible to consolidate and secure all equipment and materials at the job site.

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The Owner will not provide any security for material and equipment stored on site for contractors working at the Project site.

- G. On site storage of fuel will not be permitted without prior written approval of the Owner and approval from all appropriate local, state, and federal agencies having jurisdiction.
- H. Any and all damage to property resulting directly or indirectly by the Contractor's operations, or those of its subcontractors, shall be repaired or replaced by the Contractor at no additional cost to the Owner and to the satisfaction of Owner's Representative.
- I. Daily clean-up of the construction areas will be strictly enforced. Excess materials or accumulation of debris shall not encumber the site.
- J. If, in the judgment of the Owner's Representative, the construction area is deemed to be unclean and/or encumbered by the accumulation of excess materials; and, in the event the Contractor fails to correct the situation, the Owner reserves the right to take any action it deems necessary to correct the situation and shall back charge the Contractor for the full cost of the corrective action.
- K. The Contractor shall provide a final clean prior to turnover.
- L. All construction activities that may have any effect on any adjacent landowner's operating systems or facilities must first have the final approval of the Owner's Representative before they are initiated. The activity description, schedule time and duration, and areas affected must be submitted to the Owner at least 72 hours in advance to obtain this approval.
- M. Work activities that affect the environment of guest operations (noise, visual intrusion, safety, odor, dust and dirt, etc.) may be restricted to other than normal operating hours.
- N. Any maintenance to construction equipment on-site, which may be considered by the Owner's Representative to have the potential to contaminate the existing earth, will not be permitted.
- O. Maintenance and dust abatement of all areas of Work provided by the Contractor shall be performed in a manner acceptable to the Owner.
- P. The Contractor will be responsible for safely barricading open excavations that may present hazards.
- Q. The Contractor shall hire Mid Florida Materials to provide rubbish removal, reuse container rental/removal or other services related to the disposal of waste material from the job site. Contact Noah (Tel: 407-607-9359) or Lisa (Tel: 407-607-9345), a minimum of 24 hr. in advance of waste pick-up. No other firm, entity or agency is authorized to provide solid waste service within the District unless permitted in writing by the District. Such service includes Class I, Class III and Construction and Demolition Debris service. Any firm, entity or agency found to be providing such service within the District without written permission from the District shall be required to remove any solid waste containers associated with this service within 48 hours of notification. Failure to do so will result in the impoundment of said containers by the District. Release of said impounded containers to the owner will require payment of a storage fee of \$100/container each day.
- R. The Contractor shall legally dispose of all excess soils generated by the Work.
- S. On-site security is the responsibility of Contractor. Observe security requirements established by Central Florida Tourism Oversight District and adjacent landowners. Coordination and all questions with regard to security shall be directed to the Construction Manager.

**2.11 Existing and Adjacent Roadways and Utilities**

- A. The Contractor will maintain access to roadways at all times. The Contractor shall create no open cuts or other obstacles on roadways or walkways without explicit approval of the Owner's Representative. Authorized cuts must be bridged to permit vehicular and pedestrian traffic to continue without delay or hindrances. Any work that must be performed which may result in delays to public traffic or re-routing of traffic must be coordinated with the Owner's Representative.

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- B. Wherever possible, the Contractor shall arrange work so there will be no service interruptions of any existing systems. Whenever service interruptions are necessary, the Contractor shall secure the advance approval of the Construction Manager and jurisdictional agencies as to the time and date such interruptions will be permitted. The Contractor shall return all services back into operation as soon as possible, including working on an overtime basis, if deemed necessary by the Construction Manager, at no additional cost to the Owner.
- C. All existing conditions off the immediate Project site that are disturbed due to Contractor's activities must be restored by the Contractor to pre-construction conditions.
- D. The Contractor shall restore all existing grade, existing sod, and existing irrigation it disturbs. Restore all affected areas to existing conditions or better.
- E. RCES, CFTOD, WDW and other Utility Owners all have existing infrastructure within the project limits. The Contractor shall preserve and protect all such infrastructure during the performance of its Work. The Contractor shall sequence its Work in cooperation with the utility companies and as required to work around the existing infrastructure without damaging it until it is relocated. Once relocated, the Contractor shall preserve and protect the relocated infrastructure throughout the remaining duration of the work. Contact information is provided on the drawings.

**2.12 Temporary Facilities**

- A. The Contractor shall provide generators for temporary construction power.
- B. The Contractor shall provide temporary portable toilets for use by its tradesmen, and shall be located out of view from the traveling public at locations approved by the Construction Manager.

**2.13 Notification to Utility Companies and Excavation Permit**

- A. Utility Locate Tickets:
  - 1. In accordance with Florida "Underground Damage Prevention and Safety Act" (Chapter 556, Florida Statutes) as administered by Sunshine 811 of Florida. Any entity or individual responsible for any project involving excavating, grading, penetration, or disturbance of the earth's surface, inclusive of jack and boring, pile-driving, directional drilling, trenching and pipe bursting, within the District shall not commence such work within the District until that entity/individual has submitted a Locate Ticket request to Sunshine 811 and received clearance from the affected utilities. Refer to <http://www.sunshine811.com/>.
  - 2. There are two types of utility locate requests:
    - a. Standard Locate requests:
      - i. Used when no portion of the excavation will be underwater
      - ii. Request must be submitted a minimum of three (3) full business days before excavation. If the excavation site is in an area that is underwater, the request must be submitted ten (10) full business days before excavation. Three (3) full business days represents a time period of 72 hours, not including the day the locate ticket is requested, weekends or holidays. Day one begins at 12:00 a.m. the day AFTER the locate ticket is requested.
    - b. Submit request to Sunshine 811 Notification system.
      - i. Call 811 or enter the request via the internet at <http://www.online811.com>
      - ii. Write down the Sunshine 811 locate ticket number
    - c. Contact the Reedy Creek Energy Services ("RCES") Utility Locate Office via email at [utilitylocates@disney.com](mailto:utilitylocates@disney.com) to locate the existing utilities in the area.
      - i. Provide the Sunshine 811 locate ticket number.
      - ii. Mark up the RCES supplied map to show the limits of the excavation that will occur within the following thirty (30) days.
    - d. Emergency Locate requests:
      - i. An emergency is defined by Chapter 556.109, Florida Statutes as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or

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- communication caused by any break or defect in a member's underground facility; or any impairment of public roads or utilities that requires immediate repair, as determined by FDOT or another affected political subdivision.
- ii. Work-scheduling problems are not considered an emergency.
- e. If prior to 7:00 AM or after 4:00 PM on weekdays, or anytime on weekends or holidays, call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location.
  - f. Call Sunshine 811.
  - g. Provide the Sunshine 811 locate ticket number to the RCES Control Room.
  - h. Approved excavators can request emergency tickets using Internet Ticket Entry. Excavators not approved for ITE emergency ticket entry must request emergency tickets by calling 811.
- B. Have the area subject to the request marked on the ground using the "white line" method recommended by Sunshine 811. If the area is a sensitive "on-stage" area where marking is not desired, meet the locators at the site and define the actual extent of the area to be located. Follow the Low Impact Marking Guidelines defined in Chapter 556.114, Florida Statutes.
- C. DO NOT BEGIN EXCAVATION until you have:
1. Received and reviewed the RCES Utility Locate Office ticket and notes for utility presence, conflicts, or special conditions AND
  2. Been notified by Sunshine 811 that all public utility locators (RCES/CFTOD, Smart City, TECO/Peoples Gas, Duke Energy, etc.) have responded to the locate request. This is automatically sent to you if you provide an e-mail address during the locate ticket request process. Or you can access them manually by calling 800-850-8257 or using the internet at the web address noted above.
- D. NOTE: RCES is ONLY RESPONSIBLE for locating the utilities owned by Central Florida Tourism Oversight District and for notifying specific WDW organizations that have underground facilities within CFTOD (WDW Irrigation, WDW Telecom, and WDW Video Technology). RCES is not responsible for location of "secondary" facilities – those lines (electric, water, sewer, etc.) that are on the customer side of the meter or any other similar lines on the customer's property. The Locate Ticket you will get from RCES will specifically indicate that the excavator must also contact the property owner/customer to obtain information on those secondary lines. The customer may require that the excavator locate such lines.
- E. During Excavation:
1. Protect exposed underground facilities.
  2. Keep the locator marks visible throughout the excavation period or request a reissue of the locate.
  3. STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) or if you expose any warning tape or red concrete and contact the facility owner directly.
  4. Understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks when using any mechanized equipment within the tolerance zone, supervision is necessary.
  5. Keep a copy of the RCES Locate Ticket and the Sunshine 811 Positive Response at the specific area of work.
  6. Issuance of a utility locate ticket does not relieve the excavator of the responsibility of exercising due caution for unknown or miss-allocated underground utilities.
    - a. The Utility Locate Ticket shall not be construed as a building permit.
    - b. When a utility requests an area to be "HAND-DUG" it means HAND DIG ONLY.
  7. The Owner reserves the right to stop excavation at any time for the following reasons:
    - a. The Utility Locate Ticket is not present at the work site.
    - b. The excavation is not in compliance with WDW, RCES, or CFTOD rules and regulations.
    - c. The excavation is endangering personnel, equipment, or existing utilities.
    - d. No restitution will be made for work stoppage for violations of the above-mentioned causes.

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**2.14 Safety Requirements**

- A. The Contractor shall submit a certificate to show proof of inspection of all hoisting machinery, including serial number, date of certification, and expiration date, prior to its use. The certificate shall be displayed on the subject equipment signed by a competent person or by a government or private agency recognized by the Department of Labor. The Contractor shall maintain records and dates of the results of inspections for each hoisting machine and piece of equipment.
- B. Contractor shall provide a Site-Specific Safety Plan (“SSSP”) and obtain approval by the Owner prior to commencing work.
- C. Contractor shall provide a Severe Weather Preparedness plan and obtain approval prior to commencing work. The Severe Weather Preparedness plan will follow the guidelines of CFTOD’s “Required Storm Preparation Procedures”, dated June 2017. The costs incurred as a result of the implementation of this plan on this contract will be the responsibility of the Contractor.
- D. Contractor is required to start all meetings or briefings with a “Safety minute or thought of the day”.

**PART 3 – SPECIAL INSTRUCTIONS**

**3.01 Work Hours**

- A. Normal hours of work shall be between 7:00 AM and 4:00 PM Monday through Friday. All work requiring a temporary lane closure may need to be performed between 11:00 PM and 7:00 AM Sunday through Thursday.
- B. Contractor shall obtain approval from the Owner’s Representative at least 72 hours prior to scheduling any work to be performed during hours other than the normal (7:00 AM to 4:00 PM) work hours or on Saturdays, Sundays, or legal holidays.
- C. The Contractor shall pay for the cost of all standby trades or premiums for work on Saturdays, Sundays, and Holidays when the schedule or job site conditions require such work.

**PART 4 – ATTACHMENTS**

**4.01 Supplemental Information**

- A. See Specification Section 00850.

**PART 5 – CLARIFICATIONS**

- 5.01 The work hereunder is not subject to, nor governed by, union and/or trade agreements.

**SECTION 3. ADDENDA AND PRE-BID MEETING CLARIFICATIONS**

- 3.1 Restoration is required.
- 3.2 The existing irrigation system is reclaimed water.
- 3.3 Landscape plans are to scale and confirmed at 1”= 20’-0”. Irrigation plans have been confirmed at 1”= 30’-0”.
- 3.4 The Contractor shall maintain access to through traffic at all times.
- 3.5 The three (3) gallon material in the root zones of the existing trees may not be able to be spaced in a triangular pattern due to root conflict. Topsoil is acceptable in order to meet cover requirements. One (1) gallon plant material is not acceptable.



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- 3.6 The plan view shows multiple irrigation main tie-ins:
- A. The irrigation mains on northside of roadway are:
    - 1. The existing Swan-Dolphin Resort mainline is 6" size.
    - 2. The existing CFTOD mainline is 4" size.
  - B. The irrigation main on southside of roadway is:
    - 1. The existing CFTOD mainline is 10" size.
  - C. The mains are CL200 PVC.
  - D. The isolation for District valves are located in the ROW of Buena Vista Drive, per the location circled in blue in the image titled, "Isolation for District Valves & Tishman Controller Location" shown below. The Tishman (Dolphin Resort) valve is located on the NW corner behind BOC of the parking lot. The District can assist in isolating these valves during construction.



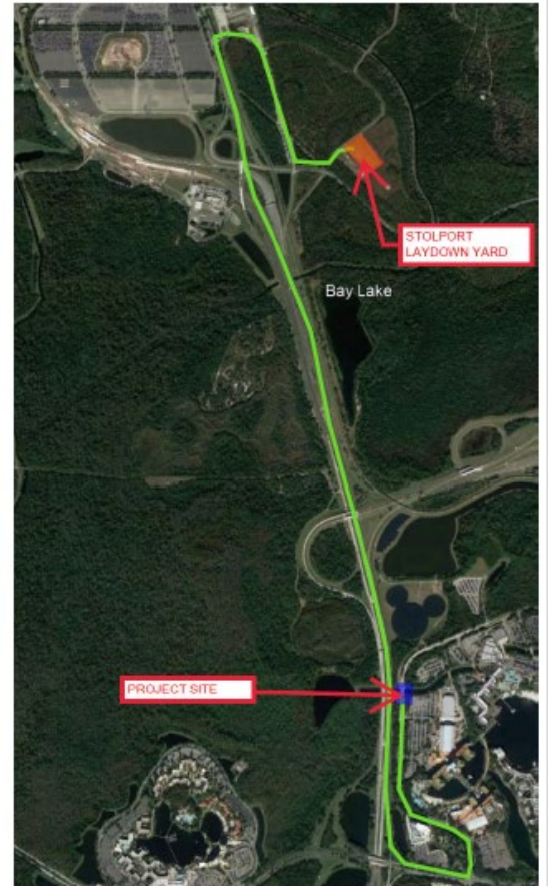
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- 3.7 The Tishman (Dolphin Resort) valve is located on the NW corner behind BOC of the parking lot per the image titled, "Isolation for District Valves & Tishman Controller Location" shown above.
- 3.8 There will be no stations for existing irrigation zones for the new Swan/Dolphin Resort Rainbird ESP-LXME controller.
- 3.9 The new Rainbird model SA6-RB1-24/WDW/FS-LS controller was Owner-provided and has already been installed.
- 3.10 The "R" Resort Controller will be located behind the green sign wall near the electrical transformers. This can be moved approximately 50' to the north to be more accurately depicted on the plan sheet, as the aerial does not show this area. The existing 52-15 controller has already been installed by others and visually is more accurately shown at approximately 40' to the north behind the green wall with the transformers. Physical field verification shall be conducted for accurate measurements.
- 3.11 Tree stumps and root plates shall be ground to approximately 16" below grade. All grinding debris shall be removed and replaced with topsoil and sod or plant material as needed.
- 3.12 Landscape material and soil: The Owner does not have a preferred vendor list for the landscape material and soil items. Contractor shall confirm with the subcontractors/material suppliers that they have the material that meets the plans and specifications.
- 3.13 There have not been any new trees planted since design. Majority of design scope of work does not fall within existing tree locations, however some shrubs/grasses were designed around a few existing trees to remain.
- 3.14 Allowance #1 – Additional Screening Material: After installation of the material, Owner will review and determine if additional screening is needed in order to fill any holes which were not apparent at time of design. If so, this will be billed against Allowance #1 utilizing the plant material as specified in the Supplemental Plant List.
- 3.15 Contractor will not be responsible or required to include any valve wiring in either of the controllers/time clocks other than that required for the valves shown on the plans.
- 3.16 The Contractor is required to have an Advanced MOT/TTC Certified individual on staff performing site inspections at all times, of which shall submit daily inspection reports to the Owners Representative.
- 3.17 The Contractor shall hire a professional engineer licensed to do business in the State of Florida to provide a certified MOT/TTC individual plan prior to applying for the required permits from the Owner's Representative.
- 3.18 Due to the high guest traffic within the project area, weekly MOT/TTC coordination meetings are held to communicate lane closure requests, adjacent contractors, Disney event schedules, and coordinate between multiple resorts.
- 3.19 Contractor shall obtain:
  - SWPPP Permit (Erosion Control Plan).
    - NOI NPDES – EPA Environmental Permit.
  - Traffic Control Plan (S&S TCP/MOT Plans).
  - CFTOD Project Management Permit (PM Permit).
    - Electrical Permit (for power to Swan Controller).
  - Utility Location: contact 811 to have all existing underground utilities located.
- 3.20 The Contractor will be required to maintain at all times, a clear, orderly construction site and ensure the implementation of good housekeeping practices. Contractors and Subcontractors at the completion of work each day will return all equipment and unused material to their assigned storage area.
- 3.21 Reedy Creek Energy Services ("RCES") places moratoriums restricting work near critical utilities during the following Holiday periods: Christmas through New Years, Easter/Spring Break, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving. Work activities during these time periods shall be vetted through RCES. Time periods and durations of such may differ depending on what day the Holidays actually fall on.

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- 3.22 Although Owner has a TCE to utilize a portion of the parking at the Dolphin Resort, no equipment or materials shall be stored in the parking area at any time. Contractor vehicles (non-POV) may access and utilize the parking areas closest to the work zone. Please note some events taking place at the convention center may prevent 24/7 access, as certain events may require the use of all of the parking spaces.
- 3.23 Staging and laydown shall be within the vicinity of the project site. Staging and construction laydown is very limited within the project limits. There may be ability to utilize additional areas near the project site for temporary laydown, plan to schedule material deliveries with the assumption that there is minimal storage capacity outside of the planned installation locations.
- 3.24 Site Access & Laydown:
- Transportation for workers to the Job Site shall be the Contractor's responsibility. Private vehicles are only permitted to travel on the project site when authorized by the Owner and must park in designated parking areas.
  - The designated parking area for POV's shall be at the Stolport laydown yard off of Vista Blvd. No POV's shall be parked within project limits.
  - No equipment or materials shall be stored in the Dolphin Resort parking lot area at any time. Convention events throughout the year will require full capacity parking and the Contractor shall not block or encroach on the parking areas at any time.
- 3.25 Haul Routes: No traffic is permitted to travel with large equipment/materials under the water bridge on Epcot Resorts Blvd.

## Site Access & Laydown



**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006426**

**SECTION 4. CONTRACTOR INCLUSIONS, EXCLUSIONS AND CLARIFICATIONS**

**4.1 Inclusions:**

- A. All trees and shrubs will be within Florida Grades and Standards Matrix of “Florida number one” or better.
- B. Maintenance included until final walk after substantial completion.
- C. Sales tax.
- D. Material and labor warranty per contract documents from substantial completion.
- E. As-Builts.
- F. Landscaping and irrigation per plans.

**4.2 Exclusions:**

- A. Cutting and patching of concrete or asphalt.
- B. Demucking and removal of unsuitable materials is assumed to be completed by others.
- C. Dewatering.
- D. Subsoil Excavation.
- E. Water retention basins.
- F. P.O.C.’s Reclaim Wet Taps and Meters installed by others.
- G. Verification that Owner supplied designs, calculations, documents, are code compliant.

**4.3 Clarifications:**

- A. Price based on all work being performed on 1st shift, straight time.
- B. Quotation based on minimum of eight (8) hours per shift access.
- C. Grades to be provided at (+/-) .10’ of finished landscape elevations.

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**II. List of Contract Documents**

**A. Drawings:**

Drawings are separately bound. For the List of Drawings, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

**B. Specifications:**

For the List of Specifications, refer to Specification Section 00850, entitled List of Drawings and Specifications, contained in the Project Manual, entitled EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT. All Drawings listed therein, and any applicable Addenda subsequently issued thereto, are specifically incorporated into the Project Manual by this reference.

C. This Exhibit A, Project Description and List of Contract Documents, 19 pages

D. Exhibit B, Project Milestone Schedule, 1 page

E. Exhibit C, Recap of Contract Sum, 1 page

F. Exhibit D, Pending Alternates, 1 page

G. Exhibit E, Schedule of Unit Prices, 1 page

H. Special Contract Conditions, 15 pages, June 2023 Ed.

I. General Conditions of the Contract for Construction, 26 pages, including table of contents, March 2023 Ed.

J. Payment Bond, 3 pages

**EXHIBIT A**  
**PROJECT DESCRIPTION AND LIST OF CONTRACT DOCUMENTS**  
**Contract No.: C006426**

- K. Performance Bond, 3 pages
- L. Consent of Surety for Partial Payment Application, 1 page
- M. Dual Obligee Rider, 1 page
- N. Contractor's Interim Affidavit (SAMPLE), including Schedule A, 2 pages
- O. Contractor's Request for Information (SAMPLE), 1 page
- P. Directive (SAMPLE), 1 page
- Q. Change Order (SAMPLE), including Exhibit A, 2 pages
- R. Close-Out Change Order (SAMPLE contains Certificate of Substantial Completion), including Attachments A through G, 10 pages
- S. Punch List (SAMPLE), 1 page

**End of Exhibit A**

**EXHIBIT B**  
**PROJECT MILESTONE SCHEDULE**  
**Contract No.: C006426**

The Contractor agrees to commence and complete the Work in strict accordance with the Project Milestone Schedule for performance of the work, as provided below:

MILESTONE DESCRIPTION	START DATE	COMPLETION DATE
Award with Limited Notice to Proceed (LNTP) (Submit Shop Drawings, SSSP, Schedule, etc.)	April 24, 2024	May 8, 2024
Notice-to-Proceed	Day 1	Day 1
Substantial Completion	Day 1*	120 Days from Notice-to-Proceed
Final Completion	Day 120	150 Days from Notice to Proceed

*\*Contractor shall provide a Site-Specific Safety Plan (“SSSP”) and obtain approval from the Owner prior to commencing work.*

**End of Exhibit B**

**EXHIBIT C**  
**RECAP OF CONTRACT SUM**  
**Contract No.: C006426**

The Contract Sum is based on the Contractor's proposed Base Bid Lump Sum Fixed Price of \$380,821.92 and a \$40,000.00 Soil Amendment Allowance for a TOTAL CONTRACT SUM of \$420,821.92 as itemized below.

<b>BASE BID</b>				
<b>Item</b>	<b>Description</b>	<b>UOM</b>	<b>QTY</b>	<b>Total</b>
1	General Construction	LS	1	\$27,360.50
2	Payment and Performance Bond	LS	1	\$7,467.10
3	Mobilization and Demobilization	LS	1	\$8,558.96
4	Survey and Layout	LS	1	\$23,659.02
5	Erosion and Sedimentation Control	LS	1	\$7,550.06
6	Maintenance of Traffic	LS	1	\$33,759.76
7	Earthwork	LS	1	\$13,729.34
<b>Section 1 - Unit Prices Subtotal</b>				<b>\$122,084.74</b>
8	Landscape	LS	1	\$93,405.62
9	Irrigation	LS	1	\$82,831.56
<b>Section 2 - Labor Subtotal</b>				<b>\$176,237.18</b>
10	Allowance #1 - Additional Screening Material	LS	1	\$75,000.00
11	Allowance #2 - Secondary Utility Location	LS	1	\$7,500.00
<b>Section 3 - Equipment Subtotal</b>				<b>\$82,500.00</b>
<b>Base Bid Grand Total</b>				<b>\$380,821.92</b>

<b>SOIL AMENDMENTS ALLOWANCE</b>				
<b>Item</b>	<b>Description</b>	<b>UOM</b>	<b>QTY</b>	<b>Total</b>
12	Allowance #3 - Soil Amendments	LS	1	\$40,000.00
<b>Section 4 - Soil Amendments Allowance Subtotal</b>				<b>\$40,000.00</b>
<b>Contract Sum Grand Total (Base Bid &amp; Soil Amendments Allowance)</b>				<b>\$420,821.92</b>

End of Exhibit C

**EXHIBIT D**  
**PENDING ALTERNATES**  
**Contract No.: C006426**

THERE ARE NO PENDING ALTERNATES

**End of Exhibit D**



**EXHIBIT E**  
**SCHEDULE OF UNIT PRICES**  
**Contract No.: C006426**

THERE ARE NO UNIT PRICES

**End of Exhibit E**

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**SPECIAL CONTRACT CONDITIONS**

Contract No.: C006426

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Table of Contents:

- (i) Definitions
- I. General Safety Requirements, Contractor Parking and Access, Break Areas
- II. Construction Site Minimum Personal Protective Equipment (“PPE”) and Clothing Requirements
- III. Reserved
- IV. Asbestos/Cadmium or Lead/CFCs
- V. Confined Spaces
- VI. Hazardous and Chemical Waste Disposal
- VII. Electrical Safety Policy
- VIII. Lock out / Tag out
- IX. Fall Protection
- X. Aerial Work Platforms (“AWP”)
- XI. Ladders
- XII. Trenching and Excavation
- XIII. Utility Locates
- XIV. Mobile Cranes
- XV. Heavy Equipment Operations
- XVI. Diving Operations
- XVII. Reserved

(i) Definitions:

The following is a list of defined terms and their corresponding meaning as they appear within this document:

**Contractor:** The word, Contractor, as it appears within this document, means the Contractor or the Consultant as named and as defined within the Agreement. The Contractor’s, rights, privileges, duties and obligations, as set forth herein also apply to each of its Sub-contractors and Sub-subcontractors and the suppliers of each and to the Consultant and each of its Sub-consultants and Sub-subconsultants and the suppliers of each.

**Owner:** The word, Owner, as it appears within this document, means the Owner, acting on its own behalf, or the Owner’s Representative, acting on the Owner’s behalf, each as named and defined within the Agreement, together with their designated representative(s).

**I. GENERAL SAFETY REQUIREMENTS, CONTRACTOR PARKING AND ACCESS, BREAK AREAS**

The Owner is dedicated to establishing and maintaining a safe work environment on all of its sites. Accordingly, the Contractor is obligated to strictly abide by the safety regulations and requirements set forth within these Special Contract Conditions. Flagrant disregard for safety regulations and requirements by the Contractor may result in disciplinary action up to and including immediate suspension of all relevant work activities and permanent removal of the responsible party, individual (or both) from the Owner’s property.

All workers must maintain appropriate and respectful behavior at all times. The following behaviors are not allowed and may result in disciplinary action up to and including immediate removal from the property:

- a) Fighting
- b) Horseplay
- c) Possession of firearms
- d) Possession/use of alcohol/drugs

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Work performed must be planned and communicated prior to starting and must incorporate safety into the planning. This shall take the form of a Project Site-Specific Safety Plan (“PSSP”), a hazard analysis, pre-task planning, etc. The type of planning used should be based on the complexity of the project and the associated safety hazards. Do not begin work before safety measures are in place and training is complete. Any changes to the PSSP must be communicated to the Owner.

All workers, including managers and supervisors, shall have the proper training and instruction on general safety requirements for the project as well as any task or equipment specific training required to complete the project. This also includes temporary workers. Awareness-type training is not sufficient where task or equipment specific training is required.

No one shall knowingly be permitted to work while their ability or alertness is so impaired by fatigue, illness, or other cause that they may expose themselves or others to injury.

All jobsite emergencies shall be reported immediately. For fire or medical emergencies, call 911 and ask for CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT. Report all emergencies to an immediate supervisor, the project manager and the Owner.

All work-related materials must be stored in an orderly fashion, keeping exits, access ways, walkways and sidewalks unobstructed. Work areas must be kept as clean and free of debris as practicable. Trash cans must be provided for refuse.

Smoking, “vaping”, and smokeless tobacco use will be permitted in designated areas only. The Owner reserves the right to designate these areas on a project.

Workers shall not engage in any activity, including cell phone usage, which diverts their attention while actually engaged in performing work. This includes operating vehicles and equipment. If cell phone usage is the primary means of communication, then it must be used in hands-free mode. The use of ear buds is prohibited.

No one shall ride in a vehicle or mobile equipment unless they are on a seat, with the exceptions of aerial work platforms (“AWPs”) and other equipment designed to be ridden while standing. Riding in the back of pick-ups shall not be allowed.

Seatbelts must be used when provided in any type of vehicle, including but not limited to, personal vehicles, industrial trucks, haulage, earth moving, and material handling vehicles. Seatbelts must also be used in a personal transport vehicle (“PTV”) if so equipped.

Posted speed limits and other traffic signs shall be observed at all times. Stop for personnel in and/or entering a crosswalk as they have the right of way.

Do not pass or drive around busses when they are loading, unloading, or stopped in a driving lane.

Park in authorized areas only. Do not block or obstruct intersections, fire lanes or fire hydrants, traffic lanes, pedestrian walkways, driveways or parking lot entrances. Vehicles parked in unauthorized places may be towed without notice at the vehicle owner’s expense.

Fresh drinking water must be provided at construction job sites. If a cooler is used instead of bottled water, then it must be maintained in a sanitary condition, be capable of being tightly closed, equipped with a tap, and clearly marked as to its content. Disposable cups must be provided. Trash cans must be provided for the disposable cups and/or bottles.

Portable restrooms and hand washing facilities must be provided, if needed, and must be maintained in a clean and sanitary condition. Portable restrooms must meet Florida Administrative Code 64E-6.0101. The Owner reserves the right to determine the location of these facilities.

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**II. CONSTRUCTION SITE MINIMUM PERSONAL PROTECTIVE EQUIPMENT (“PPE”) AND CLOTHING REQUIREMENTS**

The Contractor shall require that all workers within the construction limits always wear/utilize personal protective equipment (“PPE”), including but not limited to the following: hard hats, safety glasses, high visibility vests or shirts, construction/work-grade footwear and long pants. Additional PPE shall be utilized when other specific hazards are present as defined by the Project Specific Safety Plan (“PSSP”). All PPE must meet current Occupational Safety and Health Administration (“OSHA”) and American National Standards Institute (“ANSI”) requirements. The Owner reserves the right of final decision, in its sole and absolute discretion, as to whether the PPE utilized meets project requirements. “Cowboy” and similar novelty hard hats are not permitted. Sleeveless shirts are not permitted. All high-visibility clothing is to be monitored closely to ensure that all items retain the protective qualities provided by the manufacturer. Vests and shirts that have become faded are to be replaced and shall not be worn while performing work on the Owner’s job site. Shirts designed to be worn by the general public, such as those endorsing sports teams or other products or services, even if they are yellow, green, or orange, are not considered high-visibility shirts and do not meet the requirements set forth herein. In the event that any of the requirements set forth within this Section conflict with the requirements set forth elsewhere within this document or within any of the Contract Documents, the more stringent requirements shall apply.

**III. RESERVED**

**IV. ASBESTOS/CADMIUM OR LEAD/CFCs**

**A. ASBESTOS**

Contractor acknowledges that it has been made aware that Asbestos-Containing Materials (ACM) and/or Presumed Asbestos-Containing Materials (PACM), including without limitation, thermal system insulation, and sprayed on or troweled on surfacing material that is presumed to contain asbestos, exists or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain ACM and/or PACM as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the quantities of ACM and/or PACM referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Asbestos Standards, 29 CFR Parts 1910, 1915, and 1926.

**B. CADMIUM and/or LEAD**

Contractor acknowledges that it has been made aware that cadmium and/or lead exists, or may exist, at the Job Site and that Contractor may be performing Work or services in or near areas that contain cadmium and/or lead as specified in the Contract Documents. Contractor takes full and complete responsibility for communicating existing conditions to all subcontractors and employees thereof in accordance with the Occupational Safety and Health Administration Hazard Communication Standard 29 CFR Part 1926.59. The Owner and Contractor agree that the cadmium and/or lead referred to in the Contract Documents are described for the sole purpose of providing notification pursuant to the Occupational Safety and Health Administration Cadmium Standard 29 CFR 1926.63 and/or Lead Standard 29 CFR 1926.62.

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C. CHLOROFLUOROCARBONS (CFCs)

Contractor acknowledges that it has been made aware that chlorofluorocarbons (CFCs) exist, or may exist at the Job Site and that Contractor may be performing Work or services in or near areas that contain CFCs as specified in the Contract Documents. Should the Contractor's work result in (i) any loss or release of CFCs from any source, including any equipment or containers, or (ii) any addition by Contractor of CFCs to any equipment or container, then Contractor shall provide all necessary documentation concerning such loss, release or addition, including the quantities of CFCs affected, to the Owner. The Owner and Contractor agree that the quantities of CFCs referred to in the Contract Documents are approximate and are enumerated for the sole purpose of providing notification to the Contractor.

D. USE OF ASBESTOS/LEAD/CADMIUM CONTAINING MATERIALS

Contractor shall not utilize or install any asbestos, lead, or cadmium-containing products on the Owner's property or within the scope of Work or services contemplated by this Agreement. It is the responsibility of the Contractor to obtain appropriate Material Safety Data Sheets for all materials to be used, and verify that the products do not contain asbestos, lead or cadmium. This requirement extends to any materials that may be specified in the Contract Documents. Specification of a particular material by the Owner in the Contract Documents does not relieve the Contractor from its responsibility to verify that the specified material does not contain asbestos, lead or cadmium. If a specified material does contain asbestos, lead or cadmium, then Contractor shall notify Owner immediately, and submit a proposed alternate material to be used in lieu of the specified material. Contractor shall submit Material Safety Data Sheets for all installed products, as part of the As-Built package. If Contractor installs any product containing asbestos, lead or cadmium, without previously obtaining the written consent of the Owner, Contractor shall be responsible for all costs associated with removal of the asbestos, lead, or cadmium containing material.

V. CONFINED SPACES

Contractor acknowledges that it has been made aware that permit-required confined spaces exist or may exist at the Job Site and that the Contractor may be performing Work or Services in or near permit-required confined spaces as specified in the Contract Documents. The Contractor shall fully comply with the requirements of 29 CFR Part 1910.146 in connection with all Work in any permit-required confined space ("PRCS"), as defined by OSHA. The Contractor must have a written confined space program when performing Permit Required Confined Space ("PRCS") entry. Accordingly, site specific conditions related to confined space entry must be addressed in the Contractor's Project Specific Safety Plan ("PSSP"). In support of the Contractor's preparation the PSSP, the Contractor shall obtain from the Owner the following information: (i) the elements that make the space in question a permit-required confined space, including the hazards identified and the Owner's experience with the space, and (ii) any precautions or procedures that the Owner has implemented for the protection of employees in or near any PRCS where the Contractor's personnel will be working.

The Contractor shall provide its own confined space permits when working on the Owner's job site. All workers entering a confined space must have training commensurate with the role or task they will be performing. This includes: entrant, attendant entry supervisor, air monitoring, rescue, site-specific training for those workers exposed to hazards posed by PRCS, but who may not be performing work inside of confined space or supporting confined space entry.

Confined spaces that have been evaluated and designated by the Owner as a PRCS will be treated as such,

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despite whether or not the Contractor agrees or disagrees with that designation. Trenches may also be treated as a PRCS under certain conditions. The Owner reserves the right to designate any trench as a PRCS in its sole and absolute discretion.

Alternate entry procedures or reclassification may be used if all requirements of 29CFR1926.1200 are met. When certain conditions described in the OSHA standard are met, the Contractor may use alternate entry procedures for worker entry into a PRCS, however, the Contractor must first consult with the Owner prior to using any alternate entry procedures.

The Owner shall provide information to the Contractor respecting any known hazards associated with a given PRCS. However, it is ultimately the Contractor's responsibility to determine, with reasonable certainty, the existence of any and all hazards prior to any worker's entry into the confined space. The Owner is NOT responsible for providing additional services prior to or during entry into a given confined space, including but not limited to: atmospheric monitoring, emergency response services, including rescue, attendants or entry supervisors.

The Owner reserves the right to order the immediate discontinuation of the performance of work and the immediate removal of the Contractor's personnel from a confined space if an unsafe condition or behavior is observed. In such instances, the space will be immediately evacuated until concerns are resolved to the satisfaction of the Owner.

When both the Owner's personnel and the Contractor's personnel will be working in or near any PRCS, prior to entering such PRCS, the Contractor shall coordinate entry operations with the Owner. The Contractor shall inform the Owner at the conclusion of the entry operations regarding the PRCS program followed and regarding any hazards encountered or created within any PRCS during entry operations. The Contractor takes full and complete responsibility for communicating existing conditions to all Subcontractors, Sub-subcontractors and to the employees thereof.

**VI. HAZARDOUS AND CHEMICAL WASTE DISPOSAL.**

All hazardous, regulated, universal and chemical wastes generated by the Contractor during the performance of the Work shall be managed in accordance with applicable federal, state and local law and regulations, including but not limited to Title 40 CFR Subchapter I, Parts 260 through 265, 273, 279, 302; Title 49 CFR Chapter I, Subchapter A and Rule 62-730 of the Florida Administrative Code as applicable to "Large Quantity Generators of Hazardous Wastes". Packaging, labeling, storage and disposal of such wastes shall also comply with Owner's policies, which are available from Owner. Such wastes must be properly placed in U.S. Department of Transportation approved packaging, with appropriate markings at the time of generation. Packages containing such wastes must be labeled to identify the contents, date of accumulation and the Contractor's name and telephone number. Such packages must be stored at a secure location and not exposed to weather. Upon completion of the Project or before 60 days has elapsed from the date of the first accumulation of wastes in each specific container, whichever is earlier, Contractor shall contact Owner to arrange for disposal. Owner will arrange for the disposal of such wastes by Owner's approved hazardous waste disposal vendor. Upon Owner's receipt of the invoice for disposal costs, a copy of the invoice will be forwarded to the Contractor and Contractor shall reimburse Owner therefor. The Contractor shall be responsible for all packaging, storage, and labeling costs.

**VII. ELECTRICAL SAFETY POLICY**

Implicit on all electrical work performed at any of the Owner's properties is the Contractor's (and its Subcontractor's and Sub-subcontractor's) strict compliance with the Owner's Electrical Safety Policy ("Policy").

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The Policy is that all electrical work *shall* be performed de-energized as a standard work practice. This Policy applies to the Contractor, Subcontractors, Sub-subcontractors, Subconsultants, Sub-subconsultants and anyone who performs electrical work on or near electrical conductors or circuit parts which are or may be energized. Contractor is expected to exercise good judgment and take personal responsibility for reducing the hazard risk to its lowest level and to ensure strict compliance with all applicable federal, state and local laws, codes, regulations and rules.

The Contractor agrees that its employees and agents and the employees of any Subcontractor, Sub-subcontractor, Subconsultant, Sub-subconsultant or anyone who performs electrical work as described herein shall adhere to all posted warnings, wear appropriate personal protective equipment (“PPE”) and protective clothing and use appropriate tools until exposed energized electrical conductors or circuit parts are verified to be at a zero energy state. For systems up to 1000V, the zero-energy state shall be verified by the Contractor and those greater than 1000V shall be verified by the Owner. Any work performed within six feet (6’) of systems greater than 1000V at a zero energy state and where there are exposed cables, all personnel shall wear a minimum of 8cal daily wear Flash Resistant Clothing (FRC).

In the narrowly limited circumstances when exposed energized parts are not de-energized, excluding diagnostic testing that cannot be performed de-energized, a documented job briefing must first be completed by the Contractor and submitted to the Owner for approval. The intent of the briefing is to provide notification for performing energized work to the Owner prior to performing the work. The job briefing shall include, but not be limited to, the following:

- Validation for energized work
- Hazards associated with scheduled work such as working in roadways or work performed within boundary, etc.
- Work procedures
- Energy source controls such as physical barriers or meter verification
- PPE to be utilized
- Job work plan summary
- A complete list of the names of all individuals involved in the work/briefing

The Contractor understands and agrees that the Owner, throughout the term of the Contract, may review the Contractor's, Subcontractor's, and Sub-subcontractor's safe work plan to confirm for its operations and the safety and wellbeing of its employees, guests and invitees that adequate contingency plans have been considered in the event of an inadvertent interruption of electrical service.

Contractor shall establish or shall cause its Subcontractor or Sub-subcontractor to establish appropriate boundaries to restrict access around the Work based on the type of hazard present as called for in NFPA 70. The boundaries shall be either:

A **flash protection boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of four feet away (600V, 600A max) from the exposed energized electrical conductors or circuit parts where the potential exists for an arc flash to occur, unless specific information is available indicating a different flash boundary is appropriate. Persons must not cross the flash protection boundary unless they are wearing the appropriate PPE and are under direct supervision of a qualified person.

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A **limited approach boundary**, which shall be established by the qualified person of the Contractor or its Subcontractor or Sub-subcontractor a minimum of three feet six inches (3'6") away from the exposed fixed energized electrical conductors or circuit parts, 600V max, where the potential exists for an electric shock to occur, unless specific information is available indicating a different limited approach boundary is appropriate. The purpose of the limited approach boundary is to advise unqualified persons that an electrical shock hazard exists and to reduce the risk of contact with an exposed energized conductor. Only qualified persons and immediately supervised unqualified persons are allowed to cross the limited approach boundary.

The Contractor understands and agrees that it is the responsibility of the Contractor to ensure compliance with all applicable safety laws, codes regulations and rules as well as adherence to the Policy for all electrical work. The Owner reserves the right to observe and/or audit the Contractor's (or its Subcontractor's or Sub-subcontractor's) work without notice. The Contractor expressly understands and unequivocally agrees that any failure to strictly comply with any applicable safety laws, codes, regulations, and the rules of this Policy constitutes a material breach of the Contract and may result in an immediate work stoppage or termination of the Contract at no additional cost to the Owner.

**VIII. LOCK OUT / TAG OUT**

The Contractor shall have and maintain a program consisting of energy control procedures, employee training and periodic inspections prior to performing Lock Out / Tag Out ("LOTO"). The program shall have steps for notification, shutting down, isolating, blocking and securing machines, applying LOTO devices, dissipating stored energy equipment or facilities to control hazardous energy. It shall also have steps for the removal and transfer of LOTO devices and tags.

The Contractor must verify by testing that the machine or equipment has been isolated and secured from all energy sources before work begins. All affected personnel must be notified prior to starting.

Proper PPE must be worn in accordance with NFPA70E as referenced in RCES Electrical Safety, latest revision.

LOTO devices shall indicate the identity of the employee applying the device(s) as well as their department/company, contact number and date if the work will extend beyond one shift. A lock and tag must be used for all energy isolation. LOTO devices shall be standardized by color, shape or size and shall not be used for any other purpose. LOTO devices shall only be used for performing service or maintenance on equipment, not to be used for any other use. LOTO shall be performed only by the person(s) who are performing the servicing or maintenance. Each person performing LOTO must have individual locks and tags.

Before LOTO devices are removed by the worker who applied the device(s), the work area shall be inspected to ensure that nonessential items have been removed, all workers have been safely positioned or removed, and affected workers have been notified of re-energization of the equipment.

Hot tap operations for pressurized pipelines carrying natural gas, steam or water do not require LOTO if it is demonstrated that:

- a) Continuity of service is essential, and
- b) Shutdown of the system is impractical, and
- c) Procedures are documented and followed, and
- d) Special equipment is used to provide effective protection for workers



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Systems shall be de-energized and taken to a zero-energy state using applicable LOTO procedures and verified before work begins. Work on an energized system (e.g. diagnostic testing that cannot be performed de-energized) shall require validation accepted by the Owner and project manager.

If an equipment/machine is not capable of accepting a lock, a tag may be used without a lock as long as additional means can be used to prevent accidental activation of the device (e.g., removal of a lever, handle, switch, or valve).

Group LOTO is permitted when all of the following are met:

- a) A single authorized employee must assume the overall responsibility for the control of hazardous energy for all workers in the group. Authorized employees must have knowledge and training in the following:
- b) Skills necessary for the safe application, use and removal of energy-isolating devices
- c) Hazardous energy source recognition
- d) Type and magnitude of the hazardous energy sources in the workplace
- e) Energy-control procedures, including methods and means to isolate and control energy sources

The authorized employee must communicate and implement LOTO procedures, coordinate the operation to all affected workers, and verify that all LOTO procedural steps have been taken.

Each worker must affix their own personal LOTO device and tag to the group LOTO device or group lockbox before work begins.

The authorized employee must not remove the group LOTO device until each worker in the group has removed their personal LOTO device. The authorized employee will be the first lock on and the last lock off unless their responsibilities have been handed over to another authorized employee.

The authorized employee must make sure that there is a continuity of LOTO protection during a shift change. It is the responsibility of the oncoming worker to verify the machine, equipment or facilities is still in a zero-energy state. If there will be a lapse in time between the outgoing worker removing their LOTO device and the oncoming worker placing their LOTO device, the oncoming authorized employee must repeat the LOTO process and place their personal LOTO device on the machine, equipment or system.

In the event that a worker leaves the jobsite without removing their LOTO device and cannot be located, and it is necessary to restore the equipment to its normal operating state, the LOTO device may be removed after all of the following have been completed:

- a) Contractor has had no success in contacting the worker to determine if they are available to remove the LOTO device.
- b) Contractor's supervisory personnel, the authorized person, and the Owner have determined that it is safe to re-energize the machine, equipment or facility.
- c) The authorized person has notified all affected individuals that the machine, equipment or facility is being reenergized.
- d) After removal of the LOTO device, the Contractor must notify the worker whose lock was removed, prior to their return to work, that their LOTO device was removed and the machine, equipment or facility has been reenergized.

When the Contractor is performing work on existing machines, equipment or facilities owned and operated by the Owner, the Owner's responsible Project / Engineering Management and responsible Contractor

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supervisory personnel shall inform each other of their respective LOTO programs. The Owner reserves the right to determine if the Contractor's LOTO program meets the Owner's requirements.

**IX. FALL PROTECTION**

The Contractor shall provide training to all affected workers regarding the proper use of fall protection systems. Workers using fall protection improperly (e.g. harness slightly loose, D-ring in the wrong position on the back, etc.) can correct the condition and then continue working. Repeated misuse or misuse which results in an extremely hazardous condition (e.g. using an improper anchor point, using the wrong type or length of lanyard, etc.) will be considered cause for the Owner to demand an immediate stop to the performance of all related work (hereinafter deemed a "STOP WORK" condition), and the Contractor shall then immediately discontinue the performance of such work. When workers are observed being exposed to an unmitigated fall hazard, it will also be considered a STOP WORK condition. Work will not resume until the Contractor has reevaluated the situation and developed corrective measures to ensure the hazard(s) will not occur again.

Fall restraint systems shall be used instead of fall arrest systems whenever feasible. These systems allow a person to reach an area to perform their duties but prevent them from reaching a point where a fall could occur.

Self-retracting lifelines or lanyards ("SRLs") must be anchored at the height of the harness D-ring or above. It should be positioned directly overhead in order to prevent swing falls. When it isn't feasible to anchor overhead, and anchorage is only possible below the D-Ring, then fall protection equipment specifically designed for that application must be used. All SRLs must be used in accordance with the SRL manufacturer's instructions.

The Contractor shall use anchorage connection points designated by the Owner when available. If no such designated anchorages are available, then the Contractor's qualified person must select structures suitable as fall protection anchorage points for their workers.

Fall protection is not required when using portable ladders unless the ladder cannot be placed to prevent slipping, tilting or falling. If ladders must be used under these circumstances (e.g. lifts are not feasible), a Personal Fall Arrest System ("PFAS"), independent of the ladder, must be used. Working height on portable ladders is limited to twenty-five feet (25').

The use of a ladder, or similar, in close proximity (i.e., ladder length plus 4 feet) to a guardrail or parapet may create an exposure to the fall hazard. Fall protection must be provided by raising the height of the guardrail/parapet or a PFAS, independent of the ladder, must be used. Ladders or work platforms with a built-in guarded work platform do not require additional fall protection.

Workers shall be protected from falling into excavations five feet (5') or more in depth.

Slopes with an angle of measure from horizontal grade that exceed 40° require the use of fall protection.

Fall protection is required for work conducted six feet (6') or more above water. Where fall protection completely prevents falling into the water, personal flotation devices (PFDs) are not required.

**X. AERIAL WORK PLATFORMS ("AWP")**

All operators must be trained in safe and proper AWP operation. Training documents must be provided to the Owner immediately upon the Owner's request.

Written permission from the manufacturer is required before modifications, additions or alterations can be made to an AWP.

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Operators shall be responsible for following the requirements of the AWP operating manual and ensuring that the vehicle is in proper operating condition. Operators shall immediately report any item of non-compliance to a supervisor for corrective action. AWP's that are not in proper operating condition shall be immediately removed from service until repaired. The key shall be removed from the vehicle and a tag shall be attached to the control panel to identify the machine as "out of service" the vehicle shall not to be operated until it has been repaired.

The primary purpose of AWP equipment is to raise personnel and necessary tools to a temporary height for work; the AWP shall not be used as a crane. AWP equipment is not designed to lift materials except on the platform and within the manufacturer's capacity limits. Lifting items on the guardrails or by attaching them to the AWP equipment in any manner not approved by the manufacturer is strictly prohibited.

AWP occupants shall wear a fall restraint system, which includes a safety harness along with a fixed lanyard or self-retracting lifeline ("SRL") of appropriate length (e.g. 3 feet). If the AWP is being used at heights of 18 ft. or less, then a SRL shall be utilized. The fall restraint system shall be connected to an anchorage point provided by the manufacturer at all times when the AWP is in use.

Transfer at Height (in or out of the basket/platform) is permitted however one hundred percent (100%) tie-off is required during the maneuver.

Some AWP's are equipped with an external fall protection system. These systems are either a halo system or rigid rail engineered to safely allow personnel to exit the basket with 270-degree (270°) mobility around the basket. These systems are designed to provide an anchorage for fall arrest and can be used as such. Fall restraint is also an option depending upon the situation. When an individual is attached outside of the AWP basket, the AWP shall be emergency stopped and the basket shall not be moved. If an individual must reach an area that is not within the current radius of the attached fall protection system (harness/lanyard) they shall re-enter the AWP basket, move the unit to a closer location, emergency stop the AWP and then exit the basket to perform the given task from the new location.

**XI. LADDERS**

Consideration must be given to the method of transporting tools and materials to the work location. Workers are not permitted to hand-carry items up the ladder. Hands must be free to climb the ladder.

Ladders placed in areas such as passageways, walkways, doorways or driveways, or where they can be displaced by workplace activities or traffic should be barricaded to prevent accidental movement.

Never place a ladder in front of doors unless the door is locked and access is controlled.

Never climb the back-bracing of a step/A-frame ladder unless it is a twin (double-sided) ladder.

Only one person is permitted on a ladder at a time, unless it is designed for two-person use.

Do not use ladders as scaffold.

All manufacturer stickers/labels must be affixed and in readable condition.

Prior to each use, the Contractor must visually check the ladder for the following:

- a) Free of cracks, splits, and corrosion.
- b) Steps/rungs free of oil/grease.
- c) Steps/rungs firmly attached to side rails.
- d) Steps/rungs not bent.
- e) Safety feet/base and other moveable hardware in good working condition.

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- f) Ropes/pulleys in good condition (extension ladders).

Temporary fixes shall not be used to make repairs to a damaged ladder. Any repair to a ladder must be with manufacturer approved parts or kits. Any accessories used with a ladder must be approved by the manufacturer.

Work shall not be performed from a permanent fixed ladder unless a fall protection system, such as a ladder climbing device, is installed and used.

Extension, straight, and portable ladders cannot be made of wood (except job-made ladders on construction sites); fiberglass is preferred. Ladders made of aluminum cannot be used for electrical work or near energized equipment.

The working height for an extension shall be limited to under 25 feet.

Workers shall not sit, kneel, step, or stand on the pail shelf, top cap, or the first step below the top cap of an A-frame/step ladder.

If ladders are used within 1.5 times their height to a leading edge or drop in elevation (measured horizontally), fall protection devices must be used.

Do not use an A-frame/step ladder to transition to another elevated work surface unless it has been specifically designed for this.

Use ladders correctly. Do not over-reach. Prevent belt buckles from extending outside the side rails of the ladder. A-frame/step ladders should be used only for front-facing work. Do not perform "side-load" work.

**XII. TRENCHING AND EXCAVATION**

Utility locate tickets must be obtained prior to breaking ground by each and every contractor performing trenching/excavation and the operator performing the trenching/excavation must have reviewed the ticket. Third party locates may also be required for trenching/excavations located beyond the utility provider's service point.

All soil shall be considered as Class C soil. Class A and B soils do not exist on property. All sloping of trenches must be at a 1.5:1.0 ratio. Benching is not allowed in Class C soil.

Any shoring, bracing, shielding or trench boxes used must be in good condition. Tabulated data must be made available upon request.

Trenches or excavations that have a hazardous atmosphere or the potential to contain a hazardous atmosphere must be monitored by the competent person and may have to be treated as a confined space if appropriate.

The Contractor must provide appropriate barricades to protect people from falling or driving into the trench or excavation. Lighted and/or reflective barricades are preferable at night. Caution tape is not a sufficient barricade. Barricades must be placed at least six feet (6') from the edge of the trench or excavation. Trenches and excavation that are left open and unattended shall be barricaded until work resumes. These barricades shall be checked at least daily to assure no changes have occurred.

**XIII. UTILITY LOCATES**

*Routine Locate Tickets:*

The Contractor must request the locate ticket a minimum of three (3) full business days before digging.

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If the dig site is in an area that is under water, the Contractor must call for the locate ten (10) full business days before digging.

Locate ticket requests can be submitted anytime on-line at Sunshine One but must be submitted to Reedy Creek Energy Services (RCES) between 7:00 AM and 4:00 PM, Monday through Friday, excluding weekends and holidays.

Obtain a completed locate ticket through Sunshine State One Call of Florida (“SSOCOF”) by calling 811.

Call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539.

Provide the Sunshine One Call locate ticket number.

Mark up the RCES supplied map to show limits of excavation.

The Contractor is expressly forbidden from performing any excavation work until it has received and reviewed the RCES Utility Locate Office response and notes for utility presence, conflicts or special conditions.

*Emergency Locate Tickets:*

An emergency is defined as any condition constituting a clear and present danger to life or property; a situation caused by the escape of any substance transported by means of an underground facility; any interruption of vital public service or communication caused by any break or defect in an underground facility; or any impairment of public roads or utilities that requires immediate repair (collectively, incident(s)), as determined by the authority having jurisdiction within the area where the incident has occurred. Difficulties experienced by the Contractor in properly scheduling the performance of planned work activities will not constitute justification for obtaining an emergency locate ticket.

During the hours of 7:00 AM to 4:00 PM, Monday through Friday, call the Reedy Creek Energy Services (RCES) Utility Locate Office at (407) 560-6539. Call the SSOCOF at 811 or 1-800-432-4770. Provide the SSOCOF locate ticket number to the RCES Utility Locate Office

The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Utility Locate Office

On weekdays between 4:00 PM and 7:00 AM, or Weekends and Holidays: Call the RCES Control Room Emergency Number at 407-824-4185. Provide the nature of the emergency and exact location. Contact SSOCOF at 811. Provide the SSOCOF locate ticket number to the RCES Control Room. The Contractor shall not begin emergency excavation until it has received verbal clearance from the RCES Control Room.

No excavation will be permitted until the excavator has submitted a Locate Ticket request and received clearance as described above.

Each company that performs digging must obtain and follow their own locate ticket. The excavator shall have a copy of the locate ticket at the excavation site.

Requirements must be communicated directly to the person(s) performing the digging.

Exposed underground utilities must be protected.

Each company must locate utilities when cutting or drilling into concrete.

Secondary utilities must be considered when performing digging activities.

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The Contractor shall IMMEDIATELY STOP EXCAVATION if an underground facility is contacted (even if there is no noticeable damage) and immediately notify the Owner of such. Warning signs that indicate the potential of contacting a buried, underground utility include buried red concrete, unpainted buried concrete, wooden boards, warning tape, etc.

It is important to understand tolerance zones. Locate marks show the approximate location of underground facilities. The lines can actually be located anywhere within the tolerance zone. Proceed cautiously when digging within 24 inches on either side of the locate marks.

When any mechanized equipment is used within the tolerance zone, supervisory personnel shall be present to supervise the operation.

**XIV. MOBILE CRANES**

Operators must be certified on the specific type of crane they are operating. Certification must come from an accredited crane operator testing organization, such as The National Commission for the Certification of Crane Operators (NCCCO).

A Lift Plan shall be submitted on all critical lifts and should be completed and submitted for review and acceptance, with the exception of emergency lifts, 72 hours, prior to lift.

A critical lift plan is required for the following lifts:

- a) Lift is  $\geq 75\%$  of the cranes rated capacity as determined by the load chart
- b) Two or more cranes involved in the lift or adjacent to each other
- c) Hoisting personnel
- d) Lift from floating platform, barge, or vessel
- e) Any lift where boom intersects within 20 feet of monorail
- f) Any lift deemed critical by the Owner
- g) Any lift where boom intersects within 25 feet of a populated area

A critical lift plan should include a Pre-Lift Crane Data Worksheet, step-by-step work instructions, a list of all personnel involved and their assignments, and a diagram of the lift and swing area. A 3-D plan or comparable CAD rendering is preferable. A rigging plan is required to be submitted for critical lifts. If the crane will be set up on top of, or within 10-feet of a tunnel, manhole, or utility vault; or within 10-feet of a seawall, bridge, or water's edge, Ground Bearing Pressures (GBP) for each outrigger (below the crane mats) must be submitted with the lift plan.

The use of a crane to hoist personnel is prohibited except where it can be demonstrated that conventional means of reaching the work area (scaffold, ladders, aerial lifts, etc.) would be more hazardous or is not possible due to worksite conditions. Hoisting personnel shall comply with all parts of 29 CFR 1926.1431.

The crane hook or other part of the load line may be used as an anchor for a personal fall arrest system where all of the following requirements are met:

- a) Approved by a qualified person
- b) Equipment operator must be at the worksite
- c) No load is suspended from the load line when the personal fall arrest system is anchored to it or the hook.

Tag lines must be used for all lifts to control the load unless the use of a tag line is deemed unsafe or unfeasible. The decision to not use a tag line must be included in the lift plan and accepted by the Owner.

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All crane operations near, adjacent to, or within 10 feet of the monorail or skyway transportation system, require a special precautions are taken. All work must be coordinated with the Owner prior to commencing. Any contact with anything associated with these systems must be reported immediately to the Owner. At no time will any materials be lifted over the systems. A spotter is required when a crane travels under the systems

Barricades and notices should be used to prevent people from entering the fall zone (the area where the load will land if dropped). No one is allowed to be under a suspended load, with the exception of steel workers working in accordance with 29 CFR 1926.753(d).

In congested areas where barriers are not feasible, an audible signal (horn, whistles, etc.) must precede each lift to alert nearby personnel working in the proximity of the crane that the lift is in progress. Evening lifts may use alternative signaling methods in lieu of audible signals, if requested.

The qualified signal person shall be the only person signaling the crane operator; however, anyone can signal a stop if there is a perceived emergency situation.

**XV. HEAVY EQUIPMENT OPERATIONS**

The operator must not wear earbuds or headphones while operating heavy equipment. These devices may create a distraction and may prevent the operator from hearing important sounds in the work area (e.g. backup alarms, evacuation horns, etc.). They do not serve as hearing protection or attenuation which may be needed when operating heavy equipment.

Unless the cab is totally enclosed, the operator must wear appropriate personal protective equipment (PPE) which may include safety glasses, hearing or respiratory protection. When exiting the cab in a construction zone, the operator must wear the required site PPE. Seat belts are required at all times.

Chase (escort) vehicles / Spotters are required when:

- a) Heavy equipment travels to and from work zones
- b) Anticipated pedestrian or vehicle traffic intrudes within the safe work zone, in the judgment of the operator
- c) Space is restricted, and a safe work zone cannot be maintained
- d) The back-up alarm is muted
- e) Safe movement is in question
- f) Overhead hazards are present

The equipment shall be operated at a safe speed. Equipment inspections shall be documented and available upon request.

Check the area for overhead utility lines to ensure the equipment will remain at least 10 feet away from the lines at all times.

Avoid backing up the equipment unless it is absolutely necessary. Attempt to always travel forward if possible. Backing up the equipment usually does not present a clear field of view.

Never allow an individual to ride on running boards or any other part of the equipment. Only the operator should be on the equipment.

Maintain three points of contact when exiting or entering the vehicle.

Never exit a running vehicle. The vehicle must be turned off if the operator is leaving the cab.

Remove keys from unattended vehicles.

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Always park the vehicle on level ground. Lower buckets, shovels, dippers, etc. and set the parking brake.

**XVI. DIVING OPERATIONS**

Before conducting dive operations, a job hazard assessment shall be developed by the Contractor and submitted to the Owner in the form of a dive plan ("Dive Plan"). A complete Dive Plan shall be developed and documented for each diving operation. The primary purpose of the Dive Plan is to provide a written document capturing the details of the dive operations. The Owner must approve all Dive Plans prior to beginning the dive operations. Dive Plans shall be reviewed on a periodic basis to ensure they remain relevant for the actual diving activity and have been updated as warranted (i.e., staff safety concerns are conveyed, new equipment or procedures are to be implemented, or an injury/incident has occurred).

The Dive Plan shall include the following:

- a) Site & project information
- b) Immediate contact name(s) and telephone number(s)
- c) Information regarding personnel involved, including the Designated Person in Charge ("DPIC"), dive team roles and qualifications, assignment of responsibilities and verification of training records, and the verification of the physical fitness of dive team members
- d) Minimum equipment requirements
- e) Sequence of basic job steps and the recommended safe operational procedures and protection. Known and/or potential hazards, including environmental, surface, overhead and underwater conditions and hazards, including any anticipated hazardous conditions or confined spaces
- f) Activities, equipment or processes in the area of operations that may interfere with the dive or that pose a safety hazard to dive team members (i.e., watercraft, ride vehicles, chemicals, potentially dangerous aquatic wildlife and other types of hazards)
- g) Limited access or penetration situations. A diver entering a pipe, tunnel, wreck, or similarly enclosed or confining structure, (other than a habitat).

Activities, equipment or processes in the area of operation that may interfere with the dive or that pose a safety hazard to dive team members shall require that proper controls be developed, documented and implemented to ensure the dive area is secured from such hazards impeding and/or entering the area.

A diver-carried reserve breathing supply that meets the emergency air volume requirements for the dive profile with a separate first and second stage regulator shall be provided to each diver for all diving operations.

**XVII. RESERVED.**

END OF SPECIAL CONTRACT CONDITIONS



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**ARTICLE 1**  
**DEFINITIONS**

1.1. **THE CONTRACT.** The Contract for Construction (referred to herein as the "Contract") is the sum of all Contract Documents. It represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification, as defined below.

1.1.1. The Contract Documents consist of those documents specified in Paragraph 1.2. of the Agreement or otherwise referred to in these General Conditions of the Contract for Construction. The Contract Documents do not include bidding documents, such as the Advertisement or Invitation to Bid, the Instructions to Bidders, sample forms, the Contractor's Bid or portions of Addenda as and to the extent that they may relate to any of the bidding documents or bidding procedure.

1.1.2. An Addendum is a written or graphic instrument issued by the Owner prior to the execution of the Agreement which sets forth additions, deletions or other revisions to the Contract Documents or clarifications thereof.

1.1.3. A Modification may be accomplished by: (a) a Change Order; (b) a Directive; or (c) any other written amendment to the Contract signed by both parties. A Modification may be made only after execution of the Agreement. No Directive shall be construed as a Change Order or other Modification unless it expressly so states.

1.1.4. A Change Order is a written Modification executed by both parties (except in the event of a unilateral Change Order as herein provided) and consisting of additions, deletions or other changes to the Contract. A Change Order may be accompanied by and/or may identify additional or revised Drawings, sketches or other written instructions, which become and form a part of the Contract Documents by virtue of the executed Change Order. Except as otherwise provided in Subparagraph 1.1.5., a Change in the Work, or a change in the Contract Time or the Contract Sum shall become the subject of a Change Order.

1.1.5. A Directive is a written document issued by the Owner and consisting of additions, deletions, clarifications or other written instructions issued by the Owner with respect to the performance of the Work or the activities of the Contractor on the Job Site or the property of the Owner. A Directive may include, but shall not be limited to, a bulletin, an engineering change, or other orders or instructions. Directives may become the subject of a Change Order, either singularly or collectively. Directives shall become the subject of a Change Order if they involve a Change in the Work, or a change in the Contract Time or the Contract Sum.

1.2. **THE OWNER.** The Owner is the person or organization identified as such in the Agreement. The term "Owner," whenever it appears in the Contract Documents, means the Owner and/or the Owner's Representative acting on behalf or for the benefit of the Owner (except as otherwise specified in the Contract Documents or as the context otherwise requires); provided, however, that with respect to any provisions of the Contract which require the Contractor to provide insurance for the protection of the Owner or to release the Owner from, or waive, any claims the Contractor may have against it, the term "Owner" shall mean the Owner and its supervisors, officers, employees, agents and assigns and the Owner's Representatives and its parent, related, affiliated and subsidiary companies, and the officers, directors, agents, employees and assigns of each.

1.3. **THE OWNER'S REPRESENTATIVE.** The Owner's Representative is the person or organization designated from time to time by the Owner to act as its representative as identified in Article 3 of the Agreement or the most current Modification thereto.

1.4. **THE CONTRACTOR.** The Contractor is the person or organization identified as such in the Agreement. The Contractor shall so designate a sufficient number of Project representatives that there shall be at least one authorized representative on the Job Site at all times in which the Work is being performed including, without limitation, a project manager (herein referred to as the "Project Manager") who shall at all times have authority to act (in all capacities necessary for the Work) for and bind the Contractor.

1.5. SUBCONTRACTOR; SUB-SUBCONTRACTOR.

1.5.1. A Subcontractor is a person or organization having a direct contract with the Contractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.5.2. A Sub-subcontractor is a person or organization having a direct or indirect contract (on any tier) with a Subcontractor to perform any of the Work at the Job Site or to supply any materials or equipment to be incorporated in, or utilized in connection with, the Work.

1.6. THE JOB SITE. The Job Site shall mean the area in which the Work is to be performed and such other areas as may be designated by the Owner for the storage of the Contractor's materials and equipment.

1.7. THE PROJECT. The Project is the total construction of which the Work may be the whole or a part.

1.8. WORK; CONTRACT TIME; CONTRACT SUM. The Work, the Contract Time and the Contract Sum are as defined in Articles 2, 5 and 6, respectively, of the Agreement.

1.9. PROVIDE. Except as the context otherwise requires, the term "provide" means to furnish, fabricate, complete, deliver, install and erect including all labor, materials, equipment, apparatus, appurtenances and expenses, necessary to complete in place, ready for operation or use under the terms of the Specifications.

1.10. PLANS. Wherever the words "Plan" or "Plans" are used in the Contract Documents, they shall be construed as having the same meaning as Drawing or Drawings (as referred to in the Agreement).

1.11. SPECIFICATIONS. The Specifications shall include those referred to in the Agreement.

1.12. THE ARCHITECT/ENGINEER. The person or entity having a direct contract with the Owner to design the Project or a portion thereof and to produce the Project Plans and Specifications or portion thereof, as identified in Article 4 of the Agreement or the most current Modification thereto, together with its subconsultants.

**Article 2**  
**THE CONTRACT DOCUMENTS**

2.1. EXECUTION, INTENT AND INTERPRETATIONS.

2.1.1. The Contractor warrants and represents that, in executing the Agreement and undertaking the Work, it has not relied upon any oral inducement or representation by the Owner, the Owner's Representative, the Architect/Engineer or any of their officers or agents as to the nature of the Work, the Job Site, the Project conditions or otherwise.

2.1.2. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. If the Contract Documents do not specifically allow the Contractor a choice as to quality or cost of items to be furnished, but could be interpreted to permit such choice, subject to confirmation or approval by the Owner, they shall be construed to require the Contractor to furnish the best quality. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

2.1.3. Where conflict exists within or between parts of the Contract Documents, or between the Contract Documents and either applicable industry standards or applicable codes, ordinances or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used: the Agreement; the Special Conditions; the General Conditions; the Specifications; the Drawings. If the Contractor is required to perform any extra or corrective Work to comply with the preceding sentence, it shall not be entitled to an increase in the Contract Sum or Contract Time, and no claim shall result from such compliance. Subject to confirmation or approval by the Owner, large scale Drawings take precedence over smaller scaled Drawings, figured dimensions on the Drawings take precedence over scaled dimensions, and noted items on the Drawings take precedence over graphic representations.

2.1.4. The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings, are not intended to influence the Contractor in its division of the Work among Subcontractors or its establishment of the extent of the Work to be performed by any trade.

2.1.5. The Contractor shall submit a written request to the Owner for any interpretations necessary for the proper execution or progress of the Work. Such interpretations shall be issued in writing.

2.1.6. The Contract Documents reflect conditions as they are believed to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute a representation by or on behalf of the Owner that such conditions actually exist. The Contractor shall inspect the Job Site and conduct any tests or surveys it deems necessary or desirable prior to the commencement of the Work and shall accept full responsibility for any loss sustained by it as a result of any variances between the conditions as shown on the Contract Documents and the actual conditions revealed during the progress of the Work or otherwise. The Contract Sum shall in no event be increased by reason of any such variance unless otherwise specifically provided herein.

2.1.7. The Contractor shall develop and maintain current "as-built" Plans to be provided to the Owner in accordance with Subparagraph 9.4.2. The Owner may inspect and copy such Plans at any time during the course of the Work.

2.2. COPIES FURNISHED; OWNERSHIP. All Contract Documents and copies thereof furnished by the Owner, the Owner's Representative or the Architect/Engineer are and shall remain the Owner's property. They are not to be published or used by the Contractor on any other project and, with the exception of one complete set for the Contractor, are to be returned to the Owner upon completion of the Work.

2.3. NO ORAL WAIVER. The provisions of this Contract cannot be amended, modified, varied or waived in any respect except by a Modification signed by the Owner. The Contractor is hereby given notice that no person has authority to orally waive, or to release the Contractor from, any of the Contractor's duties or obligations under or arising out of this Contract. Any waiver, approval or consent granted to the Contractor shall be limited to those matters specifically and expressly stated thereby to be waived, approved or consented to and shall not relieve the Contractor of the obligation to obtain any future waiver, approval or consent. Despite any prior waiver, approval or consent as to any particular matter, the Owner may at any time require strict compliance with the Contract Documents as to any other matter.

### **Article 3 OWNER**

3.1. EASEMENTS. The Owner shall obtain and pay for any easements required for permanent structures.

3.2. ACCESS. The Owner shall at all times have access to the Work at each and every stage of preparation and progress. The Contractor shall provide facilities (including, without limitation, roadways) for such access.

### **Article 4 THE OWNER'S REPRESENTATIVE**

4.1. CONTRACTUAL RELATIONSHIPS. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner's Representative and the Contractor; provided, however, that the Owner's Representative shall be deemed to be a third party beneficiary of those obligations of the Contractor to the Owner as imposed by the Contract Documents (including, but not limited to, the Owner's rights pursuant to Paragraph 7.2. and Articles 10 and 11 of these General Conditions).

4.2. ROLE. Except as otherwise provided in the Contract Documents, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all determinations and decisions to be made by and, in general, all other action to be taken by, or given to, the Owner shall be taken, given and made by, or delivered or given to, the Owner's Representative in the name of and on behalf of the Owner; provided, however, that the Owner (and not the Owner's Representative) shall be solely obligated to the Contractor for all sums required to be paid by the Owner to the Contractor hereunder. If the Owner's Representative is an organization, then it shall, in turn, act through such person or persons as it may designate in writing from time to time. Only those so designated are authorized to grant on behalf of the Owner any approval, consent or waiver with respect to the Contract Documents or the Work, or to otherwise act for the Owner in any capacity whatsoever.

### **Article 5 CONTRACTOR**

5.1. REVIEW OF CONTRACT DOCUMENTS. In addition to the representations and warranties contained in Article 9 of the Agreement, the Contractor acknowledges that prior to execution of the Agreement it has thoroughly reviewed and inspected the Contract Documents. The Contractor further acknowledges that it has satisfied itself regarding any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or

explanation and has assured itself of the adequacy and accuracy of each of the Contract Documents, as well as the compatibility of any combination thereof, as they relate to one another and to the scope of Work and the Schedule. The Contractor hereby warrants and represents to the Owner that the Contract Documents are suitable and adapted for the Work and guarantees their sufficiency for their intended purpose. The Owner shall not be responsible or liable to the Contractor for, and the Contractor hereby waives, any claims for changes, delays, accelerations, inefficiencies, impacts, and any other costs, damages, losses, or expenses of any nature whatsoever, resulting from any error, inadequacy, inaccuracy, inconsistency, insufficiency, unsuitability, discrepancy, ambiguity, omission, or insufficiency of detail or explanation in the Contract Documents. The Contractor shall perform no portion of the Work at any time without approved Contract Documents or, where required, shop drawings, product data, or samples, for such portions bearing the A/E's appropriate action stamp. Work performed in violation of this provision shall be at the Contractor's risk. Nothing in this Paragraph 5.1 shall in any way limit the effects of Article 9 of the Agreement.

## 5.2. SUPERVISION AND CONSTRUCTION PROCEDURES.

5.2.1. The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, coordination, scheduling (subject to Article 8) and procedures, for all cleanup and for all safety and weather precautions and programs, in connection with the Work.

5.2.2. The Contractor shall employ a competent Project Manager and necessary assistants who shall be in attendance at the Job Site during the progress of the Work and who shall be satisfactory to the Owner. The Contractor shall remove any of its employees or agents (including, without limitation, the Project Manager) from the Project upon instruction from the Owner. The Project Manager shall not be changed except with the consent of the Owner unless the Project Manager ceases to be in the Contractor's employ.

5.2.3. The Contractor shall be responsible to the Owner for the acts and omissions of its employees. It shall also be responsible to the Owner for the acts and omissions of its Subcontractors and Sub-subcontractors, their agents and employees, and other persons performing any of the Work, in the same manner as if they were the acts and omissions of persons directly employed by the Contractor.

5.2.4. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Contract, including, without limitation, by any inspections or tests required or performed under Paragraph 5.7., or by approvals or other similar action with regard to shop drawings or submittals (of any type), or by the activities of persons other than the Contractor with respect to the Project. Further, notwithstanding the fact that a dispute, controversy or other question may have arisen between the parties hereto relating to the execution or progress of the Work, the interpretation of the Contract Documents, the payment of any monies, the delivery of any materials or any other matter whatsoever, the Contractor shall not be relieved of its obligations to pursue the Work diligently under the Contract Documents pending the determination of such dispute, controversy or other question.

5.2.5. The Contractor shall establish, implement and supervise the submission of shop drawings and other submittals (of any type) in accordance with the Schedule and any Milestones. The Contractor shall note any variances between any such shop drawings or other submittals and the Contract Documents for the benefit of the Owner at the time of submission.

## 5.3. MATERIALS AND EQUIPMENT.

5.3.1. The Contractor shall, if so directed by the Owner, cause any or all materials and equipment to be manufactured in advance, and be warehoused either at the factory or elsewhere at the Contractor's cost. The Contractor shall cause all materials and equipment to be delivered to the Job Site in accordance with any schedule or schedules therefor established from time to time and approved by the Owner and, in any event, in a manner which will assure the timely progress and completion of the Work but will not encumber the Job Site unreasonably. Materials delivered to the Job Site for incorporation in the Work shall not be removed from the Job Site without the consent of or unless directed by the Owner.

5.3.2. The Owner may, from time to time during the performance of the Work and without any liability or obligation whatsoever to the Contractor or any of its Subcontractors or Sub-subcontractors, direct the Contractor to relocate, or cause to be relocated, to any other location on or off the Job Site, as designated by the Owner, any materials, equipment, office or storage trailers, storage sheds or the like brought onto the Owner's property by the Contractor or any of its Subcontractors or Sub-subcontractors, with which directions the Contractor shall promptly comply. Should such relocation not be completed within the time therefor established by the Owner, the Owner may accomplish such relocation and offset the costs incurred by it in accomplishing the same against any amounts then or thereafter due to the Contractor.

5.3.3. The Contractor shall give, or shall require its Subcontractors and their Sub-subcontractors to give, full and accurate quality, performance and delivery status reports, in a form satisfactory to the Owner, regarding any materials and equipment, or such other data with respect thereto as may be requested by the Owner, and shall obtain for the Owner the written assurances of any manufacturer that its material or equipment is designed, and appropriate, for the use intended.

5.4. WARRANTY. The Contractor warrants to the Owner that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work shall be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not so conforming to these standards may be considered defective. This warranty is not limited by the provisions of Paragraph 14.2. of these General Conditions or Article 9 of the Agreement. All warranties and guarantees from Subcontractors or Sub-subcontractors (including, without limitation, manufacturers) shall be assignable to the Owner regardless of whether it is so stated therein, and the Contractor agrees to assign all such warranties and guarantees to the Owner and deliver them pursuant to Subparagraph 9.4.2. The Contractor's obligations under this Paragraph shall survive the expiration or sooner termination of the Contract.

#### 5.5. TAXES; FEES AND LICENSES; ROYALTIES AND PATENTS.

5.5.1. The Contractor shall pay, or cause to be paid, all import duties and sales, consumer, use, excise, value added and ad valorem taxes required to be paid in connection with the Work or upon materials, tools or equipment brought to the Job Site or used in the Work. If any of the foregoing taxes are not paid in a timely manner, the Owner may withhold the amount of any such taxes from any amounts owing to the Contractor under the Contract Documents, submit the amount so withheld to the appropriate taxing authority on behalf of the Contractor or its Subcontractors or Sub-subcontractors and offset said amount against the Contract Sum.

5.5.2. The Contractor shall secure and pay for all governmental fees, permits and licenses which the Owner is not specifically required to provide and pay for under the Contract Documents.

5.5.3. The Contractor shall pay all royalties and license fees incident to the use of any invention, design, process or device which is the subject of patent rights or copyrights held by others, all of which shall be deemed included in the Contract Sum. The Contractor shall not unlawfully use or install any patented or copyrighted article, and any such unlawful use or installation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions for infringement of, or otherwise related to, any patent rights or copyrights, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. In the event of any injunction or legal action arising out of any such infringement which has the effect of delaying the Work, the Owner may require the Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the Work, and all costs and expenses occasioned thereby shall be borne by the Contractor.

5.6. COMPLIANCE WITH LAWS. The Contractor shall, at its cost and expense, comply with each and every Federal, state and local law, ordinance, code, rule and regulation, as well as the lawful order or decree of any public or quasi-public authority, bearing on the performance of the Work specifically including, but not limited to, those specified in Subparagraph 10.1.2., and all applicable building codes. It shall be the responsibility of the Contractor to familiarize itself with all of the same, and any performance of the Work by or on behalf of the Contractor which is not in compliance therewith shall be at the Contractor's sole risk and expense. The Contractor shall notify the Owner prior to execution of the Contract (and, without limiting the duty of such prior notice, continuously thereafter) of any instances where the Contract Documents are, or where the Contractor believes the Contract Documents are, not in compliance with the same.

#### 5.7. TESTS.

5.7.1. If the Contract Documents, or any laws, ordinances, rules, regulations, or any orders or decrees of any public or quasi-public authority having jurisdiction, or common practice in the industry, require or dictate that the Contractor have any portion of the Work inspected, tested or approved, the Contractor shall advise the

Owner in a timely manner (in writing, if practicable) of its readiness and of the date arranged so that the Owner may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals except as otherwise specified.

5.7.2. The Owner may require any special inspection, testing or approval of the Work not included under Subparagraph 5.7.1., or any more stringent inspection, testing or approval thereof, in which event it shall instruct the Contractor to order such inspection, testing or approval, and the Contractor shall advise the Owner in a timely manner (in writing, if practicable) as in Subparagraph 5.7.1. If such inspection or testing reveals any failure of the Work or the performance thereof to comply with the more stringent of: (a) the requirements of the Contract Documents; (b) applicable industry standards; or (c) applicable laws, ordinances, codes, rules, regulations or orders or decrees of any public or quasi-public authority having jurisdiction, or reveals any defect in the Work, the Contractor shall bear the costs of such inspection or testing and all costs to correct the Work to the satisfaction of the Owner, which, if incurred by the Owner, may be offset by the Owner against any amounts then or thereafter due to the Contractor. If such inspection or testing proves that the Work was performed properly, the Owner shall bear the costs of such inspection or testing.

5.7.3. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Owner.

5.8. GENERAL. The duties and responsibilities of the Contractor as set forth in this Article 5 are in addition to, and not in lieu of, other duties and responsibilities of the Contractor enumerated elsewhere in these Contract Documents.

## **Article 6 SUBCONTRACTORS**

6.1. GENERAL. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner or the Owner's Representative and any Subcontractor or Sub-subcontractor. However, it is acknowledged that the Owner and Owner's Representative are intended third party beneficiaries of the obligations of the Subcontractors and Sub-subcontractors related to the Work and the Project.

### 6.2. AWARD OF SUBCONTRACTS.

6.2.1. The Contractor shall, prior to awarding any subcontract, notify the Owner in writing of the names of all Subcontractors proposed for the several parts of the Work and shall include with any such notice the completed insurance information form and any insurance certificates required by this Contract for any proposed Subcontractor. The Owner may also require such lists and information regarding any proposed Sub-subcontractors. The Contractor shall also advise the Owner in writing of any Subcontractor or Sub-subcontractor with which it shares any business relationship or financial interest, and of the nature and extent of any such relationship or interest. No Subcontractor or Sub-subcontractor shall be engaged if objected to by the Owner; provided, however, that if the Owner does not take exception to a Subcontractor or Sub-subcontractor in writing within fifteen (15) days of its receipt of such notification, such Subcontractor or Sub-subcontractor shall be deemed acceptable to the Owner. The Owner shall not be liable to the Contractor in any manner arising out of the Owner's objection to a proposed Subcontractor or Sub-subcontractor. The Contractor shall not terminate the employment of a Subcontractor or Sub-subcontractor engaged in the Work prior to the expiration of that subcontract without good cause shown and the Owner's prior approval after reasonable notice of the Contractor's intent to so terminate.

6.2.2. The Owner may, without any responsibility or liability whatsoever, require the Contractor to utilize any person or organization for any portion of the Work as a Subcontractor or a Sub-subcontractor (herein referred to as a "Nominated Subcontractor" or "Nominated Sub-subcontractor") provided the Owner gave notice of its intention to so nominate any such Subcontractor or Sub-subcontractor prior to execution of the Agreement. The Contractor shall assume full responsibility for any such Nominated Subcontractor or Nominated Sub-subcontractor.

6.2.3. In the event the Owner and Contractor agree that the Owner may participate in any Subcontractor or Sub-subcontractor procurement activities, provided the Owner has informed the Contractor and allowed the Contractor the opportunity to participate and concur with such activities, the Contractor shall assume full responsibility for the results of any such activities including, without limitation, full responsibility for the Subcontractors' or Sub-subcontractors' awarded portions of the Work as a result thereof.

6.2.4. The Owner may assign to the Contractor any contracts or purchase orders entered into between the Owner and any other person or organization in any way related to the Project or the Work, at any time, in which event the Contractor shall assume full responsibility for such person or organization and its portion of the Work



as if such person or organization was originally a Subcontractor. Such assignment may occur by Change Order or other Modification to the Contract, and any increase in the Contract Sum shall be governed by Article 12.

### 6.3. SUBCONTRACTUAL RELATIONS.

6.3.1. All subcontracts and sub-subcontracts shall be in writing. Each subcontract and sub-subcontract shall contain a reference to this Contract and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby. Each Subcontractor must agree, for the benefit of the Owner, to be bound by, and to require each of its Sub-subcontractors to be bound by, such terms and conditions to the full extent applicable to its portion of the Work.

6.3.2. Each subcontract shall provide for its termination by the Contractor if, in the Owner's opinion, the Subcontractor fails to comply with the requirements of the Contract Documents insofar as the same may be applicable to its portion of the Work; and each Subcontractor shall be required to insert a similar provision in each of its sub-subcontracts. In the event of any such failure by a Subcontractor or Sub-subcontractor to comply with the requirements of the Contract Documents, such Subcontractor or Sub-subcontractor, as the case may be, shall, upon the Owner's request, be removed immediately from the Work and shall not again be employed on the Work. Any such failure (specifically including, without limitation, a failure to pay for labor (including applicable fringe benefits) or materials) by a Subcontractor or Sub-subcontractor shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

### 6.4. PAYMENTS TO SUBCONTRACTORS.

6.4.1. Unless the Owner otherwise agrees or the Contract Documents otherwise provide, the Contractor shall pay each Subcontractor, upon receipt of payments from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's portion of the Work, less a percentage thereof equal to the percentage retained from payments to the Contractor. The Contractor shall also require each Subcontractor to make similar payments due to any Sub-subcontractor.

6.4.2. If the Owner fails to approve a Contractor's Application for Payment, as hereinafter provided, for any cause which is the fault of the Contractor and not the fault of a particular Subcontractor, the Contractor shall nevertheless pay that Subcontractor for its portion of the Work to the extent completed, less the retained percentage, such payment to be made no later than the date payment to the Contractor would otherwise have been made by the Owner.

6.4.3. The Contractor shall pay each Subcontractor its proper share of any insurance monies received by the Contractor under Article 11, and it shall require each Subcontractor to make similar payments due to a Sub-subcontractor.

## **Article 7 SEPARATE CONTRACTS**

7.1. OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS. The Owner reserves the right to award other contracts in connection with the Project or other work on the Job Site on any terms and conditions which the Owner may from time to time determine in its sole discretion (hereinafter referred to as "Separate Contracts"; and such other contractors are hereinafter referred to as "Separate Contractors").

### 7.2. MUTUAL RESPONSIBILITY OF CONTRACTORS.

7.2.1. The Contractor shall afford all Separate Contractors and the Owner reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work and shall properly cooperate, connect and coordinate the Work with such other work as shall be in the best interest of the Project as determined by the Owner.

7.2.2. If the execution or result of any part of the Work depends upon any work of the Owner or of any Separate Contractor, the Contractor shall, prior to proceeding with the Work, inspect and promptly report to the Owner in writing any apparent discrepancies or defects in such work of the Owner or of any Separate Contractor that render it unsuitable for the proper execution or result of any part of the Work. Failure of the Contractor to so inspect and report shall constitute an acceptance of the Owner's or Separate Contractor's work as fit and proper to receive the Work, except as to defects which may develop in the Owner's or Separate Contractor's work after completion of the Work and which the Contractor could not have discovered by its inspection prior to completion of the Work.

7.2.3. Should the Contractor cause damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work, the Contractor shall be liable for the same; and, in the case of a Separate Contractor, the Contractor shall attempt to settle said claim with such Separate Contractor prior to such Separate Contractor's institution of litigation or other proceedings against the Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. Any such damage to the work or property of the Owner or of any Separate Contractor on the Project, or to other work on the Job Site, or delay or interfere with the Owner's or any Separate Contractor's work shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such damage, delay or interference, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

7.2.4. Should any Separate Contractor cause damage to the Work or to the property of the Contractor or cause delay or interference with the Contractor's performance of the Work, the Contractor shall present to such Separate Contractor any claims it may have as a result of such damage, delay or interference (with an information copy to the Owner) and shall attempt to settle its claim against such Separate Contractor prior to the institution of litigation or other proceedings against such Separate Contractor. If so requested by the parties to the dispute, the Owner may, but shall not be obligated to, arbitrate the dispute, in which event the decision of the Owner shall be final and binding on the parties to the dispute. In no event shall the Contractor seek to recover from the Owner, the Owner's Representative or the Architect/Engineer, and the Contractor hereby represents that it will not seek to recover from them, any costs, expenses or losses incurred by the Contractor as a result of any damage to the Work or property of the Contractor or any delay or interference caused or allegedly caused by any Separate Contractor.

7.2.5. If a dispute arises between the Contractor and any Separate Contractor as to the responsibility for cleaning as required by the Contract Documents, the Owner may clean and charge the cost thereof to the responsible contractor, or apportion it among the several responsible contractors, as the Owner shall determine to be just.

## **Article 8**

### **TIME**

#### **8.1. DEFINITIONS.**

8.1.1. Whenever the word "day" is used in the Contract Documents, it shall mean a calendar day unless otherwise specifically provided.

8.1.2. The Date of Commencement of the Work is the date established in a written notice to proceed. If there is no notice to proceed, it shall be the date of the Agreement or such other date as may be established by the Owner in writing.

8.1.3. The Date of Substantial Completion of the Work (or "Substantial Completion") is the date, certified by the Owner, when all construction is sufficiently complete in accordance with the Contract Documents that the Owner may, if it so elects, occupy and use the Work or designated portion thereof for the purpose for which it was intended.

## 8.2. PROGRESS AND COMPLETION; SCHEDULING.

8.2.1. All times and dates stated in the Contract Documents including, without limitation, those for the Commencement, prosecution, Milestones, Substantial Completion and final completion of the Work and for the delivery and installation of materials and equipment, are of the essence of the Contract.

8.2.2. The Contractor shall begin the Work on the Date of Commencement and shall perform the Work diligently, expeditiously and with adequate resources so as to meet all Milestones and complete all the Work within the Contract Time. The scheduling of the Work shall be performed and monitored by the Contractor utilizing a method to be chosen by the Owner. The Contractor (and its Subcontractors, if the Owner requires) shall furnish all scheduling information requested by the Owner (in such form and detail as requested for the particular portion of the Work; herein referred to as the "Schedule" or "Schedules") within two (2) weeks of the Owner's request, shall revise the same from time to time thereafter when so requested by the Owner, and shall attend such meetings concerning scheduling as the Owner may call from time to time. The Contractor shall comply with any Schedule or Schedules established by it and approved by the Owner, or established by the Owner with respect to the Commencement, performance, Milestones or completion of the whole or various portions of the Work. With respect to any portion of the Work for which a Schedule has not been established, the Contractor shall commence such portion of the Work within three (3) days of the date on which the Owner directs such commencement and shall thereafter prosecute and complete the same with all due diligence or as otherwise directed by the Owner. Neither the scheduling information submitted by the Contractor or its Subcontractors, the acceptance or approval thereof by the Owner nor the establishment or implementation of, or failure to establish or implement, Schedules by the Owner shall relieve the Contractor of its obligation to perform and complete the Work in a timely manner or to otherwise perform in accordance with the Contract Documents.

8.2.3. Float or slack time associated with any one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as set forth in an approved Schedule for the Work (assuming the critical path method is used), including any revisions or updates thereto. Float or slack time is not for the exclusive use or benefit of either the Owner or the Contractor. However, if float time associated with any chain of activities is expended but not exceeded by any actions attributable to the Owner, the Contractor shall not be entitled to an extension in the Contract Time.

## 8.3. DELAYS, EXTENSIONS OF TIME AND OVERTIME.

8.3.1. The time during which the Contractor is delayed in the performance of the Work by the acts or omissions of the Owner, the Owner's Representative, acts of God, unusually severe and abnormal climatic conditions or other conditions beyond the Contractor's control and which the Contractor could not reasonably have foreseen and provided against, shall be added to the Contract Time stated in the Agreement; provided, however, that no claim by the Contractor for an extension of time for such delays shall be considered unless made in accordance with Paragraph 13.1.

8.3.2. The Owner and the Owner's Representative shall not be obligated or liable to the Contractor for, and the Contractor hereby expressly waives any claims against them, on account of, any damages, costs or expenses of any nature whatsoever which the Contractor, its Subcontractors or Sub-subcontractors may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like, arising from or out of any act or omission of the Owner, or any of the events referred to in Subparagraph 8.3.1. above, it being understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time, but only if claim is properly made in accordance with the provisions of Paragraph 13.1.

8.3.3. Whenever, in the opinion of the Owner, the Work falls behind Schedule due to the fault of the Contractor, the Contractor shall, to the extent necessary to meet said Schedule, increase its labor force and/or provide overtime, extra shifts, Saturday, and Sunday and/or holiday work, and shall have each Subcontractor do likewise, all at no additional cost to or compensation from the Owner. Further, the Owner shall have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any additional costs the Owner may incur as a direct result of said increase in labor force or overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4. The Owner may, in its sole discretion and for any reason, direct the Contractor to accelerate the Schedule of performance by providing overtime, extra shifts, Saturday, Sunday and/or holiday work and/or by having all or any Subcontractors or Sub-subcontractors designated by the Owner provide overtime, extra shifts, Saturday, Sunday and/or holiday work.

8.3.4.1. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by the Contractor's own forces pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor

(except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Contractor of the premium time (or shift differential for any extra shifts) for all labor utilized by the Contractor in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time costs of such labor, together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time (or shift differential for any extra shifts)).

8.3.4.2. In the event of overtime, extra shifts, Saturday, Sunday or holiday work by a Subcontractor pursuant to this Subparagraph 8.3.4., the Owner's sole and exclusive obligation to the Contractor (except as hereinafter provided) on account thereof shall be to reimburse the Contractor for the direct cost to the Subcontractor for the premium time (or shift differential for any extra shifts) of all labor utilized in such overtime, extra shifts, Saturday, Sunday or holiday work (but not for the straight time cost of such labor), together with any Social Security and state or federal unemployment insurance taxes in connection with such premium time.

8.3.4.3. Anything in the foregoing to the contrary notwithstanding, should the Owner's direction to the Contractor to accelerate the Schedule of performance pursuant to this Subparagraph 8.3.4. require the Contractor's or a Subcontractor's forces to work in excess of fifty (50) hours per week for a period in excess of four (4) consecutive weeks, the Owner shall pay to the Contractor, for each consecutive week after the fourth consecutive week in which the same forces are required to work in excess of fifty (50) hours, an additional amount equivalent to ten percent (10%) of the gross wages of Job Site labor, less payroll costs as defined in Subparagraph 12.2.1., paid to such forces on account of such overtime, Saturday, Sunday or holiday work pursuant to this Subparagraph 8.3.4. Such acceleration shall be referred to as "Extended Acceleration", and the payment described herein shall be the sole and exclusive remedy for such Extended Acceleration including, without limitation, all inefficiencies, impacts, added supervision and overhead, ripple effect or any other costs or expenses of any kind. Anything in this Subparagraph 8.3.4.3. to the contrary notwithstanding, the Owner shall have no obligation to make payments on account of overtime, Saturday, Sunday or holiday work ordered pursuant hereto unless: (a) the Contractor shall submit to the Owner, for the Owner's review and approval, duly authenticated time tickets evidencing the hours of overtime, Saturday, Sunday or holiday work performed pursuant to this Subparagraph 8.3.4.3. by the end of the day on which performed and recapped in summary form; and (b) the Contractor shall include with its request for reimbursement a duplicate of each of the foregoing time tickets and such other substantiation of costs reimbursable hereunder as the Owner may require. If overtime, extra shifts, Saturday, Sunday or holiday work is performed in part pursuant to Subparagraph 8.3.3. and in part pursuant to this Subparagraph 8.3.4.3., the provisions of this Subparagraph 8.3.4.3. calling for payments by the Owner on account thereof shall only apply to such work performed pursuant to this Subparagraph 8.3.4.3.

8.4. TEMPORARY SUSPENSION OF WORK. The Owner shall have the authority to suspend the Work, in whole or in part, for such periods and such reasons as it may deem necessary or desirable, in its sole discretion including, without limitation: (a) unsuitable weather; (b) other conditions considered unfavorable for the suitable prosecution of the Work; (c) special events; and/or (d) other conditions considered adverse to the best interests of the Owner. Any such suspension shall be in writing to the Contractor. The Contractor shall immediately obey such orders of the Owner and shall not resume the Work until so ordered in writing by the Owner. No such temporary suspension of the Work, for periods of time up to thirty (30) consecutive days, shall be the basis of a claim by the Contractor for any increase in the Contract Sum or for any other damages, losses, costs or expenses whatsoever, all of which claims the Contractor hereby expressly waives. The Contractor shall be entitled to an extension of the Contract Time not to exceed the length of time that the Work was suspended provided the claim is submitted in accordance with Paragraph 13.1. and the suspension is not due to an act or omission of the Contractor, any Subcontractor or Sub-subcontractor.

## **Article 9 PAYMENTS AND COMPLETION**

### 9.1. APPLICATION FOR PAYMENT; PASSAGE OF TITLE.

9.1.1. The "Payment Application Date" shall be that day of each calendar month designated in the Agreement when the Contractor shall deliver the "Application for Payment," as hereinafter defined, to the Owner.

9.1.2. The "Application for Payment" shall be an invoice prepared by the Contractor and submitted to the Owner in accordance with the Contract Documents. It shall show in detail all monies properly payable to the Contractor in accordance with the previously approved Schedule of Values, including those items of labor, materials and equipment used or incorporated in the Work (and, if the Owner has agreed in advance in writing, suitably stored at the Job Site) through and including the Payment Application Date. The Application for Payment shall have, as attachments, waivers of mechanics' and materialmen's liens by the Contractor and its Subcontractors and Sub-subcontractors as of the date of submission of the Application for Payment, which waivers shall conform in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor

thereto), and such other evidence of performance of the Work, the costs thereof and payment therefor as the Owner may deem necessary or desirable.

9.1.3. The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment shall pass to the Owner, free and clear of all liens, claims, security interests or encumbrances, upon the sooner occurrence of: (a) the delivery of any such materials or equipment to the Job Site; or (b) the tender of payment of the applicable Application for Payment by the Owner to the Contractor; and that no Work, materials or equipment covered by an Application for Payment shall have been acquired, whether by the Contractor or by any Subcontractor or Sub-subcontractor, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. The passage of title to the Owner as provided herein shall not alter or limit the obligations and duties of the Contractor with respect to the Work and the materials or equipment incorporated therein or used in connection therewith as set forth in the Contract Documents.

## 9.2. APPROVALS OF APPLICATIONS FOR PAYMENT.

9.2.1. If the Contractor has submitted an Application for Payment in the manner prescribed in the Contract Documents, the Owner shall, with reasonable promptness, approve the same (or such portions thereof covering amounts it determines to be properly due) or shall state in writing its reasons for withholding its approval (whether of all or a part).

9.2.2. The Owner's approval of an Application for Payment shall not constitute a representation by the Owner that the conditions precedent to the Contractor's entitlement to payment have been fulfilled, nor shall approval of an Application for Payment by the Owner be deemed a representation by the Owner: (a) that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) that it has reviewed the construction means, methods, techniques, sequences, coordination or procedures, or the cleanliness of the Job Site, or the safety precautions and programs, in connection with the Work; (c) that it has made any examination to ascertain how or for what purposes the Contractor has used the monies previously paid on account of the Contract Sum.

9.2.3. No approval of an Application for Payment, progress payment or any beneficial, partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any Work which is not in accordance with the Contract Documents; and regardless of approval of an Application for Payment by the Owner, the Contractor shall remain totally obligated and liable for the performance of the Work in strict compliance with the Contract Documents.

9.2.4. Subject to the Owner's rights to offset or withhold as set forth in these General Conditions, after the Owner has approved an Application for Payment, in whole or in part, it shall make payment of the amount approved to the Contractor as provided in the Contract Documents.

## 9.3. PAYMENTS WITHHELD; OWNER'S RIGHT TO MAKE DIRECT PAYMENTS FOR WORK.

9.3.1. The Owner may withhold its approval of an Application for Payment, in whole or in part, or nullify the whole or any part of an approval previously given, if it determines that the Application for Payment covers portions of the Work which have not, in fact, been completed, or that it includes amounts for claims allegedly made but not actually made (or subsequently withdrawn), and/or for which payment is not then due or if, and to the extent that, it deems it necessary or desirable to protect itself against loss or damage due to: (a) defective Work not remedied; (b) Contractor, Subcontractor, Sub-subcontractor or third party claims, disputes or liens or reasonable evidence indicating such claims, disputes or liens; (c) failure or alleged failure of the Contractor to make payments to Subcontractors (or of Subcontractors to make payments to Sub-subcontractors) as required by the Contract Documents, or failure to provide lien waivers for previous payments; (d) inability, or reasonable doubt as to the ability, of the Contractor to complete the Work within the Contract Time, for the unpaid balance of the Contract Sum or within the estimates prepared by the Contractor and submitted to and approved by the Owner; (e) damage to the Owner or a Separate Contractor; (f) unsatisfactory prosecution of the Work by the Contractor, its Subcontractors or Sub-subcontractors; (g) failure of the Contractor to maintain the Job Site in a clean and safe condition; (h) failure of the Contractor to meet any other monetary obligation imposed upon it pursuant to the Contract Documents; or (i) failure of the Contractor to comply with any other provision of the Contract Documents.

9.3.2. The Owner after giving the Contractor appropriate notice, may make payments on account of labor, materials and/or equipment for the Work directly to the Subcontractors, Sub-subcontractors or persons entitled to the same in lieu of paying the Contractor therefor or make joint payment to any such person and the Contractor. Any amounts so paid shall be credited against the Contract Sum. No such payment shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Contractor shall

cooperate with the Owner to facilitate any such direct payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid. If the Owner elects to make such payments as a result of a failure on the part of the Contractor to perform in accordance with the Contract, or as a result of a request from the Contractor that the Owner make such payments, then the Owner may offset or credit the amount of its administrative costs incurred in making said such payments against the Contract Sum or render an invoice to the Contractor for such administrative costs, which invoice the Contractor shall pay promptly.

#### 9.4. SUBSTANTIAL COMPLETION AND FINAL PAYMENT.

9.4.1. At such time as the Contractor deems the Work to be Substantially Complete, the Contractor shall so notify the Owner and prepare and submit to the Owner a list of items to be completed and/or corrected and its final bill, including itemized projected amounts for any portions of the Work not yet completed. The failure to include any items on such list shall not alter the responsibility of the Contractor to complete and/or correct the Work in accordance with the Contract Documents. When the Owner, on the basis of an inspection, confirms the notification from the Contractor that the Work is Substantially Completed or, without being notified by the Contractor, determines that the Work is Substantially Completed, it shall prepare and deliver to the Contractor a Certificate of Substantial Completion which may state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities and insurance and it shall, within twenty (20) days from the date of the Certificate of Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, which sets forth those items determined by the Owner to require completion or correction, as applicable, and fix the time within which the Contractor shall complete or correct the items listed and complete all obligations required by the Contract Documents and submit to the Owner all documents and other matters required by the Contract Documents to be submitted by the Contractor upon completion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs, claims or fees for any outstanding Change Orders, or any other matter which the Contractor has not previously waived pursuant to the General Conditions, and itemized projections for any incomplete Work), and the Contractor shall be deemed conclusively to have waived the right to payment of any such item, fee or cost of any kind not billed to the Owner within thirty (30) days of delivery to the Contractor of the Certificate of Substantial Completion. The issuance of the Certificate of Substantial Completion shall not constitute a waiver of any rights of the Owner, including without limitation the right to those retainages permitted by the Contract Documents. If the Contractor does not complete and/or correct the items listed in the Punch List within the time fixed therein, the Owner shall have the right to accomplish the same and offset all costs thereof against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner. The Owner's decision as to the Date of Substantial Completion shall be final and binding.

9.4.2. Within a reasonable time following the Owner's receipt of written notification from the Contractor that the Work is ready for final inspection and acceptance and that the Contractor has completed all items set forth on the Punch List, including, delivery of the final Application for Payment, the Owner shall make such inspection and, when the Work is found to be acceptable under the Contract Documents and the Contract fully performed, shall certify completion of the Punch List, including approval of the final Application for Payment; provided, however, Owner shall not be required to certify completion of the Punch List and, therefore, neither final payment nor any retainage shall become due, until the Contractor submits to the Owner: (a) an affidavit, in a form approved by the Owner, that all payrolls, bills for materials and equipment and other indebtednesses connected with the Work for which the Owner or its property might in any way be responsible have been paid in full or otherwise satisfied; (b) consent of sureties, if any, to final payment; (c) all Contract Documents (except one set thereof to be retained by the Contractor), including, without limitation, a completed set of as-builts and record documents (as defined in and to the extent required by the Specifications); (d) such other data as the Owner may require establishing payment or satisfaction of all obligations of the Contractor in connection with the Work including, without limitation, receipt of final satisfaction and releases and waivers of lien and releases of any and all claims by the Contractor, Subcontractors and Sub-subcontractors, conforming in all material respects with the then current provisions of Part I, Chapter 713, Florida Statutes (or any successor thereto) and evidencing performance of the Work in accordance with the Contract Documents; (e) a release of the Owner and its insurers from and against any claims under the insurance required to be provided by the Owner hereunder (except to the extent of any claims theretofore timely filed which are owing but unpaid) and a release of the Owner from and against any claims between the Contractor and a separate contractor; (f) any governmental certificates required by the Contract Documents or otherwise to evidence compliance of the Contractor and the Work with applicable laws, ordinances, rules, codes, regulations and the Contract Documents; and (g) warranties, guarantees, assignments thereof, and maintenance or other manuals, required by the Specifications in the forms approved by the Owner, in favor of the Owner and such other persons as the Owner may direct (notwithstanding the foregoing, by execution of the Agreement, the Contractor shall be deemed to have guaranteed to the Owner the matters contained in the attached form of guarantee incorporated by reference into the Agreement); and (h) a fully and

properly executed Close-out Change Order, with all of its fully and properly executed Exhibits, in the form attached to the Agreement.

9.4.3. The making of final payment shall not constitute a waiver of any claims or rights by the Owner.

9.4.4. The acceptance of final payment shall constitute a waiver of all claims by the Contractor and shall constitute a general release of the Owner, the Owner's Representative and the Architect/Engineer by the Contractor.

9.4.5. If any Subcontractor or Sub-subcontractor refuses to furnish any release, satisfaction or waiver of lien required at any time by the Owner under Paragraphs 9.1., 9.3. or 9.4., or files a claim of lien against the Owner's property, the Contractor shall, if requested by the Owner and at the Contractor's expense, furnish a bond (separate and apart from any other bond provided by the Contractor hereunder) satisfactory to the Owner to exempt the Owner and its property from and against any such lien. The Contractor authorizes the Owner, and shall cause its Subcontractors and Sub-subcontractors to authorize the Owner, to check directly with any suppliers of labor and material with respect to any item chargeable to the Owner's property, to confirm balances due and to obtain sworn statements and waivers of lien, all if the Owner so elects. If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall reimburse the Owner on account of all monies that the latter may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

#### 9.5. BENEFICIAL USE AND OCCUPANCY; PARTIAL SUBSTANTIAL COMPLETION.

9.5.1. The Owner reserves the right, at its option and convenience, to occupy or otherwise make use of all or any part of the Project or equipment at any time prior to completion of the Work upon two (2) days written notice to the Contractor (referred to herein as "Beneficial Occupancy"). The Owner shall use its best efforts to prevent such occupancy from interfering with the performance of the remaining Work; provided, however, that the Owner shall not be liable for any delays or additional costs of any nature caused by such occupancy.

9.5.2. Beneficial Occupancy shall not constitute acceptance by the Owner or the Owner's Representative of the completed Work or any portion thereof, shall not relieve the Contractor of its full responsibility for correcting defective Work and repairing the Work, shall not be deemed to be the equivalent of completion of the Work, shall not relieve the Contractor from its obligation to complete the Punch List, and shall not entitle the Contractor to any increase in the Contract Sum.

9.5.3. Anything in this Paragraph 9.5. to the contrary notwithstanding, the Owner may certify any portion of the Work to be occupied or used hereunder to be Substantially Completed and shall prepare and deliver to the Contractor a Certificate of Partial Substantial Completion for such portion of the Work. The Owner shall, within twenty (20) days from the date of the Certificate of Partial Substantial Completion, prepare and deliver to the Contractor a Punch List, in the form provided by the Owner, and, upon the Contractor's timely completion or correction of the items on the Punch List and the Owner's approval thereof, accept that portion of the Work. Failure of the Owner to prepare and deliver to the Contractor a Punch List, shall not constitute a waiver of the Owner's rights or remedies under the Contract Documents nor release the Contractor of its obligations to complete the Work in accordance with the Contract Documents. The provisions of Paragraph 9.4., except as they relate to the Contractor's obligations to complete or correct the Work in accordance with the Contract Documents, shall not apply to such Partial Substantial Completion, but the provisions of Subparagraph 14.2.2. shall apply to the portion of the Work which the Owner certifies to be Substantially Completed.

### **Article 10 PROTECTION OF PERSONS AND PROPERTY**

#### 10.1. RESPONSIBILITY FOR SAFETY AND HEALTH.

10.1.1. The Contractor shall be responsible for initiating, maintaining and supervising safety and anti-substance abuse precautions and programs in connection with the Work, and shall provide all protection to prevent injury to all persons involved in any way in the Work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Owner who may visit or be affected thereby. These precautions shall include, but in no event be limited to: the posting of danger signs and personal notification to all affected persons of the existence of a hazard of whatever nature; the furnishing and maintaining of necessary traffic control barricades and flagman services; the use, or storage, removal and disposal of required explosives or other hazardous materials only under the supervision of qualified personnel and after first obtaining permission of all applicable governmental authorities; and the maintenance of adequate quantities of both hose and operable fire extinguishers at the Job Site. The Contractor shall set forth in writing its safety and anti-substance abuse precautions and programs in connection with the Work and, if requested by the Owner, submit the same to the

Owner for review. The Owner may, but shall not be obligated to, make suggestions and recommendations to the Contractor with respect thereto.

10.1.2. All Work, whether performed by the Contractor, its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with, and conform to: (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act; and (b) all codes, rules, regulations and requirements of the Owner and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

10.1.3. The Contractor shall designate a responsible member of its organization at the Job Site as the Project Safety Officer, whose duties it shall be to enforce the Contractor's safety and anti-substance abuse programs, to assure compliance with Subparagraph 10.1.2 and to prevent accidents. This person shall be the Contractor's Project Manager unless otherwise designated in writing by the Contractor and approved by the Owner. The Contractor shall further cause each of its Subcontractors and Sub-subcontractors to designate a responsible supervisory representative to assist the Contractor's Project Safety Officer Representative in the performance of his or her duties as aforesaid.

10.1.4. Should the Contractor fail to provide a safe area for the performance of the Work or any portion thereof, the Owner shall have the right, but not the obligation, to suspend Work in the unsafe area. All costs of any nature (including, without limitation, overtime pay) resulting from the suspension, by whomsoever incurred, shall be borne by the Contractor.

10.1.5. The Contractor shall provide to each worker on the Job Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Job Site who fails or refuses to use the same. The Owner shall have the right, but not the obligation, to order the Contractor to send a worker home for the day or to discharge a worker for his or her failure to comply with safe practices or anti-substance abuse policies, with which order the Contractor shall promptly comply.

10.1.6. Any failure of the Contractor, its Subcontractors or Sub-subcontractors or anyone directly or indirectly employed by any of them or for whose acts any of them may be responsible, to comply with the provisions of Paragraph 10.1. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

10.1.7 The Contractor shall not be relieved of its responsibilities under this Paragraph 10.1. should the Owner act or fail to act pursuant to its rights hereunder, nor shall the Owner thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Contract, or in any other manner whatsoever.

## 10.2. PROTECTION OF WORK AND PROPERTY; RESPONSIBILITY FOR LOSS.

10.2.1. The Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the Owner and third parties from loss or damage from whatever cause arising out of the performance of the Work and shall comply with the requirements of the Owner and its insurance carriers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards. The Owner may, but shall not be required to, make periodic patrols of the Job Site as a part of its normal security program. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities.



10.2.2. Until final acceptance of the Work by the Owner pursuant to Paragraph 9.4. (unless and to the extent otherwise set forth in a Certificate of Substantial Completion), the Contractor shall have full and complete charge and care of and, except as otherwise provided in this Subparagraph 10.2.2., shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) from any cause whatsoever. The Contractor shall rebuild, repair, restore and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including Owner-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense unless the loss, injury or damage requiring such rebuilding, repair or restoration: (a) is directly due to errors in the Contract Documents which were not discovered by the Contractor and which the Contractor could not have discovered through the exercise of due diligence; (b) is caused by the Owner (unless (i) the Contractor has waived its rights of subrogation against the Owner on account thereof as provided in the Contract Documents, or (ii) such loss or damage would be covered by any policy or policies of insurance which the Contractor is required to maintain hereunder, whether the Contractor actually maintains such insurance or not, or (iii) is otherwise covered by a policy or policies of insurance maintained by the Contractor, whether or not required hereunder); or (c) is caused by a hazard against which the Owner is required to insure under the provisions of Article 11 hereof; provided, however, that if the loss, injury or damage would not have occurred but for the negligent act or omission of the Contractor, any of its Subcontractors or Sub-subcontractors, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, the rebuilding, repair or restoration shall be at the Contractor's cost and expense to the extent of the deductible on said insurance.

10.3. SURFACE OR SUBSURFACE WATER. Surface or subsurface water or other fluid shall not be permitted to accumulate in excavations or under structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved by the Owner in writing. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Job Site shall be submitted to the Owner for its prior written approval. All such work shall be done at the sole expense of the Contractor.

10.4. EMERGENCIES. In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss or to remedy said violation, whichever is applicable, failing which the Owner may immediately take whatever action it deems necessary, including, but not limited to, suspending the Work as provided in Paragraph 8.4. Any failure by the Contractor to so act or so remedy a violation shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure to act or remedy a violation, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner. If the Contractor shall be entitled to any additional compensation or extension of time claimed on account of emergency work not due to the fault or neglect of the Contractor or its Subcontractors or Sub-subcontractors, it shall be handled as a claim as provided in Article 13.

10.5. CLEANUP. The Contractor shall at all times keep the Job Site clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by his performance of the Work, and shall continuously throughout performance of the Work remove and dispose of all such materials from the Job Site and the Project. The Owner may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as the Owner may make known to the Contractor. In the event the Contractor fails to keep the Job Site clean and free from such waste or rubbish, or to comply with such standards, means and methods, the Owner may take such action and offset any and all costs or expenses of whatever nature paid or incurred by the Owner in undertaking such action against any sums then or thereafter due to the Contractor. The Contractor shall notify the Owner in advance of the generation, importation, storage, transportation or disposal, of any hazardous waste, toxic materials or contaminants of any type in connection with the Project.

10.6. OWNER'S STANDARDS. The Owner reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the protection of persons and property, with which the

Contractor shall comply, and to review the efficiency of all protective measures taken by the Contractor. The exercise of or failure to exercise any or all of these acts by the Owner shall not relieve the Contractor of its duties and responsibilities under this Contract, and the Owner shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Contractor.

**Article 11  
INSURANCE**

11.1. **COMMERCIAL INSURANCE/INDEMNIFICATION.** The Contractor shall at its expense procure and maintain during the life of this Contract and for two (2) years thereafter (and shall require the same from its Subcontractors and Sub-subcontractors) the following types and minimum amounts of insurance:

- i. Commercial General Liability Insurance including liability assumed under written contract, bodily injury, property damage, personal and advertising injury, and products/completed operations liability written on an occurrence basis with minimum combined single limits for bodily injury and property damage of **\$1,000,000** per occurrence;
- ii. Automobile Liability coverage for all owned, non-owned and hired vehicles written on an occurrence basis, with minimum combined single limits of **\$1,000,000** per occurrence;
- iii. Workers' Compensation Insurance providing statutory benefits and Employer's Liability Insurance with minimum limits of **\$1,000,000** per occurrence;
- iv. Umbrella Liability on a follow-form basis providing coverage excess of the underlying policies required by i., ii, and iii. above in an amount of at least **\$1,000,000** per occurrence;
- v. If Contractor is providing any kind of professional service or advice including design, architectural, surveying, legal, financial, accounting or similar then Contractor will also carry Professional Liability/Errors & Omissions insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vi. If Contractor is using, transporting or disposing of any hazardous materials, potentially harmful materials, chemicals, waste or similar then Contractor will also carry Pollution Liability insurance with a limit of at least \$1,000,000 per occurrence. This insurance may be on a claims-made form if there is a retroactive date that precedes the first date of work or services under this agreement and is maintained for at least 2 years following the conclusion of work.
- vii. If work will include the use or operation of any crane, total limit of Umbrella liability insurance will be at least \$4 million.
- viii. If Contractor is using any kind of aircraft including unmanned aerial vehicles (drones) then use must be approved by Owner and liability insurance satisfactory to Owner must be obtained.

Contractor is not required to commercially insure its owned, rented or borrowed machinery, tools, equipment, office trailers, vehicles, and other property but agrees that Owner is not responsible for and Contractor holds Owner harmless for loss, damage or theft of such items.

- A. All insurance required under this Article shall be with companies and on forms authorized to issue insurance in Florida and with an insurer financial strength rating from AM Best of no less than A- or an equivalent rating from a similar, recognized ratings agency unless such requirements are waived, in writing, by the Owner's Risk Manager. Certificates of insurance (or copies of policies, if required by the Owner) shall be furnished to the Owner.

- B. CANCELLATION. All such insurance required by this Article shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to Contractor, who agrees to promptly relay any such notice received to Owner.
- C. ADDITIONAL INSUREDS. Each liability policy required herein (except Workers' Compensation or Professional Liability) shall schedule as Additional Insureds, on a primary and non-contributory basis, the Owner and its affiliated entities and their supervisors, officers, employees, agents and assigns.
- D. WAIVERS. The Contractor hereby waives, and will require its Subcontractors and Sub-subcontractors to waive and to require its and their insurers to waive their rights of recovery or subrogation against the Owner and its affiliated entities, supervisors, officers, employees, agents and assigns.
- E. CLAIMS. The Contractor and its Subcontractors and Sub-subcontractors shall assist and cooperate in every manner possible in connection with the adjustment of all claims arising out of the operations conducted under or in connection with the Work and shall cooperate with the insurance carrier or carriers of the Owner and of the Contractor, its Subcontractors and Sub-subcontractors in all litigated claims and demands which arise out of said operations and which the said insurance carrier or carriers are called upon to adjust or resist.
- F. INDEMNIFICATION. The Contractor shall indemnify the Owner from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by the negligence, recklessness or intentional wrongful misconduct (which includes, without limitation, any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to perform and complete the Work in strict compliance with the Contract Documents, unless such failure has been specifically waived by the Owner in writing upon final acceptance of the Work) of the Contractor or any persons employed or utilized by the Contractor in the performance of the Contract, including without limitation, any Subcontractor or Sub-subcontractor (or their employees), utilized by the Contractor in the performance of the Work. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

## **Article 12 CHANGES IN THE WORK**

12.1. CHANGE ORDERS AND DIRECTIVES. The Owner may, without affecting the validity of the Contract Documents or any term or condition thereof, issue Change Orders, or Directives, or give other orders and instructions regarding the Work which may have the effect of ordering extra work or other changes in the Work by altering, adding to or deducting from the Work, modifying the method or manner of its performance or otherwise (herein sometimes referred to as "Changes in the Work"). The Contractor shall comply with all such orders and instructions issued by the Owner. In any such event, the Contract Sum shall, where applicable, be increased or decreased in the manner hereinafter set forth; provided, however, that if the Contractor should proceed with a Change in the Work upon an oral order, by whomsoever given, it shall constitute a waiver by the Contractor of any claim for an increase in the Contract Sum or extension of the Contract Time on account thereof. Upon receipt of any such Change Order, or Directive or other order or instructions, the Contractor shall promptly proceed with the Change in the Work, even though the amount of any resultant increase or decrease in the Contract Sum has not yet been determined. All Changes in the Work shall be performed in accordance with the Contract Documents.

12.2. CHANGES REQUIRING AN INCREASE IN CONTRACT SUM. If any Change in the Work will result in an increase in the Contract Sum, the Owner shall have the right to require the performance thereof on a lump sum basis, a unit price basis or a time and material basis, all as hereinafter more particularly described.

12.2.1. If the Owner elects to have any Change in the Work performed on a lump sum basis, its election shall be based on a lump sum proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a lump sum proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a lump sum basis). The Contractor's proposal shall be itemized and segregated by labor and materials for the various components of the Change in the Work (no aggregate labor total will be acceptable) and shall be accompanied by signed proposals of any Subcontractors or Sub-subcontractors who will perform any portion of the Change in the Work and of any persons who will furnish materials or equipment for incorporation therein. The portion of the proposal relating to labor, whether by the Contractor's forces or those of its Subcontractors or Sub-subcontractors, may only include

reasonably anticipated gross wages of Job Site labor, including foremen, who will be directly involved in the Change in the Work (for such time as they will be so involved), plus payroll costs (including Social Security, federal or state unemployment insurance taxes and fringe benefits in connection with such labor required by union and/or trade agreements if applicable) and up to fifteen percent (15%) of such anticipated gross wages, but not payroll costs, as overhead and profit for any such entity actually performing the Change in the Work or a portion thereof. The portion of the proposal relating to materials may only include the reasonably anticipated direct costs to the Contractor, its Subcontractors or Sub-subcontractors (as applicable) of materials to be purchased for incorporation in the Change in the Work, plus transportation and applicable sales or use taxes, and up to fifteen percent (15%) of said direct material costs as overhead and profit for the entity actually supplying the materials. The proposal may further include the Contractor's or its Subcontractor's or Sub-subcontractor's reasonably anticipated direct rental costs in connection with the Change in the Work (either actual rates or discounted local published rates), plus up to six percent (6%) thereof as overhead and profit for the entity actually incurring such costs. If any of the items included in the lump sum proposal are covered by unit prices contained in the Contract Documents, the Owner may elect to use these unit prices in lieu of the similar items included in the lump sum proposal, in which event an appropriate deduction will be made in the lump sum amount prior to the application of any allowed overhead and profit percentages. No overhead and profit shall be applied to any unit prices. The lump sum proposal may only include up to six percent (6%) of the amount which the Contractor will pay to any Subcontractor, and up to six percent (6%) of the amount which a Subcontractor will pay to any Sub-subcontractor, for the Change in the Work as overhead and profit to the Contractor or Subcontractor (only a maximum of two contractual tiers of such markup may be included).

12.2.2. If the Owner elects to have the Change in the Work performed on a unit price basis, its election shall be based on a unit price proposal which shall be submitted by the Contractor to the Owner within the time established by the Owner in the Owner's request therefor (but the Owner's request for a unit price proposal shall not be deemed an election by the Owner to have the Change in the Work performed on a unit price basis). The Contractor's proposal shall itemize the quantities of each item of the Change in the Work for which there is an applicable unit price contained in the Contract Documents. The quantities shall be itemized in relation to each specific Drawing. Unit prices shall be applied to net differences of quantities of the same item. Nothing herein contained shall preclude the Owner from requesting a lump sum proposal and a unit price proposal with respect to the same Change in the Work, in which event the Contractor shall submit both.

12.2.3. If the Owner elects to have the Change in the Work performed on a time and material basis, the same shall be performed, whether by the Contractor's forces or the forces of any of its Subcontractors or Sub-subcontractors, at actual cost to the entity performing the Change in the Work (without any charge for administration, clerical expense, supervision or superintendents of any nature whatsoever, except foremen directly involved in the Change in the Work, or the cost, use or rental of small tools, defined as tools with a cost or value of less than \$1,000, or equipment owned by the Contractor or any of its related or affiliated companies), plus fifteen percent (15%) of gross wages (excluding payroll costs) of Job Site labor and direct material costs and six percent (6%) of rental costs (other than small tools or equipment owned by the Contractor or any of its related or affiliated companies) as the total overhead and profit. Only the entity actually performing the Change in the Work or a portion thereof shall be entitled to a mark-up as aforesaid for overhead and profit, but the Contractor may include up to six percent (6%) of the amount it will pay to any Subcontractor, and a Subcontractor may include up to six percent (6%) of the amount it will pay to any Sub-subcontractor (only a maximum of two contractual tiers of such markup may be included), for the Change in the Work as overhead and profit to the Contractor or Subcontractor. The Contractor shall submit to the Owner daily time and material tickets, to include the identification number assigned to the Change in the Work, the location and description of the Change in the Work, the classification, names and social security numbers of the labor employed, the materials used, the equipment rented (not tools) and such other evidence of costs as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Contractor to secure any required authentication shall, if the Owner elects to treat it as such, constitute a waiver by the Contractor of any claim for the cost of that portion of the Change in the Work covered by a non-authenticated ticket or invoice; provided, however, that the authentication of any such ticket or invoice by the Owner shall not constitute an acknowledgment by the Owner that the items thereon were reasonably required for the Change in the Work.

12.2.4. The Owner shall have no obligation or liability on account of a Change in the Work except as specifically provided in this Paragraph 12.2. If the Contractor fails to render any proposal within ten (10) days after the date of the Owner's request pursuant to this Paragraph 12.2. or such longer period of time established by the Owner in its request, the Owner may issue a unilateral Change Order for any such Change in the Work giving the Owner's reasonable estimate of the cost of the Change, which shall become automatically binding upon the Contractor. Overhead and profit, as allowed under this Paragraph 12.2., shall be deemed to cover all costs and expenses of any nature whatsoever, including, without limitation, those for clean-up, protection, supervision, estimating, field operations, insurance, impacts, inefficiency, extended (Job Site and home office) overhead, unabsorbed (Job Site and home office) overhead, delays, acceleration (actual or constructive), ripple effect, small

tools and security, which the Contractor or any of its Subcontractors or Sub-subcontractors may incur in the performance of or in connection with a Change in the Work and which are not otherwise specifically recoverable by them pursuant to this Paragraph 12.2.

12.2.5. The Work pursuant to this Contract shall be performed by the Contractor at no extra cost to the Owner despite any order from the Owner which designates or contemplates a portion of the Work as a Change in the Work.

12.3. CHANGES REQUIRING A DECREASE IN CONTRACT SUM. If any Change in the Work will result in a decrease in the Contract Sum, the Owner may request a quotation by the Contractor of the amount of such decrease for use in preparing a Change Order. The Contractor's quotation shall be forwarded to the Owner within ten (10) days after the date of the Owner's request or such longer period of time established by the Owner therein and, if acceptable to the Owner, shall be incorporated in the Change Order. If not acceptable, the parties shall make every reasonable effort to agree as to the amount of such decrease, which may be based on a lump sum properly itemized, on unit prices stated in the Contract Documents and/or on such other basis as the parties may mutually determine. If the parties are unable to so agree, the amount of such decrease shall be the total of the estimated reduction in actual cost of the Work, as determined by the Owner's Representative in its reasonable judgment. If the Contractor fails to render any proposal within the time required herein, the Owner may issue a unilateral deductive Change Order giving the Owner's reasonable estimate of the deductive Change, which shall become automatically binding upon the Contractor.

12.4. DISPUTES REGARDING CHANGES. If any dispute should arise between the parties with respect to an increase or decrease in the Contract Sum as a result of a Change in the Work, the Contractor shall not suspend performance of any such Change in the Work or the Work itself unless otherwise so ordered by the Owner in writing. The Owner may, however, notify the Contractor of its determination regarding any such Change and, in the case of an increase, may thereafter pay to the Contractor up to 50% of the Owner's reasonable estimate of the value of the Change in the Work as its sole obligation with respect to any such Change pending resolution of the dispute. The Contractor shall thereafter be subject to the terms of Paragraph 13.2. regarding its claim for any difference.

12.5. AUDIT RIGHTS. The Contractor shall afford, and shall cause its Subcontractors and Sub-subcontractors to afford, access to the Owner at all reasonable times to any accounting books and records, correspondence, instructions, invoices, receipts, vouchers, memoranda and other records of any kind relating to the Work, all of which each of them shall maintain for a period of at least four (4) years from and after the Date of Substantial Completion. The Contractor and its Subcontractors and Sub-subcontractors shall make the same available for inspection, copying and audit, in accordance with generally accepted accounting standards, within three (3) days following notification to the Contractor of the Owner's intent to audit, failing which any claims for an increase in the Contract Sum and/or extension of the Contract Time, as applicable, shall be waived.

### **Article 13 CLAIMS**

13.1. CLAIMS FOR EXTENSIONS OF CONTRACT TIME. No claim by the Contractor for an extension of the Contract Time or any Milestones shall be considered unless made in accordance with this Paragraph 13.1. The Contractor shall not be entitled to any extension of the Contract Time or any Milestones as a result of any condition or cause, unless it shall have given written notice to the Owner pursuant to Paragraph 16.3. promptly, but in any event within fourteen (14) days following the commencement of each such condition or cause and stating the probable duration of the condition or cause and the Contractor's request for an extension of time. The Contractor shall deliver to the Owner, within thirty (30) days after the commencement of each condition or cause for which the Contractor has submitted a request for extension of time, supporting data to substantiate and justify the Contractor's request, including, without limitation, an analysis showing the actual impact of the condition or cause on the Schedule and the critical path of construction activities, plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's request. The Contractor hereby waives any claims for any such extensions not timely made or timely substantiated in accordance herewith. If the Contractor timely makes any such claim and the parties are unable to agree as to whether or not the Contractor is entitled to an extension of time or the length of such extension regarding such claim, the Owner's Representative may, but shall not be required to, ascertain the facts and the extent of the delay and determine and fix an extension of the time for completing the Work.

13.2. CLAIMS FOR INCREASES IN CONTRACT SUM.

13.2.1. Except as otherwise provided in Paragraph 12.2., no claim by the Contractor for an increase in the Contract Sum shall be considered unless made in accordance with this Paragraph 13.2. The Contractor shall give

the Owner written notice pursuant to Paragraph 16.3. of any such claim promptly, but in any event not later than fourteen (14) days after the occurrence of the event giving rise to the claim (including, without limitation, any Owner determination pursuant to Article 12.4.), but (except in the event of emergencies pursuant to Paragraph 10.4.) prior to the incurring of any expenses by the Contractor. Failure to give such notice, or to provide substantiation thereof as required below, shall constitute a waiver of the claim including, but not limited to, any and all damages, cost, impacts, inefficiency, extended overhead, unabsorbed overhead, ripple effect, or expenses of any nature whatsoever which the Contractor, or its Subcontractors or Sub-subcontractors, may suffer or incur. Claims shall be made in writing and shall identify the instructions or other circumstances that are the basis of the claim and shall set forth the Contractor's best estimate of the dollar amount claimed. Within thirty (30) days after the occurrence of the event giving rise to the claim, the Contractor shall fix the amount of its claim with specificity and shall provide to the Owner supporting data to substantiate and justify the Contractor's claim, including, without limitation, substantiation of all costs plus any other documentation or information as may be requested by the Owner or as may be necessary to substantiate the Contractor's claim. No claim shall be considered by the Owner if the Contractor has otherwise waived its rights to file a claim pursuant to the Contract Documents.

13.3. NO OTHER CLAIMS. The parties acknowledge that the provisions of Paragraphs 13.1. and 13.2. are included herein for the purpose of fixing and limiting the time within which, and the manner in which claims must be made; and that Paragraphs 13.1. and 13.2. do not grant to the Contractor any right to increases in the Contract Sum, or extensions in the Contract Time or any Milestones, not otherwise permitted or provided by the other terms and provisions of the Contract Documents.

#### **Article 14 UNCOVERING AND CORRECTION OF WORK; OWNER'S RIGHT TO CARRY OUT WORK**

##### 14.1. UNCOVERING OF WORK.

14.1.1. If any portion of the Work should be covered contrary to the instructions or request of the Owner or the requirements of the Contract Documents, the Contractor shall, if required by the Owner, uncover such portion of the Work for the Owner's observation and shall replace such Work all at the Contractor's expense.

14.1.2. If any portion of the Work should be covered prior to a specific request for observation or instruction by the Owner, the Owner may request to see such Work, and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents and without defect, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall bear such costs; provided, however, that if it is found that the condition was caused by a Separate Contractor employed as provided in Article 7, the Contractor shall have the right to seek reimbursement of the costs it incurs as aforesaid from said Separate Contractor.

##### 14.2. CORRECTION OF WORK.

14.2.1. The Owner shall have the authority to reject any portion of the Work which is defective or does not conform to the Contract Documents, and the Contractor shall promptly correct all Work so rejected by the Owner, whether observed before or after the Date of Substantial Completion and whether or not fabricated, installed or completed. In order that such corrective Work shall not interrupt or delay the Owner's schedule for completion of the Project or, if applicable, disturb the occupants of the completed Project, the Contractor shall perform such Work according to a schedule therefor established by the Owner (which may provide that the same be performed on overtime, shiftwork, Saturdays, Sundays and/or holidays), utilizing in the performance thereof such manpower as is necessary to complete the corrective Work in accordance with said schedule. The Contractor shall bear all costs of correcting such rejected Work including, without limitation, compensation for any additional architectural and engineering services made necessary thereby.

14.2.2. If, within one (1) year after the Date of Substantial Completion of the Work (as determined by the Owner) or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty or guarantee required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall correct it promptly after receipt of written instructions to that effect from the Owner unless the Owner has previously given the Contractor a written acceptance of such condition.

14.2.3. The Contractor shall remove from the Job Site all Work which is defective or non-conforming and not corrected under Paragraph 5.4. or Subparagraphs 14.2.1. or 14.2.2. unless removal is waived by the Owner.

14.2.4. The Contractor shall bear the cost of making good all work of Separate Contractors (and any of the Owner's other structures or facilities) destroyed or damaged by such removal or correction.

14.2.5. If the Contractor does not remove such uncorrected defective or non-conforming Work within a reasonable time fixed by written instructions to that effect from the Owner, the Owner may remove it and store the materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the Owner may, upon ten (10) additional days written notification to the Contractor, sell such materials and equipment at public or private sale and account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional architectural and engineering services and attorneys' fees made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such difference, the Contractor shall, upon demand, pay the same to the Owner. The obligations of the Contractor under this Subparagraph 14.2.5. shall be in addition to, and not in limitation of, any obligations imposed on it by law, by any other provision of this Contract or by any warranty or guarantee under this Contract.

14.2.6. If the Contractor fails to correct any defective or non-conforming Work, the Owner may correct it in accordance with Paragraph 14.3. In the event of a defect found after final acceptance of the Work by the Owner which the Contractor is obligated to correct pursuant to Subparagraph 14.2.2., the Owner may, at its option, after giving the Contractor an opportunity to correct such defect, cause such corrective Work to be performed by others and charge the Contractor with the cost thereof. Such charge shall be due and payable by the Contractor upon demand.

14.3. OWNER'S RIGHT TO CARRY OUT WORK. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or fails to perform any provision of this Contract, and such default, neglect or non-performance shall continue for a period of 48 hours after written notification thereof from the Owner (or if such default, neglect or non-performance cannot be reasonably remedied within such 48-hour period, and Contractor does not (in the sole determination of Owner) undertake in good faith the remedy of the same within said period and thereafter proceed diligently to completion), then the Owner may, without prejudice to any other remedy the Owner may have, make good such deficiencies; provided, however, that in the event of an emergency, as determined by the Owner, no notification shall be required. The Owner shall have the right to take possession of such portion of the Job Site as will enable it to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, construction equipment and machinery of the Contractor located on the Job Site. If the Owner makes good any such deficiencies, the costs of correcting the same including, without limitation, compensation for additional architectural and engineering services made necessary by such default, neglect or non-performance, shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall, upon demand, pay the difference to the Owner.

14.4. ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK. If the Owner prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case an appropriate amount shall be offset against any amounts then or thereafter due to the Contractor; or, if the said appropriate amount of offset is determined after final payment (or if there is not then or thereafter due to the Contractor an amount sufficient to cover the offset available to the Owner), the Contractor shall, upon demand, pay the appropriate amount (or the difference after offset, as applicable) to the Owner.

## **Article 15 TERMINATION OF CONTRACT**

15.1. TERMINATION BY CONTRACTOR. If the Owner should, without notifying the Contractor of its cause for doing so, fail or refuse to approve an Application for Payment or make payment thereon for a period of thirty (30) days after the same is required to be approved or paid pursuant to the Contract Documents, then the Contractor shall have the right, as its sole and exclusive remedy and upon fourteen (14) days prior written notice to the Owner, to terminate this Contract and recover from the Owner payment for all unpaid Work executed up to the date of termination, including any proven loss of reasonable profits sustained, based upon the percentage of Work completed through the date of termination. If the Owner shall cure its said default within such fourteen (14) day period, then the Contractor's notice of termination shall thereby be rendered ineffective, and this Contract shall continue in full force and effect. Prior to termination as aforesaid, the Contractor shall not delay or suspend the Work in whole or in part. The Contractor may not terminate this Contract on the grounds that the cause given by the Owner for failing or refusing to pay is not in accordance with fact or law, it being understood and agreed that the Contractor's sole remedy in such event shall be to seek money damages. The Contractor acknowledges

that it can be adequately compensated by such money damages for any breach of this Contract which may be committed by the Owner. Accordingly, and except as hereinabove provided, the Contractor expressly agrees that no default, act or omission of the Owner shall entitle the Contractor to cancel or rescind this Contract or suspend or abandon its performance of the Work.

#### 15.2. TERMINATION BY OWNER FOR CAUSE.

15.2.1. If the Contractor should become insolvent, file any bankruptcy proceedings, make a general assignment for the benefit of creditors, suffer or allow appointment of a receiver, refuse, fail or be unable to make prompt payment to Subcontractors, disregard applicable laws, ordinances, governmental orders or regulations or the instructions of the Owner, or if the Contractor should otherwise be guilty of a violation of, or in default under, any provision of the Contract, then the Owner may, without prejudice to any other right or remedy available to the Owner and after giving the Contractor and its surety, if any, three (3) days written notice, terminate the Contract and the employment of the Contractor on the Project, take possession of the Job Site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and finish the Work by whatever method the Owner may deem expedient. In addition, without terminating this Contract as a whole, the Owner may, under any of the circumstances set forth above, terminate any portion of this Contract (by reducing, in such manner the Owner deems appropriate, the scope of the Work to be performed by the Contractor) and complete the portion of this Contract so terminated in such manner as the Owner may deem expedient, taking possession of such part of the Job Site and utilizing such materials, equipment, tools, construction equipment and machinery owned by the Contractor as may be necessary to accomplish the same. The Contractor hereby grants to the Owner the further right: (a) to enter upon any premises or property other than the Job Site in order to take possession of any materials, tools, equipment, machinery or other items intended for incorporation in the Work (or any portion thereof) or for use in the performance thereof; and (b) to receive an assignment of such subcontracts as the Owner deems necessary or desirable at the time of termination of this Contract or a portion thereof.

15.2.2. If this Contract is terminated pursuant to Subparagraph 15.2.1., the Contractor shall not be entitled to receive any further payment until the Work is completed, and the Owner shall have the same right to retain monies owing to the Contractor as it would have to retain such monies from and against final payments. Upon the completion of the Work, the Owner shall make payment to the Contractor, or the Contractor shall reimburse the Owner, as the case may be, as provided in Article 10 of the Agreement. If a portion of this Contract is terminated pursuant to Subparagraph 15.2.1., such termination shall not be treated as a reduction in the scope of the Work pursuant to Article 12. Rather, in such event, the Owner shall offset against any monies then or thereafter due to the Contractor an amount determined by the Owner to be adequate to cover all costs and expenses it will incur in performing, or causing to be performed, the portion of this Contract so terminated. If the Owner's cost and expenses prove to be less than the amount offset, the Contractor shall be entitled to the difference unless otherwise provided herein. If the amount then or thereafter due to the Contractor is less than the amount to be offset and/or if the Owner's costs and expenses prove to exceed the amount offset, the Contractor shall pay the difference to the Owner upon demand.

15.2.3. The remedies provided to the Owner in this Paragraph 15.2. are in addition to, and not in lieu of, any other rights or remedies available to the Owner under the Contract Documents, at law or in equity. In the event of any breach of this Contract by the Contractor, and whether or not this Contract is terminated by the Owner, the Contractor shall be liable for all damages, losses, costs and expenses incurred by the Owner as a result thereof.

15.3. TERMINATION BY OWNER WITHOUT CAUSE. Without limitation to the provisions of Paragraph 15.2., the Owner shall have the right at any time, upon not less than three (3) days notice to the Contractor to terminate this Contract without cause and/or for the Owner's convenience. Upon receipt of such notice of termination, the Contractor shall forthwith discontinue the Work and remove its equipment and employees from the Job Site. In the event of termination under this Paragraph 15.3., the Contractor shall have the right, as its sole and exclusive remedy, to recover from the Owner payment for all unpaid Work executed up to the date of termination, including any proven loss of reasonable profits sustained based upon the percentage of Work completed through the date of termination. In addition, without terminating this Contract as a whole, the Owner may, for its convenience, terminate a portion of this Contract (by reducing, in such manner as the Owner deems appropriate, the scope of the Work to be performed by the Contractor), in which event such termination of a portion of this Contract shall be treated as a reduction in the scope of the Work pursuant to Article 12.



**Article 16**  
**MISCELLANEOUS PROVISIONS**

16.1. GOVERNING LAW. This Contract shall be governed by, and construed in accordance with, the laws of the State of Florida, to the exclusion of Florida rules of conflicts of laws.

16.2. ASSIGNABILITY; SUCCESSORS AND ASSIGNS.

16.2.1. This Contract may be assigned by Owner at any time without Contractor's consent; without limiting the generality of the foregoing, all warranties and guarantees in favor of Owner under the Contract Documents may be assigned without Contractor's consent by Owner to any party designated by Owner and such assignee may directly enforce any such warranty or guarantee. The Contractor shall not assign this Contract in whole or in part without the written consent of the Owner, which consent the Owner may withhold in its sole discretion; nor shall this Contract be assignable by the Contractor by operation of law. The Contractor shall not assign any monies due or to become due to it hereunder without the prior written consent of the Owner.

16.2.2. The Owner and the Contractor each binds itself and, to the extent permitted herein, its successors and assigns, to the other party and, to the extent permitted herein, the other party's successors and assigns, in respect to all covenants, agreements and obligations contained in the Contract Documents.

16.3. NOTICE. All notices (whether or not designated as such herein) which are required under this Contract to be given between the parties pursuant to this paragraph shall be in writing and deemed given and, unless otherwise provided herein, effective when delivered personally to an officer of the party to be served (including the Contractor's Project Manager, in the case of the Contractor), when deposited in the United States mail, or in a sealed envelope, with postage thereon prepaid, sent by registered or certified mail, return receipt requested, and addressed to the appropriate party at the address set forth in the Agreement or such other address as may be designated by either party hereto by notice to the other, or when transmitted by wire or facsimile to the appropriate party at the aforesaid address (a complimentary confirming letter shall also be mailed to the appropriate party on the same date).

16.4. PERFORMANCE AND PAYMENT BONDS. Unless waived or otherwise agreed by the Owner, the Contractor shall furnish (and if directed by the Owner shall require all or certain of its Subcontractors to furnish) a bond covering the faithful performance of this Contract (or any such subcontract), as revised or modified from time to time, and a bond covering the payment of all obligations arising thereunder in full compliance with the then current provisions of Section 713.23, Florida Statutes (or any successor thereto; or, if applicable, Section 255.05, Florida Statutes, or any successor thereto), each in the full Contract Sum, as revised or Modified from time to time, and with such sureties as may be approved by the Owner. Each bond shall contain the following language: "The provisions and limitations of Section 255.05 or of Section 713.23, Florida Statutes, whichever is applicable to the Contract, are incorporated herein by reference, provided, however, that in the event of any conflict between the provisions of said Section 255.05 or Section 713.23 and those contained in this bond, the provisions of said Section 255.05 or Section 713.23 shall govern." If such bonds, or either of them, are stipulated in the bidding documents or in the Contract Documents, the premium therefor shall be paid by the Contractor (or appropriate Subcontractors); but if required or increased in amount pursuant hereto subsequent to award of the Contract or due to Changes in the Work, the premium therefor shall be reimbursed by the Owner. The Contractor shall deliver promptly, and in any event no later than ten (10) days after notice of award, to the Owner any required bonds or amendments thereto. The Contractor's failure to timely obtain and deliver the required bonds or amendments thereto shall constitute cause for the Owner to terminate this Contract (or for the Contractor to terminate any subcontract). The Owner shall not be obligated to respond to, and the Contractor shall assure that the Owner is not sent, any job status inquiries from the Contractor, any surety, or any of their accountants or independent auditors.

16.5. MAINTENANCE OF HARMONIOUS RELATIONS. The Contractor is hereby advised that any portion of the Project, or other projects in proximity to the Project may be subject to, and governed by, certain union or trade agreements. It is the policy of the Owner to promote and maintain harmonious relationships in connection with the Project. The Contractor and its Subcontractors and Sub-subcontractors shall follow this policy; and shall utilize only qualified persons or organizations in the performance of the Work. A qualified person or organization is one: which is not likely to promote labor unrest on the Project; which shall abide by all local, state and federal labor and employment relation rules, regulations and laws; whose financial stability is reasonably assured throughout the duration of the Contract; and whose commitments to other projects are not likely to interfere with its ability to perform its portion of the Work efficiently and cost effectively. The Owner reserves the right to disapprove, or to require the removal of, any person or organization who is being considered for, or has received, an award to perform all or a portion of the Work but has failed to demonstrate the willingness or ability to follow this policy.

16.6. UNION AGREEMENTS. Regardless of the expiration of any collective bargaining agreement during the term of this Contract which may affect the Contractor in any of its activities including, without limitation, with respect to the Work or the Project, the Contractor is obligated to man the job and properly and timely perform the Work in a diligent manner. Upon notification of expected or actual labor disputes or job disruption arising out of any such collective bargaining negotiations, the expiration of any union or trade agreement or any other cause, the Contractor and its Subcontractors and Sub-subcontractors shall cooperate with the Owner concerning any legal, practical or contractual actions to be taken by the Owner in response thereto and shall perform any actions requested by the Owner to eliminate, neutralize or mitigate the effects of such actions on the progress of the Work and the impact of such actions on the public access to the Reedy Creek Improvement District or any of the properties or facilities located therein, irrespective of whether such properties are owned by the Owner or by a third party. It is the Contractor's obligation, at the Contractor's own cost and expense, to take all steps available to prevent any persons performing the work from engaging in any disruptive activities such as strikes, picketing, slowdowns, job actions or work stoppages of any nature or ceasing to work due to picketing or other such activities, which steps shall include, without limitation, execution of an appropriate project agreement with appropriate unions prohibiting all such activities on or about the Project. Notwithstanding any such occurrences, the Contractor shall not be relieved of its obligation to man the job and properly and timely perform the Work in a diligent manner.

16.7. USE OF OWNER'S NAME/CONFIDENTIALITY. Neither the Contractor nor its Subcontractors or Sub-subcontractors, by virtue of this Contract, shall acquire any right to use, and they shall not use, the name of the Owner, the Owner's Representative (either alone or in conjunction with or as a part of any other word, mark or name) or any marks, fanciful characters or designs of either of them or any of its related, affiliated or subsidiary companies: in any of their advertising, publicity or promotion; to express or imply any endorsement of their respective Work or services; or in any other manner whatsoever (whether or not similar to the foregoing uses hereinabove specifically prohibited). The Contractor may, during the course of its engagement hereunder, have access to, and acquire knowledge of or from, material, data, strategies, systems or other information relating to the Work, the Project, the Owner, the Owner's Representative, its parent, affiliated, or related companies, which may not be accessible or known to the general public. Any such knowledge acquired by the Contractor shall be kept confidential and shall not be used, published or divulged by the Contractor to any other person, firm or corporation, or in any advertising or promotion regarding the Contractor or its Work or services, or in any other manner or connection whatsoever without first having obtained the written permission of the Owner, which permission the Owner may withhold in its sole discretion. The Contractor shall not be allowed to undertake or allow any photography on or about the Job Site or the Project absent written permission of the Owner, which permission the Owner may withhold in its sole discretion. In the event of a breach by Contractor of its obligations under this Paragraph 16.7., Owner shall be entitled to an injunction restraining Contractor from disclosing or divulging in whole or in part any confidential information. Further, any failure by Contractor to comply with this Paragraph 16.7. shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. The Provisions of this Paragraph shall survive the expiration or sooner termination of the Contract.

#### 16.8. GENERAL.

16.8.1. The captions of divisions, sections, articles, paragraphs, subparagraphs, clauses and the like in the Contract Documents are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, paragraphs, subparagraphs, clauses and the like. The parties agree that the Contract Documents shall not be construed more strictly against any party regardless of the identity of their drafter.

16.8.2. Unless otherwise specified, article, paragraph and subparagraph references appearing in these General Conditions are to articles, paragraphs and subparagraphs herein.

16.8.3. Wherever this Contract obligates the Contractor hereunder to reimburse the Owner or others for attorneys' fees, such obligation shall not only include attorneys' fees incurred prior to and including litigation in the trial court, but also all attorneys' fees incurred in connection with any and all appellate proceedings, no matter to which court any appeal is taken and by whomever so taken.

16.8.4. Wherever this Contract obligates the Contractor to "indemnify" the Owner, such obligations shall include, but shall not be limited by, the following: (i) the Contractor shall indemnify the Owner and its supervisors, administrators, officers, directors, agents, employees, agents, successors and assigns and Owner's

Representative, and its parent, related, affiliated and subsidiary companies and the officers, directors, agents, employees and assigns of each; (ii) the Contractor shall defend (if requested by the Owner) and hold each indemnitee harmless; (iii) in the event of any such requested defense, the Owner may choose its legal counsel, control the litigation including, without limitation, determining legal strategy, settlement strategy and whether or not to file any appeals; (iv) the Contractor shall not raise as a defense to its obligation to indemnify any comparative or contributing negligence, recklessness or intentional wrongful misconduct of any of those indemnified pursuant to any such provision, it being understood and agreed that no such comparative or contributing negligence, recklessness or intentional wrongful misconduct shall relieve the Contractor from its liability to so indemnify nor entitle the Contractor to any contribution, either directly or indirectly, by those indemnified; (v) no indemnification obligation hereunder shall be limited in any way to any limit on the amount or type of damage, compensation or benefits payable by or for the Contractor or any Subcontractor or Sub-subcontractor under any Worker's Compensation Act, disability benefit acts or other employee benefit acts; and (vi) all such indemnity provisions shall survive the expiration or sooner termination of this Contract.

16.8.5. Unless otherwise specifically provided herein, the Owner may withhold any consents, approvals or waivers required of it pursuant to the Contract in its sole discretion.

16.9. IMMIGRATION REFORM CONTROL ACT. All Contractors, Subcontractors, and Sub-subcontractors must adhere to the Immigration Reform Control Act of 1986 and shall maintain I-9 forms regarding all employees. It is not the Owner's obligation to insure compliance with this law, however, the Owner reserves the right to inspect and copy the Contractor's records in this regard upon request.

16.10. ADJACENT LAND AND LANDOWNERS. To the extent the Work requires the Contractor to enter upon land owned by others than the Owner, or the Contractor is permitted to enter upon such land, then the Contractor shall, prior to entry, satisfy itself as to all conditions present upon such land and shall take all necessary precautions to protect all persons and property from injury or damage as a result of the Contractor's entry upon such land and shall promptly repair any damage to the land and any property located thereon. The Contractor shall defend, indemnify and hold harmless the owner(s) of such land from and against any and all claims, suits, judgments, damages, losses and expenses (including attorneys' fees) of any nature whatsoever to the extent caused by or arising out of the Contractor's entry upon such land. Nothing contained herein shall create any contractual relationship between the Contractor and the owner(s) of such land; however, it is acknowledged that the owner(s) of such land are intended third party beneficiaries of the obligations of the Contractor hereunder.

## **Article 17 EQUAL OPPORTUNITY**

17.1. POLICIES OF EMPLOYMENT. The Contractor shall maintain policies of employment as follows:

17.1.1. Neither the Contractor nor any of its Subcontractors or Sub-subcontractors shall discriminate against any employee or applicant for employment on the basis of race, religion, color, sex or national origin. The Contractor shall ensure that qualified applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

17.1.2. The Contractor and its Subcontractors and Sub-subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

17.2. MINORITY BUSINESS ENTERPRISE PARTICIPATION. The Contractor shall provide, and shall require its Subcontractors to provide, full and fair utilization of minority business enterprises in the performance of the Work.

17.3. PROCEDURES AND GUIDELINES. The provisions of this Article are in addition to any and all other policies, procedures or guidelines established by the Owner with respect to equal employment opportunities and minority business participation which are set forth elsewhere in the Contract Documents. The Owner may, at any time during the term of the Contract, issue Directives in furtherance of this Article and the obligations of the Contractor and its Subcontractors and Sub-subcontractors hereunder, and the Contractor and its Subcontractors and Sub-subcontractors shall comply with all of the foregoing as they relate to any Work performed under this Contract. No policies, procedures or guidelines established by the Owner pursuant hereto shall give rise to a claim by the Contractor for an increase in the Contract Sum or an extension of the Contract Time, nor shall they relieve the Contractor of its primary responsibilities to provide equal employment opportunities and to insure that

its Subcontractors and Sub-subcontractors do the same. Any failure of the Contractor or any of its Subcontractors or Sub-subcontractors to provide equal employment opportunities as required by these Contract Documents or by law shall be considered or deemed to be caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor or of persons employed or utilized by the Contractor in the performance of the Work. The Contractor is responsible for and shall pay all damages, judgments, losses, costs or expenses, including, without limitation, attorneys' fees, arising out of any claims, lawsuits or actions pertaining or otherwise related to any such failure, including, without limitation, any and all damages, judgments, losses, expenses, costs and attorneys' fees, incurred by the Owner. If the Contractor fails to reimburse the Owner for, or to otherwise pay, any such damages, judgments, losses, expenses, costs or attorneys' fees, the Owner shall have the right to offset or back-charge all of said items or amounts against sums then or thereafter due to the Contractor under the Contract. If the sums due under the Contract have already been paid or if the sums then or thereafter due to the Contractor are not sufficient to cover the items or amounts required hereunder, the Contractor shall reimburse the Owner or otherwise pay the difference to the Owner.

END OF GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION
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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PAYMENT BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

CEPRA LANDSCAPE, LLC  
P.O. Box 865  
Oakland, FL 34760 (hereinafter "Contractor")

**SURETY:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024  
Contract No. C006426  
Project: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

Legal Description or Street Address of Project: (Refer to Attachment A for Site Location on Epcot Resorts Boulevard, attached hereto and made a part hereof).

Contract Sum: FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024  
Amount: FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Obligee, to pay for labor, material, services, utilities, equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor promptly makes full payment to all Claimants, as hereinafter defined, for all labor, material, services, utilities and equipment and all other items for which a lien could be claimed if Ch. 713, Florida Statutes applied to this Project, supplied for or used in the performance of the Contract, including, but not limited to, all modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from

their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.

4. The Surety and the Contractor further agree that this bond shall inure to the benefit of, and may be sued directly upon by, any Claimant furnishing labor, materials, services, utilities or equipment or any other item for which a construction lien could be claimed if Ch. 713, Florida Statutes applied to this Project.
5. "Claimant" shall mean for purposes hereof all persons, firms, partnerships, corporations or other entities that would be entitled to claim a construction lien if Ch. 713, Florida Statutes applied to this Project.
6. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
7. The sum of this Payment Bond is in addition to the sum of the Performance Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
CEPRA LANDSCAPE, LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

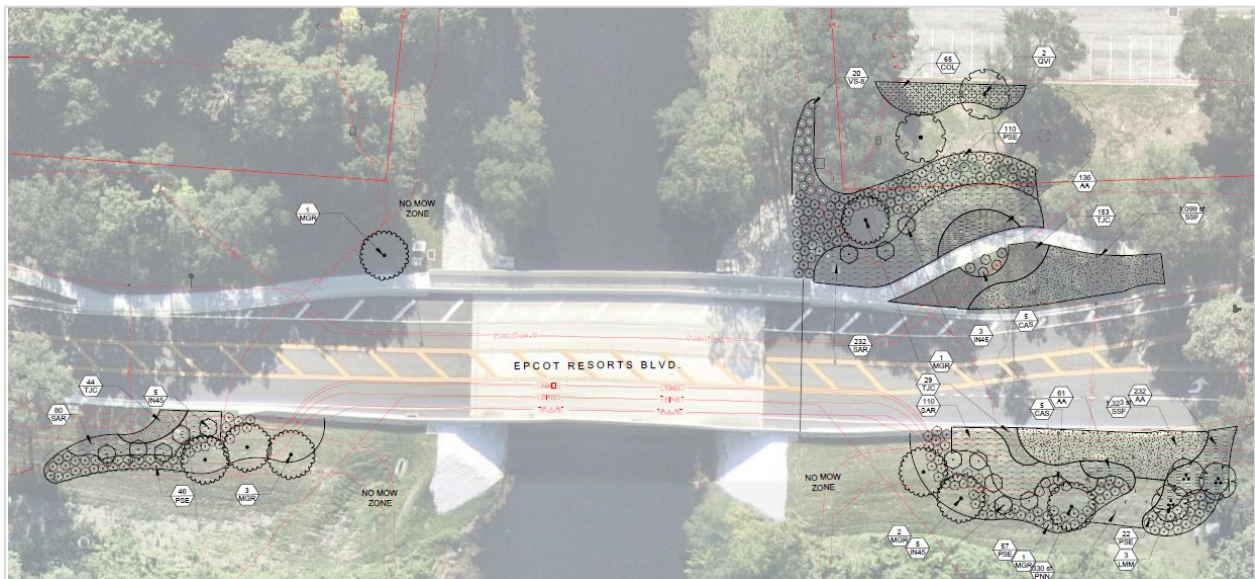
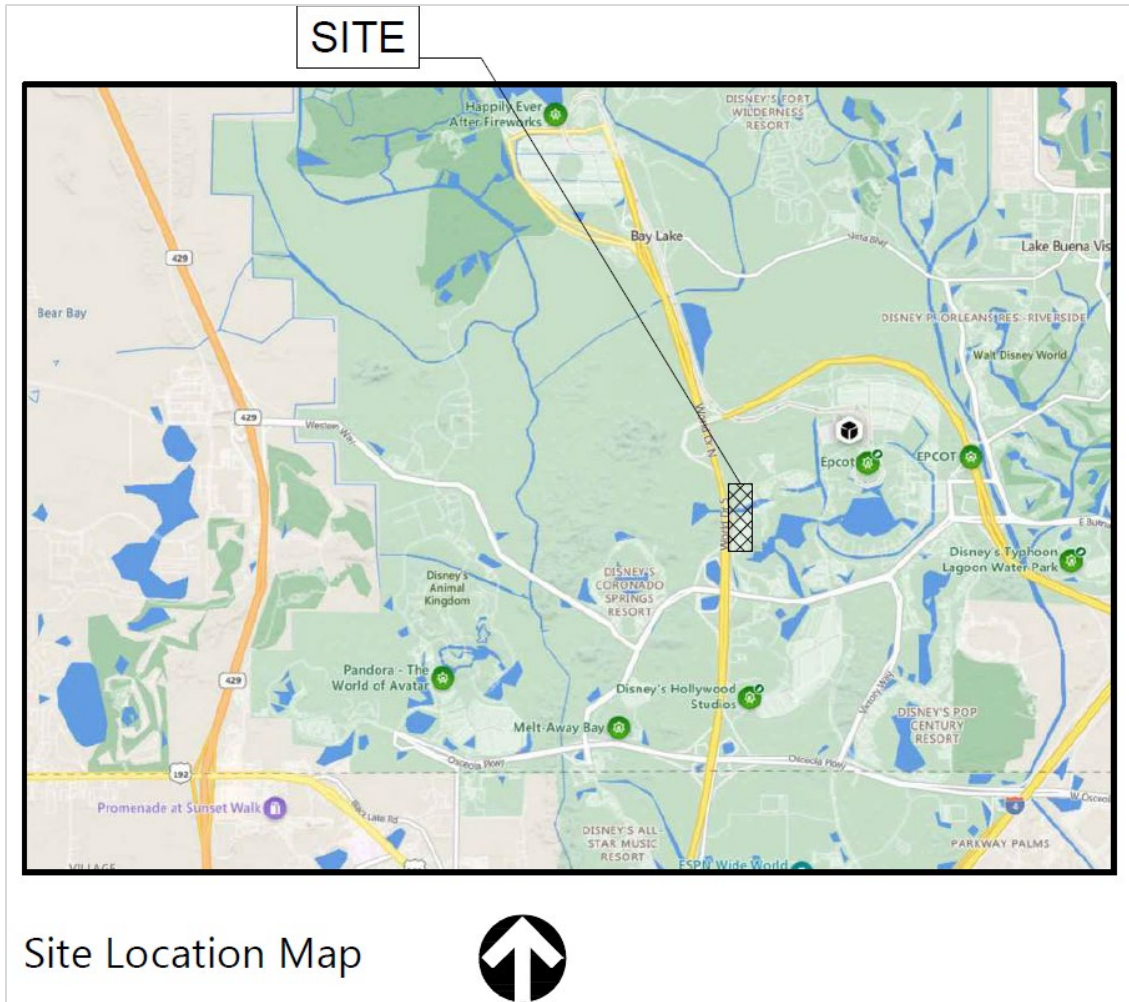
Print Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment A:  
Site Location on Epcot Resorts Boulevard



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
PERFORMANCE BOND**

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**OWNER:**

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869 (hereinafter "Owner")

**CONTRACTOR:**

CEPRA LANDSCAPE, LLC  
P.O. Box 865  
Oakland, FL 34760 (hereinafter "Contractor")

**SURETY:**

Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (hereinafter "Surety")

**CONTRACT:**

Date: April 24, 2024  
Contract No. C006426  
Project: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

Legal Description or Street Address of Project: (Refer to Attachment A for Site Location on Epcot Resorts Boulevard, attached hereto and made a part hereof).

Contract Sum: FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92) (hereinafter "Contract")

**BOND:**

Date: April 24, 2024  
Amount: FOUR HUNDRED TWENTY THOUSAND, EIGHT HUNDRED TWENTY-ONE AND NINETY-TWO ONE-HUNDREDTHS DOLLARS (\$420,821.92) (hereinafter "Bond")

1. The Contractor, as Principal, and the Surety hereby, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner, as Obligee, for the performance of the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, all of which are incorporated herein by reference.
2. If the Contractor fully performs the Contract, including, but not limited to, all undertakings, covenants, terms, conditions, agreements, extensions, modifications, changes, additions, alterations, and warranties thereof, and also fully indemnifies and holds harmless the Owner from all costs, damages, losses and expenses which the Owner may suffer by reason of the Contractor's failure to do so and fully reimburses and pays the Owner for all costs, damages and expenses which the Owner may incur in remedying any such failure, then this obligation shall be void; otherwise it shall remain in full force and effect.
3. The Surety further agrees that whenever the Contractor shall be, and is declared by Owner to be, in default under or in breach of the Contract (which shall include without limitation any breach by the Contractor of any of the provisions of the Contract) the Surety shall promptly remedy the default or breach and undertake to perform and complete the Contract in accordance with its terms and conditions. The Surety's obligations include, but are not limited to, (i) the responsibilities of the Contractor for correction of defective work, completion of the Contract and fulfillment of warranty obligations, (ii) additional legal, design professional and delay costs resulting from the Contractor's default or breach or from the Surety's failure to act as required under this paragraph, and (iii) liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed



performance or non-performance of the Contractor or the Surety. The Surety shall fully indemnify and hold harmless the Owner from all costs, damages, and expenses (including attorneys' fees), which the Owner may incur as a result of the Surety's failure to act as required under this paragraph.

4. The Surety and Contractor further agree that any modifications, changes, additions or alterations which may be made in the terms of the Contract or in the work to be done thereunder, or any extensions of the Contract time, or other forbearance on the part of either the Owner or Contractor to the other, shall not in any way release the Contractor and the Surety, or either of them, their heirs, executors, administrators, successors and assigns, from their liability hereunder, notice to Surety of any such modifications, changes, additions, alterations, extensions or forbearances being hereby expressly waived.
5. The provisions of Section 255.05, Florida Statutes, including without limitation its notice and limitations provisions, are incorporated in this bond by reference; provided, however, that in the event any provision of this Bond conflicts with Section 255.05, Florida Statutes, then such conflicting provision shall be deemed deleted herefrom and the applicable provisions of Section 255.05, Florida Statutes shall be deemed incorporated herein.
6. The sum of this Performance Bond is in addition to the sum of the Payment Bond being executed concurrently herewith.

IN WITNESS WHEREOF, the parties have executed this instrument under their several seals effective on the Date of this Bond as set forth on page 1 hereof.

**CONTRACTOR:**  
CEPRA LANDSCAPE, LLC

**SURETY:**

[SEAL]

[SEAL]

By: \_\_\_\_\_

By: \_\_\_\_\_

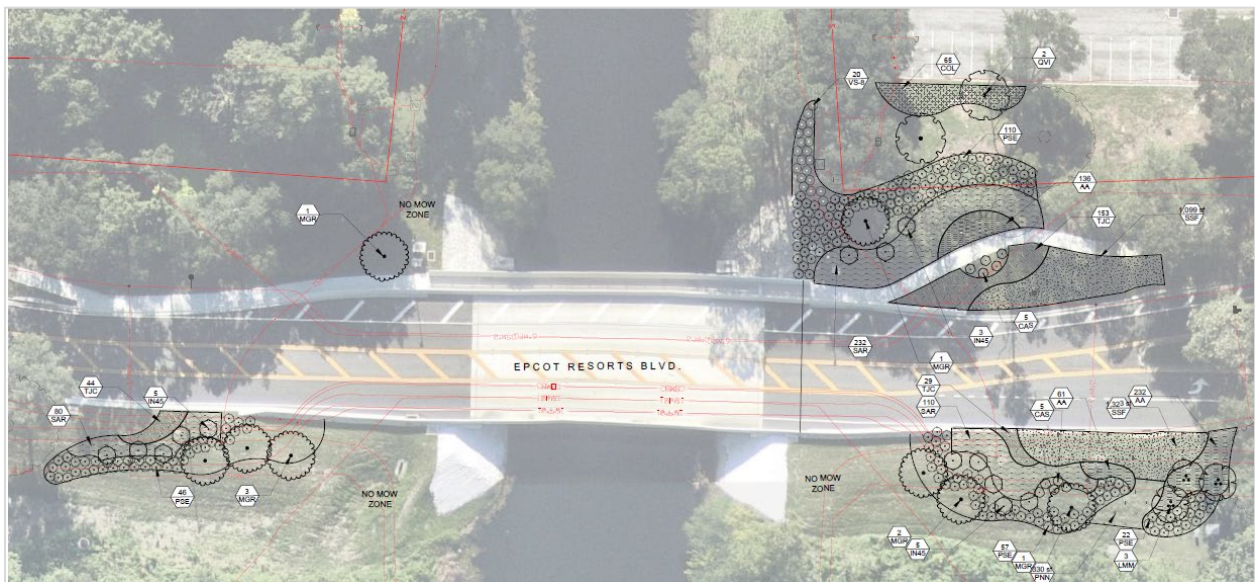
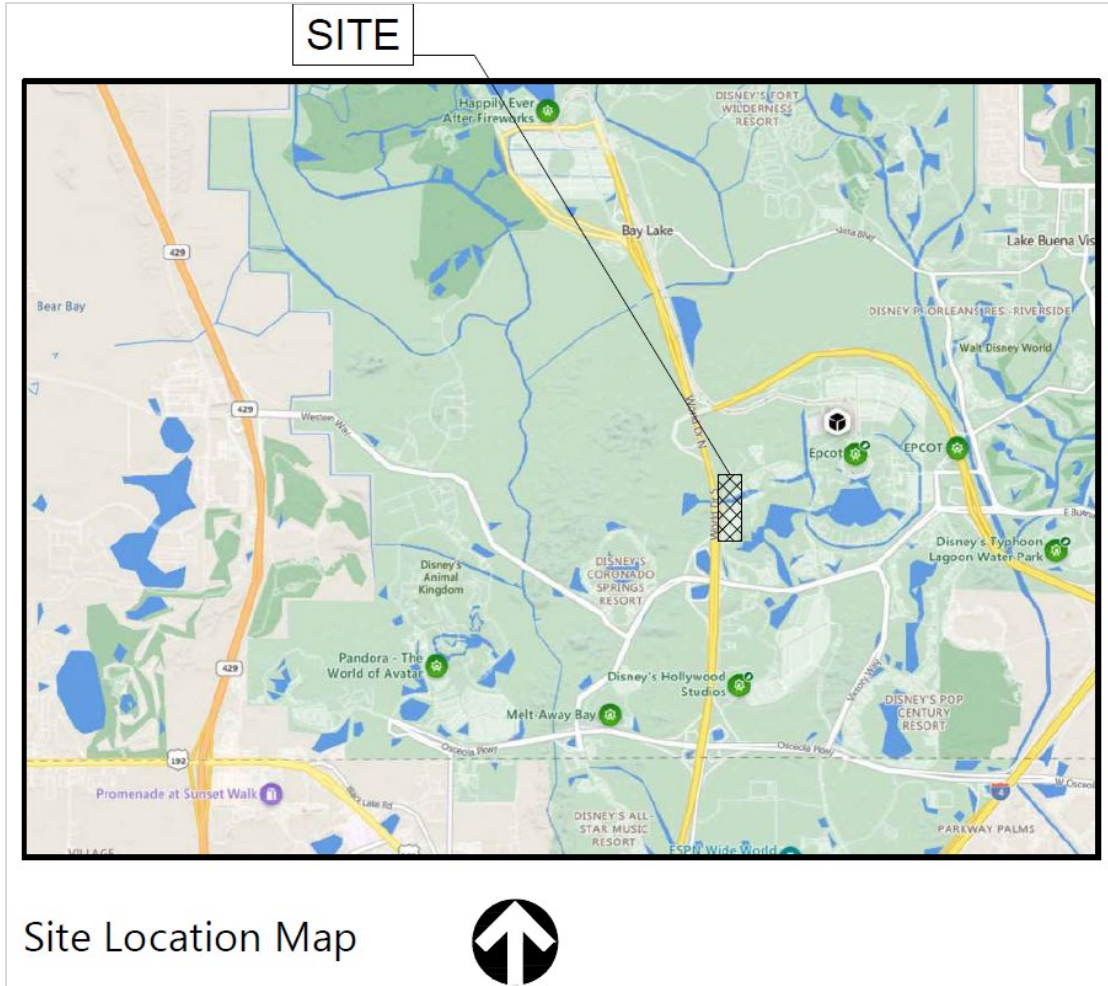
Print Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Attachment A:  
Site Location on Epcot Resorts Boulevard



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CONSENT OF SURETY FOR PARTIAL PAYMENT APPLICATION**

(Date) \_\_\_\_\_

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
P.O. Box 690519  
Orlando, Florida 32869

Re: Consent of Surety  
Bond # \_\_\_\_\_  
Contract # C006426  
Payment Req. No.: \_\_\_\_\_

Dear Sir or Madam:

\_\_\_\_\_ (Surety) hereby consents to the payment of the amount of moneys due to \_\_\_\_\_ (Prime Contractor), by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT for which the necessary duly executed affidavits/releases of liens have not been provided.

This Consent of Surety is executed in lieu of the appropriated Affidavit and Release of Lien from \_\_\_\_\_ (Subcontractor/s - Supplier/s list if necessary) which the District's Prime Contractor has not submitted with its Partial Payment Application. The Surety executes this Consent for the amount of \_\_\_\_\_, encompassing Work and/or labor performed, the provision of materials, equipment, and supplies through the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, except for any applicable retainage.

\_\_\_\_\_ (Surety) further acknowledges that payment by CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT shall not be construed as a waiver of any of the District's rights or those of any other named Obligee under the Payment and Performance Bonds; nor a determination by the District or those of any other named Obligee as to the merits of any controversy or dispute between the Prime Contractor and a Subcontractor/Supplier.

Sincerely,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature of Attorney-in-Fact

**Note: Documentation must be provided that reflects the Attorney-in-Fact's authority to sign for the Surety.**

**DUAL OBLIGEE RIDER**

To be attached to and form a part of contract payment bond number \_\_\_\_\_ issued by \_\_\_\_\_ (Surety)

On behalf of \_\_\_\_\_ (Contractor)

In the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

and dated \_\_\_\_\_ in favor of CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT.

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

1. Walt Disney Parks and Resorts U.S. Inc. is hereby added to said bond as additional Obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligee, or either of them, shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligee is limited to the penal sum above stated Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against and other party liable to the payee on the discharged obligation.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Contractor: **Cepira Landscape, LLC**

By \_\_\_\_\_

**Surety**

By \_\_\_\_\_

**CONTRACTOR'S INTERIM AFFIDAVIT**

From: CEPRA LANDSCAPE, LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No.: C006426, dated April 24, 2024, for EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to, or claimed by, all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of liens and waivers of claims through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

Contractor: Cepra Landscape, LLC

By: \_\_\_\_\_

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

\_\_\_\_\_  
Print Title

**CONTRACTOR'S INTERIM AFFIDAVIT - SCHEDULE A**

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

From: CEPRA LANDSCAPE, LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006426, dated April 24, 2024, between CENTRAL FLORIDA TOURISM DISTRICT and CEPRA LANDSCAPE, LLC

The following are ALL the amounts due and owing to, or claimed by, all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above-referenced Contract. All amounts represent the total amount due and owing, or claimed, as of the date hereof and any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

<u>Name</u>	<u>Amount Due and Owing</u>	<u>Notes</u>
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Sample

Please initial:

\_\_\_\_\_

Owner

\_\_\_\_\_

Contractor

**CONTRACTOR'S REQUEST FOR INFORMATION**

RFI NO: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE INFORMATION REQUIRED: \_\_\_\_\_

SUBMITTED BY: \_\_\_\_\_

SCHEDULE EFFECT IF THE RESPONSE IS NOT RECEIVED BY THE ABOVE REFERENCED

DATE: \_\_\_\_\_

CATEGORY \_\_\_\_\_ Information not shown on the Contract Documents  
\_\_\_\_\_ Interpretation of Contract Requirements  
\_\_\_\_\_ Conflict in Contract Requirements  
\_\_\_\_\_ Coordination Problems

Contract Drawing Ref. \_\_\_\_\_  
Shop Drawing Ref \_\_\_\_\_  
Specification Ref \_\_\_\_\_  
Other: \_\_\_\_\_

SUBJECT: \_\_\_\_\_

DESCRIPTION: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

ENGINEER/ARCHITECT ASSIGNMENT

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

From: \_\_\_\_\_

ENGINEER/ARCHITECT RESPONSE

REPLY: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

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

RESPONSE TO CONTRACTOR

To: \_\_\_\_\_

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

Copy To: \_\_\_\_\_

From: \_\_\_\_\_

**DIRECTIVE NO.**

CONTRACT NO: C006426

DATE: \_\_\_\_\_

PROJECT: **EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT**

SUB-PROJECT: \_\_\_\_\_

CONTRACTOR: Cepra Landscape, LLC

ATTACHMENTS:

DESCRIPTION: \_\_\_\_\_

Pursuant to the General Conditions of the Contract for Construction, you are hereby directed to proceed to perform the Work described above as indicated below. All work is to be accomplished in accordance with the Contract Documents. Any time extension associated with this Directive should be identified and a separate price stated to incorporate this change within the Contract completion date. Accurate records of any additional work, which may result in a change to the Contract Sum or Contract Time must be maintained. The implementation of all work now in process must be coordinated with the proposed revised conditions associated with this Directive.

The following is applicable to this Directive as marked:

- \_\_\_\_\_ A. The work described above and in the accompanying attachments will not change the Contract Sum or Contract Time.
- \_\_\_\_\_ B. The Contract Sum shall be increased/decreased by the sum of \$ \_\_\_\_\_ as a result of this Directive and the Contract Time shall be increased/decreased by \_\_\_\_\_ calendar days and shall be reflected in a Change Order to be signed by the parties.
- \_\_\_\_\_ C. The amount of change, if any, to the Contract Sum or Contract Time is undetermined as of the date of the Directive. Any such change amount shall be determined in accordance with the provisions of Article 12 of the General Conditions of the Contract for Construction.
- \_\_\_\_\_ D. Proceed immediately with the changes on a time-and-materials basis. Time tickets shall be submitted daily to the Owner's Representative for verification. A formal Change Order will be issued for the actual costs based upon the signed time tickets and material invoices plus the Contractor's allowable mark-up as specified in the Contract Documents.
- \_\_\_\_\_ E. The parties are unable to agree at this time as to whether the work described above constitutes a change in the scope of the work of the Contractor. Such dispute shall be resolved in accordance with the applicable provisions in the Contract Documents.

Approved:

Recommended for Approval:

\_\_\_\_\_  
Central Florida Tourism Oversight District      Date

\_\_\_\_\_  
Engineer/Architect – (insert company name)      Date

Accepted:

\_\_\_\_\_  
Contractor: Cepra Landscape, LLC      Date

Copy: Contract File  
Engineer/Architect's Project Manager: \_\_\_\_\_  
Owner's Project Manager: Craig Sandt



PROJECT: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

CONTRACTOR: Cepra Landscape, LLC  
P.O. Box 865  
Oakland, FL 34760

CONTRACT NO. C006426

CHANGE ORDER NO.  
DATE: «Change Order Date»

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
CHANGE ORDER

The Owner and the Contractor hereby agree to this Change Order for all labor, services, materials, equipment and other items or things to be furnished, provided or performed, and all other obligations, terms and conditions, as described in Exhibit A hereto, all of which shall become part of the Work.

- |   |                                     |
|---|-------------------------------------|
| 1. Original Contract Sum                                | <u>\$420,821.92</u>                 |
| 2. Total net change by previous Change Orders           | <u>«Prior Revisions Fee Amount»</u> |
| 3. Contract Sum prior to this Change Order              | <u>«Prior Contract Sum Amount»</u>  |
| 4. Contract Sum will be adjusted with this Change Order | <u>«Fee Amount»</u>                 |
| 5. Adjusted Contract Sum including this Change Order    | <u>«Total Contract Fee Amount»</u>  |
| 6. Original Contract Time                               | <u>«Original Completion Date»</u>   |
| 7. Contract Time prior to this Change Order             | <u>«Prior Completion Date»</u>      |
| 8. Adjustment in Contract Time by this Change Order     | <u>«Extended Days» days</u>         |
| 9. Adjusted Contract Time including this Change Order   | <u>«Current Completion Date»</u>    |

Any funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor to be first applied to the payment of Subcontractors, laborers and materialmen, and other costs of construction, pursuant to law.

The total amount of this Change Order is fair, reasonable and mutually agreeable, and includes all applicable taxes, insurance, bond or corporate guarantee, delivery, supervision, overhead, profit, labor, labor impact, materials, changes, cardinal change, delays, acceleration, inefficiency and cumulative impact, or any claims, lawsuits, actions or causes of action therefor, and the Contractor hereby waives, releases and forever discharges any and all claims, lawsuits, actions or causes of action for such items associated with or related to the Work covered by this Change Order. Without limitation on the foregoing, the parties hereto specifically acknowledge that it is their intent to hereby waive, release and forever discharge any and all cardinal change or cumulative impact claims, whether known or unknown, whether in law or in equity, whether contingent or non-contingent, and whether past, present or future, arising out of or in connection with this Change Order and all previous Change Orders.

This Change Order represents the entire and integrated agreement between the parties, and supersedes all prior negotiations and qualifications, for this change in scope; but this Change Order and the Work contemplated herein is, except as otherwise specifically provided herein, subject to all the terms and conditions of the Contract including, without limitation, those concerning payment.

OWNER  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

CONTRACTOR  
**CEPRA LANDSCAPE, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: S.C. Kopelousos

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

Title: District Administrator

Title: \_\_\_\_\_

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

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

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EXHIBIT A

<u>Item</u>	<u>Description</u>	<u>Value</u>
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Sample

Please initial:

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Contractor

PROJECT: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

CONTRACT NUMBER: C006426

CHANGE ORDER NUMBER: (C.O. No.)

**CLOSE-OUT CHANGE ORDER**

THIS CLOSE-OUT CHANGE ORDER, is made effective as of (Insert Change Order Date), by and between the Owner and the Contractor.

WHEREAS, the parties desire to close-out the above referenced Contract based upon the Contract Documents as, and to the extent, modified below.

NOW THEREFORE, in consideration of the covenants hereinafter set forth, the parties agree as follows:

1. The current status of the Contract is as follows:

Original Contract Sum	<u>\$420,821.92</u>
Total net change by previous Change Orders	<u>\$(Insert Amount)</u>
Contract Sum prior to this Change Order	<u>\$(Insert Amount)</u>
Contract Sum will be increased/decreased with this Change Order	<u>\$(Insert Amount)</u>
Final Contract Sum including this Change Order	<u>\$(Insert Amount)</u>

2. The Contractor certifies that all Work covered by the Contract and Change Order No. \_ through \_ has been completed in accordance with the terms of the Contract, including all punch list items.

3. The attached Contract Close-out Documents, all of which are incorporated herein by reference, relate to all Work performed under the Contract and all Change Orders thereto (which are inclusive of all the Work in Contract No. C006426 and, along with the other terms of this Close-out Change Order, constitute material consideration and representations to the Owner to induce the Owner into execution of this Close-out Change Order.

CONTRACT CLOSE-OUT DOCUMENTS

Attachment A	General Release
Attachment B	Contractor's Affidavit
Attachment C	Contractor's Release and Waiver - Insurance
Attachment D	Waiver of Claim/Waiver of Lien/Litigation List
Attachment E	Contractor's Guarantee to Owner
Attachment F	Consent of Surety
Attachment G	Certificate of Substantial Completion

4. RETAINAGE: Within (15) working days after approval by Owner of the Contract Close-out Documents submitted by Contractor hereunder and satisfaction by Owner that Contractor shall have complied with all provisions of the Contract Documents, final payment, constituting the entire unpaid balance of the Contract Sum shall be paid by the Owner to the Contractor.

5. The Contractor represents to the Owner that:

a. There are no outstanding claims, which the Contractor has against the Owner or Separate Contractors, their Subcontractors or Sub-subcontractors, on the Project, and to the best of

Please initial:

\_\_\_\_\_ Owner

\_\_\_\_\_ Contractor

its knowledge, there are no outstanding claims against Contractor, its Subcontractors or Sub-subcontractors, by Separate Contractors or their Subcontractors or Sub-subcontractors on the Project.

- b. Without limitation upon the indemnity provisions contained in the Contract and in addition thereto, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner's Representative, the parent, related, affiliated and subsidiary companies of each, and the officers, directors, agents, employees, successors and assigns of each from and against any and all claims, causes of action, liens, rights to claim a lien, suits, expenses, losses and damages (including, without limitation, any and all expenses, losses and damages, for or arising out of direct costs, indirect costs, expenses, overhead, profit, labor, labor impacts, materials, supplies, equipment, changes, cardinal changes, cumulative impacts, disruptions, hindrances, interferences, delays, acceleration, inefficiencies, lost productivity, taxes, insurance, bonds, deliveries, supervision, or any other costs, expenses, losses or damages of any nature whatsoever), judgments, and rights whatsoever, in law or in equity, known or unknown or which may hereafter accrue (hereinafter referred to collectively as "Claims") directly or indirectly (i) made or asserted by any Subcontractors or Sub-subcontractors arising out of, related to or in connection with the Contract or the Project, or (ii) arising out of or relating to any and all Claims asserted or made by any of such Subcontractors or Sub-subcontractors including, without limitation, any Claims made or asserted against any of the "Releasees" ("Releasees" being as defined in the General Release attached hereto as Attachment A), provided such Claim arises out of or relates to the Contract or the Project.
  - c. If requested by the Owner, the Contractor shall cooperate with the Owner in gathering and providing information to the Owner regarding any claims by or against Separate Contractors.
6. The Contractor hereby certifies and warrants that all charges for labor, materials, supplies, equipment, lands, licenses, and other expenses under the Contract incurred up to and including the date hereof, for which the Owner might be sued or for which a lien might be filed, have been fully satisfied, paid in full and released, except for those names listed on the attached Contractor's Affidavit and that those listed on the Contractor's Affidavit shall be fully satisfied, paid in full and released prior to final payment as provided herein.
7. All other obligations of the Contractor under the Contract Documents remain unchanged and shall survive the disbursement of final payment and the closing hereon.
- 
- 

OWNER:  
**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

Signature: \_\_\_\_\_  
Print Name: S.C. Kopelousos  
Title: District Administrator  
Date: \_\_\_\_\_

CONTRACTOR:  
**CEPRA LANDSCAPE, LLC**

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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GENERAL RELEASE

Attachment A

CONTRACT NO. C006426

FOR AND IN CONSIDERATION OF THE SUM OF \$ \_\_\_\_\_ (Insert Amount of Final Payment, including all retainage withheld), as FINAL PAYMENT, the receipt and adequacy of which is hereby acknowledged, CEPRA LANDSCAPE, LLC, the undersigned, hereby fully and forever releases, acquits and discharges CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, the Owner's Representative, the Architect/Engineer and their parent, related and affiliated companies, their agents, employees, consultants, architects, engineers, officers, directors, successors and assigns, all of whom are hereinafter referred to collectively as "Releasees", from all manner of action and causes of action, suits, claims, judgments, damages, liens, claims of lien and rights whatsoever, in law or in equity, now existing or which may hereafter accrue in favor of the undersigned including, without limitation, any and all liability arising out of or in connection with that certain construction Contract dated April 24, 2024, Contract No. C006426, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and Cepra Landscape, LLC and all Work, labor and materials furnished, performed or provided pursuant thereto or otherwise for the project.

The undersigned covenants that except for actions and suits based upon breaches of the terms of this Release, it shall not commence or prosecute any action or suit in law or in equity, against the Releasees, either collectively or individually, on account of any action or cause of action which now exists or which may hereafter accrue in its favor.

In addition to any other liability which shall accrue upon the breach of the covenants contained herein, undersigned shall be liable to pay all reasonable attorneys' fees and costs incurred by the Releasees in the defense of any such action or suit.

Attested on this date \_\_\_\_\_

\_\_\_\_\_  
Cepra Landscape, LLC  
(Contractor)

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Print Title

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S AFFIDAVIT

Attachment B  
Page 1

From: CEPRA LANDSCAPE, LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

The undersigned, being duly sworn, upon his/her oath deposes and says:

1. That he/she is over the age of eighteen (18) years, has personal knowledge of the following facts, is authorized to make this Affidavit on behalf of the Contractor named above, and that this Affidavit is, in fact, made on behalf of said Contractor.
2. That this Affidavit is made with respect to Contract No. C006426, dated April 24, 2024, for the EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT project.
3. That all Work performed under the above Contract through the date of this Affidavit has been performed in accordance with the terms of said Contract.
4. That the Contractor covenants and warrants that all labor, materials, equipment, services and other items including, without limitation, all amounts due and owing to all persons, firms, corporations, union welfare or benefit funds (if any), furnished pursuant to the above Contract and any additions or changes thereto, have been paid in full as of the date of this Affidavit, and that waivers of lien through the date of this Affidavit have been obtained from all persons, firms, and corporations who have furnished services, labor, materials, equipment and supplies, except as otherwise indicated in Schedule A attached.

\_\_\_\_\_  
Cepra Landscape, LLC  
(Contractor)

By: \_\_\_\_\_

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

\_\_\_\_\_  
Print Title

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S AFFIDAVIT - SCHEDULE A

Attachment B  
Page 2

Date: (Insert Date)

From: Cepra Landscape, LLC

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Re: Contract No.: C006426, dated April 24, 2024, between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and CEPRA LANDSCAPE, LLC

The following are ALL the amounts due and owing to all persons, firms, corporations and union welfare and benefit funds (if any) who have furnished services, labor, materials, equipment or supplies, with respect to the above referenced Contract. All amounts represent the total amount due and owing as of the date hereof AND any contested, claimed, or unissued credits are specifically noted next to the amounts due and owing.

NAME

AMOUNT DUE AND OWING

OTHER

Please initial: \_\_\_\_\_  
Contractor

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S RELEASE AND WAIVER - INSURANCE

Attachment C

Project: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

Contract No.: C006426

Contractor: Cepra Landscape, LLC

Date of Contract: April 24, 2024

In consideration of the final payment under the Contract shown above between CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, as Owner, and the undersigned, as Contractor, for Work on the above-captioned Project, the undersigned hereby represents that all claims which the undersigned may have against the Owner-furnished insurance (as and to the extent provided pursuant to the Contract Documents) for the Project have been reported in writing to the Owner and the Owner's insurance representative. The undersigned hereby waives and releases CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT, its insurance carriers pursuant to any such Owner-furnished insurance, the Owner's Representative, their respective parent, subsidiary, related and affiliated companies and the officers, directors, agents and employees of each from any and all claims for property damage which have not been timely reported in writing to the Owner's insurance representative. CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT and its insurance carriers reserve the right to deny any claim which has not been timely filed.

Company:

\_\_\_\_\_  
(Cepra Landscape, LLC)

Signature: \_\_\_\_\_  
(Signature of Corporate Officer)

Title: \_\_\_\_\_



CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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Attachment D

WAIVER OF CLAIM/WAIVER OF LIEN/LITIGATION LIST

CONTRACTOR: Cepra Landscape, LLC

CONTRACT NO. C006426

All of the following have filed one or more of the following Notices:

(NONP) NOTICE OF NON-PAYMENT  
(NOC) NOTICE OF CLAIM  
(COL) CLAIM OF LIEN

Pursuant to the General Conditions, provide such releases, waivers, or satisfactions of Claims and Liens (or other documentation) in such form as the Owner may require for the following:

TYPE                      COMPANY FILING NOTICE                      UNDER AN ORDER GIVEN BY:

Please initial: \_\_\_\_\_  
Contractor

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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CONTRACTOR'S GUARANTEE TO OWNER

Attachment E

Date: (Insert Date)

To: CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

Contract No: C006426

Project: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

In further consideration of the above-referenced Contract and pursuant to the provisions thereof, the undersigned hereby guarantees to the Owner, its successors and assigns, that all Work, as defined in the Contract Documents, whether performed or caused to be performed by the undersigned, shall be free from any defects in workmanship, materials and/or equipment and shall be in strict compliance with the Contract Documents. If, within a period of one (1) year from the date of acceptance of the Work by the Owner (or such longer period of time as may be prescribed by law or otherwise specified in the Contract Documents), the Work or any portion thereof shall prove to be defective in workmanship, material and/or equipment, or in any way not in strict compliance with the Contract Documents, then the undersigned shall repair and/or, at the option of the Owner, replace at its own cost and expense all such defective or non-complying Work, together with any adjacent structures or facilities which have been displaced or damaged by so doing or which have been damaged as a result of any defect in workmanship, material and/or equipment or the failure of the Work to comply with the Contract Documents. Such repairs and/or replacements shall be performed in accordance with all terms, conditions, covenants and provisions of the Contract Documents pursuant to which the Work was performed in the first instance, except that such repairs and/or replacements shall be without cost to the Owner, its successors or assigns.

Should the undersigned fail to perform its said repair and/or replacement obligations promptly after being given notice of its breach of this Guarantee, then the Owner may perform such corrective Work or cause it to be performed by others and charge the undersigned with the cost thereof, at Owner's option; provided, however, that if, in the sole judgment of the Owner, an emergency exists as a result of any such defective or non-complying Work which, in the Owner's opinion, requires more immediate corrective action than the undersigned is able to provide, then the Owner may, without notice to the undersigned, perform such corrective Work or cause it to be performed by others and charge the undersigned with the cost thereof.

\_\_\_\_\_  
Cepra Landscape, LLC

(Contractor)

By: \_\_\_\_\_

\_\_\_\_\_  
(Title)

Local Representative to be contacted for service:

Contractor: (Cepra Landscape, LLC)

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

Address: \_\_\_\_\_

P.O. Box 865  
Oakland, FL 34760

Telephone No.: \_\_\_\_\_

CONSENT OF SURETY

Attachment F

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

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
1900 Hotel Plaza Boulevard  
Lake Buena Vista, Florida 32830

Attention: Contracting Officer

Dear Ms. Kimball:

We are the surety for the "Contractor" under Performance and Payment Bonds issued in connection with Contract No. C006426, dated April 24, 2024, between the Contractor and the Owner pursuant to which Contract the Contractor is performing certain Work in connection with the construction of the EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT project. We understand that the Contractor desires to be paid, subject to our consent, the retainage held by the Owner under the aforesaid Contract and any Change Orders. Accordingly, please be advised as follows:

1. We hereby consent to the payment of the retainage as aforesaid.
2. Said payment shall in no way affect the aforesaid Payment and Performance Bonds or our obligations thereunder, all of which shall remain in full force and effect.

Very truly yours,

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

THIS SPECIFIC FORMAT MUST BE SUBMITTED ON THE LETTERHEAD OF THE SURETY

CONTRACTOR: Cepra Landscape, LLC  
CONTRACT NUMBER: C006426  
CHANGE ORDER NO. (Insert C.O. Number)

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Attachment G

CERTIFICATE OF SUBSTANTIAL COMPLETION

CONTRACT NO. C006426  
PROJECT: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT  
CONTRACTOR: Cepra Landscape, LLC  
DATE: \_\_\_\_\_

Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, this is to certify that the Work under the above referenced Contract has been substantially completed on \_\_\_\_\_ (Insert date of substantial completion) (the "date of substantial completion") and a Punch List shall be issued within twenty (20) days.

Commencing on the day following the date of substantial completion, the Owner shall have responsibility for maintenance of the Project, utilities serving the Project and casualty insurance covering the Project; provided, however, that nothing herein contained shall relieve Contractor of its responsibilities under Article 11 of the General Conditions of the Contract for Construction during the period following the date of substantial completion of the Work and final completion (or thereafter with respect to Section 11.8 of said General Conditions).

As provided in Section 9.4.1 of the General Conditions of the Contract for Construction, this Certificate of Substantial Completion shall constitute a demand for an Application for Payment (including all costs and/or fees for any outstanding Revision Orders and itemized projections for any incomplete Work), and the Contractor shall conclusively be deemed to have waived the right to payment of any item or fee or cost not billed within thirty (30) days of Contractor's receipt hereof. The issuance of this Certificate of Substantial Completion shall not constitute a waiver of any right of the Owner hereunder including, without limitation, the right to those retainages permitted by the Contract Documents.

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

PUNCH LIST FOR THE  
PROJECT AREA KNOWN AS  
{Project Name}

CONTRACT NO.: C006426

PROJECT: EPCOT RESORTS BLVD. PHASE II AREA DEVELOPMENT

CONTRACTOR: Cepra Landscape, LLC

DATE: \_\_\_\_\_

1. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Owner has determined that the following items related to the Work require completion and/or correction:

SEE ATTACHED LIST ( \_\_ pages), dated \_\_\_\_\_

2. Pursuant to the provisions of Section 9.4 of the General Conditions of the Contract for Construction, the Contractor shall submit to the Owner all items required by Section 9.4.2 of the General Conditions of the Contract for Construction, including, without limitation, the following items. All such items shall be delivered to the Owner and the Owner must approve all such items before the Contractor is entitled to receive payment from the Owner.
  - (i) Application for Payment;
  - (ii) As-Built Drawings; and
  - (iii) Retainage Reduction Change Order including all Exhibits attached thereto and all Waivers of Claim. **NOTE: THIS PROVISION WILL BE INCLUDED ONLY WHEN THE OWNER WILL RELEASE RETAINAGE.**

The items referenced in paragraph 1, above, shall be accomplished on or before \_\_\_\_\_ (insert completion date). In the event Contractor does not complete and/or correct such items set forth above within the time set forth above, then, in accordance with the provisions of Section 14.3 of the General Conditions of the Contract for Construction, the Owner shall have the right to complete and/or correct such items or to cause the same to be completed and/or corrected by others, and Owner shall have the right to offset such costs against any amounts then or thereafter due the Contractor. If the amounts then or thereafter are not sufficient to cover such costs, the Contractor shall pay the difference to the Owner.

---

Owner's Representative

# Specification Section 00850

## List of Drawings & Specifications

Contract No.: C006426

Project: Epcot Resorts Boulevard Phase II Area Development

### DRAWINGS & SPECIFICATIONS

**DRAWINGS:**

The following list of drawings is incorporated into the Scope of Services.

DRAWING NO.	DRAWING TITLE	ISSUE DATE	EOR
<b>EPCOT RESORTS BLVD. (PH. II) LANDSCAPE ARCHITECTURAL CONSTRUCTION PLANS</b>			
L0.00	Cover Sheet	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.00	Landscape Planting Plan	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.50	Planting Specifications	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.51	Planting Specifications (con't)	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.52	Landscape Maintenance Specifications	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.53	Landscape Details	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.54	Landscape Schedule	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.60	Irrigation Specifications	06/13/2023	Vanasse Hangen Brustlin, Inc.
L1.61	Irrigation Specifications (con't)	06/13/2023	Vanasse Hangen Brustlin, Inc.
AD-900	Irrigation Plan	06/13/2023	Vanasse Hangen Brustlin, Inc.
AD-950	Irrigation Legend & Notes	06/13/2023	Vanasse Hangen Brustlin, Inc.
AD-951	Irrigation Details	06/13/2023	Vanasse Hangen Brustlin, Inc.
AD-952	Irrigation Details	06/13/2023	Vanasse Hangen Brustlin, Inc.

**SPECIFICATIONS:**

The following list of specifications is incorporated into the Scope of Services.

SECTION NO.	SECTION TITLE	ISSUE DATE
<b>DIVISION 00 – CONTRACT &amp; BIDDING DOCUMENTS</b>		
00850	List of Drawings and Specifications	01/11/2024
<b>DIVISION 01 – GENERAL REQUIREMENTS</b>		
01009	CFTOD Project Specific Safety Plan Requirements	01/11/2024
01010	Summary of Work	01/11/2024
01018	Owner-Furnished Products	01/11/2024
01019	Owner-Purchased Products	01/11/2024

# Specification Section 00850

## List of Drawings & Specifications

Contract No.: C006426

Project: Epcot Resorts Boulevard Phase II Area Development

SECTION NO.	SECTION TITLE	ISSUE DATE
<b>DIVISION 01 – GENERAL REQUIREMENTS (Continued)</b>		
01019A	Exhibit A ODP Purchase Order Procedures	01/11/2024
01019B	Exhibit B Attachment “1” Contractor’s Invoice Affirmation Letter	01/11/2024
01019C	Exhibit C Attachment “2” Owner’s Representative Invoice Affirmation Letter	01/11/2024
01021	Allowances	01/11/2024
01041	Project Coordination	01/11/2024
01045	Cutting and Patching	01/11/2024
01050	Field Engineering	01/11/2024
01100	Alternates	01/11/2024
01202	Progress Meetings	01/11/2024
01310	Construction Schedule	01/11/2024
01315	Contract Time, Sequencing and Timing of Work	01/11/2024
01325	Scheduling of Work	01/11/2024
01330	Submittal Procedures	01/11/2024
01340	Shop Drawings, Product Data and Samples	01/11/2024
01370	Schedule of Values	01/11/2024
01410	Regulatory Requirements	01/11/2024
01420	References	01/11/2024
01430	Soils Investigation	01/11/2024
01440	Quality Assurance and Quality Control	01/11/2024
01455	Testing and Inspecting Services	01/11/2024
01500	Temporary Construction Facilities	01/11/2024
01560	Erosion Control and Dewatering	01/11/2024
01560A	SFWMD Dewatering Permit Notification	01/11/2024
01630	Substitutions and Product Options	01/11/2024
01640	Product Handling and Protection	01/11/2024
01700	Project Closeout	01/11/2024
01710	Cleaning	01/11/2024
01720	Project Record Documents	01/11/2024
01730	Execution	01/11/2024
01750	Starting and Adjusting	01/11/2024
09870	Protective Coatings for Carbon Steel Light Poles and Mast Arms	01/11/2024

## Specification Section 01021 – Allowances (Revised)

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
Epcot Resorts Boulevard Phase II Area Development  
Contract: C006426

Section 01021  
Allowances  
TBD

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### SECTION 01021 ALLOWANCES

#### 1.01 SPECIFIC CASH ALLOWANCES

- A. Allowances include only the costs for items described in paragraphs B and C, below. All overhead, profit, general conditions, tools, miscellaneous expenses, and all other things necessary to complete the Work shall be included by the Contractor in the Contract Sum.
- B. The cost of each “furnish and install” allowance, unless specifically described otherwise, shall include:
1. The cost of the product to the Contractor, less any applicable trade discounts.
  2. Delivery to the site.
  3. Applicable taxes.
  4. Installation labor, including worker’s compensation, social security, paid benefits, and other applicable labor taxes.
- C. In addition to the amount of each “material only” allowance, Contractor shall include the following costs:
1. The cost of the product to the Contractor, less any applicable trade discounts.
  2. Delivery to the site.
  3. Applicable taxes.
- D. List of Allowances:
1. Allowance No. 1 – Additional Screening Material  
  
The work encompassed in this Allowance includes the installation of additional trees, plantings and related irrigation to help supplement screening and sightlines that have yet to be determined. The Owner has the right to determine the location and use of additional material as decided in the field.  
  
Allowance No. 1 – Amount shall be SEVENTY-FIVE THOUSAND AND ZERO ONE-HUNDRETHS DOLLARS (\$75,000.00).
  2. Allowance No. 2 – Secondary Utility Locating Service  
  
The RCES Utility Locate Services Office will only locate primary utilities. It will not locate secondary utilities. Allowance No. 1 provides funds for the Contractor to hire a private utility locate service to locate all secondary utilities with the limits of the work. The Allowance shall cover the costs of electromagnetic induction detection, ground penetrating radar detection, and vacuum excavation by an independent certified locate technician. The locate service selected by the Contractor shall be a member of Sunshine State One Call of Florida, Underground Utility Leak & Locators Association (UULLA), and the National Utility Locating Contractors Association.  
  
This Allowance will not cover the costs of hand digging or soft digging by the Contractor’s personnel. Locating services provided by the RCES Locating Services Office and by any private secondary locating technician provided for under this Allowance No. 1 shall be confined to surface markings and flagging only. The Contractor shall hand dig as required to determine the depths of all utilities. All such hand digging is included in the Lump Sum Contract Amount. Where vacuum excavation is required, the Contractor shall secure approval from the Owner’s



## Specification Section 01021 – Allowances (Revised)

CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
Epcot Resorts Boulevard Phase II Area Development  
Contract: C006426

Section 01021  
Allowances  
TBD

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Representative in advance.

Allowance No. 2 – Amount shall be **SEVEN THOUSAND FIVE HUNDRED AND ZERO ONE-HUNDREDTHS DOLLARS (\$7,500.00)**.

3. Allowance No. 3 – Soil Amendments

This Allowance will cover the costs of soil amendments that may be necessary based on the results of the Contractor performed soil testing, which is unknown at the time of Contract issuance. Soil amendments, if any, shall be performed as specified within the plan specifications. This allowance will cover all costs associated with performing the soil amendment process. Testing is already included within the scope of work of the Contract and will not be covered under this Allowance.

Allowance No. 3 – Amount shall be **FORTY THOUSAND AND ZERO ONE-HUNDREDTHS DOLLARS (\$40,000.00)**.

### 1.02 SUBMITTALS

- A. Comply with pertinent provisions of Section 01340.

### 1.03 ADJUSTMENT OF COSTS

- A. If the aggregate costs of the allowance items exceed the allowance aggregate total, the Contractor shall receive an additive change order for the difference plus a percentage mark-up per the terms of the Contract. If the aggregate costs of the allowance items are less than the allowance aggregate total, the Contractor shall receive a deductive change order for the difference less any other allowable deductions pursuant to the terms set forth in the Contract.
- B. Submit all requests for anticipated additional costs at the site, or other expenses caused by selection under the Allowance, prior to purchase and execution of the Work of the selected item.

### 1.04 CONTRACTOR'S RESPONSIBILITIES

- A. Identify the selection dates required to meet the Construction Schedule.
- B. Assist Owner's Representative and Engineer/Architect in determining qualified suppliers or subcontractors.
- C. Obtain competitive Bids from at least 3 separate suppliers or subcontractors. Notify Owner's Representative of any reasonable objections Contractor may have against any party under consideration prior to solicitation of Bids.
- D. Make appropriate recommendations for the consideration of the Owner's Representative and Engineer/Architect.
- E. Upon notification by the Owner's Representative, execute purchase agreement or subcontract with selected party.
- F. Administer the Work in accordance with the provisions of the Contract Documents.

<b>END OF SECTION 01021</b>
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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BOARD OF SUPERVISORS REPORT 8.9

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Board Meeting Date: 04/24/2024

Subject: Purchase of Solar Energy and Environmental Attributes from Bronson Solar, LLC

Presented By: Ray Crooks, Director of Utility Business Affairs

Department: Utility Services

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**STAFF RECOMMENDATION** (Motion Ready): Approve Agenda Item #8.9 twenty-year contract for the purchase of 74.5 megawatt alternating current of solar energy and environmental attributes from Bronson Solar LLC

**RELEVANT STRATEGIC GOALS:** Quality of Place

**PROOF OF PUBLICATION:** N/A

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**BACKGROUND:** Bronson Solar, LLC and CFTOD have negotiated a final form of Agreement for the Purchase of Solar Energy and Environmental Attributes for the output of a solar facility to be in Levy County, Florida.

Bronson shall construct, own, and operate the solar photovoltaic generating facility connected to the DEF Transmission System, which is anticipated to have a total Nameplate Capacity Rating of approximately 74.5 MWac.

The initial term of the agreement is twenty (20) years from the commercial operation date with the option to extend the agreement an additional five (5) years.

The commercial operation date is anticipated to be in the fall of 2025.

**FINDINGS AND CONCLUSIONS:** The Bronson Solar Power Purchase Agreement (PPA) will be the District's fourth solar PPA resulting in a portfolio totaling 212 MWs of solar capacity.

**FISCAL IMPACT:** Significant savings over the term of the agreement.

**PROCUREMENT REVIEW:**

This purchase has been reviewed and approved for compliance with the District's procurement policies.

**LEGAL REVIEW:**

This agenda item has been reviewed by the District's General Counsel.

**ALTERNATIVE:**

- Deny
- Amend
- Table

**SUPPORT MATERIALS:**

Contract - Agreement for the Purchase of Solar Energy and Environmental Attributes for the output of a solar facility to be in Levy County, Florida.

**CONFIDENTIAL – TRADE SECRET**



**AGREEMENT FOR THE PURCHASE OF SOLAR ENERGY AND ENVIRONMENTAL  
ATTRIBUTES**

**between**

**BRONSON SOLAR, LLC**

**and**

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**Dated as of April 24, 2024**

**AGREEMENT FOR THE PURCHASE OF  
SOLAR ENERGY AND ENVIRONMENTAL ATTRIBUTES**

This Agreement for the Purchase of Solar Energy and Environmental Attributes, including Exhibits 1-12 hereto, which are incorporated into and made part hereof (hereinafter collectively, this “Agreement”), is made and entered into as of this 24th day of April, 2024 (the “Effective Date”), by and between **BRONSON SOLAR, LLC**, a Delaware limited liability company (hereinafter “Seller”) registered to do business in the State of Florida, and **CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**, a political subdivision organized and existing under the laws of the State of Florida (hereinafter “Buyer” or “CFTOD”) under the terms specified herein. Buyer and Seller are sometimes herein referred to individually as a “Party” and collectively as the “Parties.” Notwithstanding anything set forth herein, neither this Agreement nor any covenants or transactions contemplated hereunder will be effective or binding unless and until both Parties have executed this Agreement.

**RECITALS**

WHEREAS, Buyer is a political subdivision of the State of Florida organized and existing under the laws of the State of Florida; and

WHEREAS, Buyer the owner and operator of the CFTOD Electric System, provides generation and electric distribution services to its customers within Florida; and

WHEREAS, Seller is engaged in the business of developing, owning, and operating solar photovoltaic generating facilities for the purpose of producing electric energy; and

WHEREAS, Buyer desires to purchase the Product (as defined below) to serve the needs of its customers and provide a portion of CFTOD’s capacity needs; and

WHEREAS, Seller desires to construct, own, and operate a solar photovoltaic generating facility to be located at an Acceptable Site (as defined below) in Florida connected to the DEF Transmission System, which is anticipated to have a total Nameplate Capacity Rating (as defined below) of approximately **74.5 MWac** (hereinafter the “Facility”); and

WHEREAS, Buyer and Seller desire to memorialize the fundamental business terms upon which Seller will produce, deliver, and sell, and Buyer will receive, purchase, and pay for the Product to be produced by the Facility for the Term (as defined below); and

NOW THEREFORE, in consideration of the promises and mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## 1. **Definitions.**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1 “AAA” is defined in Section 23.3.1.
- 1.2 “Abandon(s)” means (i) the permanent relinquishment of all control and possession of the Facility by Seller, other than a transfer permitted by this Agreement, (ii) prior to the Commercial Operation Date, the complete cessation of the development, construction planning, construction, testing and inspection of the Facility for thirty (30) consecutive days by Seller and Seller’s contractors, or (iii) following the Commercial Operation Date, the complete cessation of the operation, maintenance and repair of the Facility for thirty (30) consecutive days by Seller and Seller’s contractors, but in each case (i) through (iii), only if such relinquishment or cessation is not caused by or attributable to a Force Majeure or a breach or Event of Default of Buyer.
- 1.3 “AC” or “ac” means alternating current.
- 1.4 “Acceptable Site” means the real property depicted or described in Exhibit 4 on which the Facility will be located or alternative real property designated or depicted in reasonable detail in a notice provided by Seller to Buyer after the Effective Date but prior to [REDACTED] that fulfills the Alternative Site Requirements and is otherwise reasonably acceptable to Buyer, as evidenced by Buyer’s written consent to the use of such alternative real property as the site of the Facility, which consent may not be unreasonably withheld, conditioned or delayed.
- 1.5 “Affiliate” means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with “control” meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. For purposes of this Agreement, NextEra Operating Partners, LP, NextEra Energy Partners, LP, and their respective subsidiaries shall be deemed to be Affiliates of Seller, except in the event Seller or the Facility is sold or otherwise transferred to a third-party unaffiliated with NextEra Energy, Inc., NextEra Operating Partners, LP, or NextEra Energy Partners, LP. Notwithstanding the foregoing, with respect to Buyer, if at any point Buyer has any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or FERC, the term Affiliate shall not include such subsidiaries or affiliates.
- 1.6 “Alternative Site Requirements” means real property described in a notice by Seller to Buyer in accordance with Section 1.4 as a proposed site of the Facility that is connected to the DEF Transmission System.

- 1.7 “Agreement” is defined in the introductory paragraph hereof.
- 1.8 “Applicable Law” means any applicable treaty, constitution, law, statute, ordinance, rule, order, decree, regulation, or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions.
- 1.9 “Appropriate Actions” is defined in Section 9.3.8.
- 1.10 “Assignment” is defined in Section 24.1.
- 1.11 “Back-Up Media” is defined in Section 16.4.
- 1.12 “Bankrupt” means, with respect to a Party or entity, that such Party or entity: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within forty-five (45) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (f) otherwise becomes bankrupt or insolvent (however legally evidenced).
- 1.13 “Billing Meter” is defined in Section 10.
- 1.14 “Billing Period” is defined in Section 11.1.
- 1.15 “Breakage Costs” means all reasonably documented breakage costs and other transaction costs and expenses actually and reasonably incurred, by Seller or any Affiliate of Seller upon or in connection with the acquisition of the Facility by Buyer or termination of the Agreement pursuant to the exercise by Buyer of the Early Purchase Option or Final Purchase Option (i) under any of the Financing Documents or under or consisting of any Facility Debt, (ii) contracting for, or terminating any arrangements for, operations, maintenance, administration, scheduling or related services for the Facility or (iii) terminating any arrangement pursuant to which Seller, or any Affiliate thereof, has financed with any Facility Lender or Facility Lenders or otherwise hedged Seller’s obligations under this Agreement.
- 1.16 “Business Day” means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time (as defined in Section 1.64).

- 1.17 “Buyer” is defined in the introductory paragraph hereof.
- 1.18 “Buyer Required Level” is defined in Section 5.5.
- 1.19 “Capacity” means the electric generation capability and ability of the Facility. CFTOD expects to utilize such generation capability as part of its reserve requirements.
- 1.20 “CFTOD Electric System” means the generation and distribution system owned and operated by CFTOD.
- 1.21 “CFTOD System Operator” means CFTOD’s operators who have the responsibility to balance generation supply with customer load and serve as scheduling coordinator for the Facility, and the authority to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity duly authorized and designated by CFTOD delivering any such instructions to the Seller in the execution and fulfillment of such person’s or entities’ official authorized duties.
- 1.22 “CFTOD System Operator Instruction” means any order, action, requirement, demand, or direction from the CFTOD System Operator that is authorized by, consistent with, and neither preempted by nor subordinate to any rule, regulation, or requirement of the FRCC Reliability Coordinator or the Transmission Provider, including all provisions of the Transmission Provider’s applicable tariffs, in accordance with Prudent Utility Practice, and delivered to Seller to suspend or interrupt any operational activity in a non-discriminatory manner for an Emergency Condition or Force Majeure event; provided, however, that such limitation on non-discrimination shall not limit the right of the CFTOD System Operator to suspend or interrupt power supplies as necessary and in accordance with this Agreement to maintain the integrity, reliability, and stability of the CFTOD Electric System. In the event of any conflict between an instruction from the FRCC Reliability Coordinator or an instruction from or a tariff requirement of the Transmission Provider, and a CFTOD System Operator Instruction, the instructions and requirements of the FRCC Reliability Coordinator and the Transmission Provider shall be deemed to have priority and superior effect over CFTOD System Operator Instructions.
- 1.23 “Change in Market Design” means that, after the Effective Date, (i) the OATT has been changed and such change has a material adverse impact on either Party or (ii) Transmission Provider (as such term is later defined in this Agreement) has been dissolved or replaced and any successor to the Transmission Provider operates under rules, protocols, procedures or standards that differ in a material respect from the OATT and such difference has a material adverse impact on either Party.
- 1.24 “Change in Tax Law” means that, after the Effective Date but prior to the



Commercial Operation Date, (a) a bill that has been enacted into law, (b) any change in or amendment to the Code, (c) any change in the interpretation of the Code by a controlling and final decision of the United States Tax Court, United States District Court, United States Court of Appeals or United States Supreme Court, or (d) any binding guidance, notice, announcement or regulation issued by the United States Department of the Treasury, United States Internal Revenue Service or any other Governmental Authority that applies to taxpayers generally, solely to the extent that any of the events described in clauses (a) through (d) directly and materially adversely affects (i) the applicable depreciation or amortization periods, methods, amounts or conventions for the Seller or the Facility, or (ii) the availability or projected amount of investment tax credits, production tax credits, or other Tax Attributes, and as a result prevents or is reasonably expected to prevent Seller from obtaining tax equity financing for the Facility on commercially reasonable terms and conditions.

- 1.25 “Change of Control” means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or “group” (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50.1% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller; *provided, however*, that a Change of Control shall not be deemed to have occurred in the case of consolidation or sale of the direct or indirect membership interest in Seller to an Affiliate.
- 1.26 “Code” means the United States Internal Revenue Code of 1986, as amended from time to time, and any successor statute.
- 1.27 “Commercial Operation” means that the Facility is operational such that all of the following have occurred and remain simultaneously true and accurate: (a) Seller has provided to Buyer a certificate from an independent and licensed professional engineer that the Facility has been constructed, has passed all critical tests for safe and reliable operation, and is fully capable of operating for the purpose of generating the Product and delivering the Product as required herein; (b) the Facility has received written authorization from the Transmission Provider for interconnection and synchronization of the Facility with the System; (c) the Facility has obtained all necessary Permits for the operation of the Facility and Required Approvals; (d) the Facility has been successfully synchronized with the System and (e) the Facility has met all requirements necessary for safely and reliably generating the Product and delivering the Product to Buyer in accordance with Prudent Utility Practice. For purposes of this definition, “independent” shall be deemed to mean that such licensed professional engineer may not be a current or former officer, director, employee or agent of either Party or any of its Affiliates.
- 1.28 “Commercial Operation Date” or “COD” means the date on which the Facility achieves or achieved Commercial Operation as set forth in Seller’s written notice pursuant to Section 9.2.

- 1.29 “Commercial Operation Date Deadline” means [REDACTED], as such date may be extended pursuant to the terms of this Agreement.
- 1.30 “Commercially Reasonable Manner” or “Commercially Reasonable” means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to achieving or accomplishing the specified goal, requirement, or result. Factors used to determine whether a goal or requirement has been performed in a “Commercially Reasonable Manner” may include, but shall not be limited to, any specific factors or considerations identified in this Agreement as relevant to such goal or requirement.
- 1.31 “Compensable Curtailment” means any curtailment of Energy output from the Solar Facility for the reasons described in parts (b), (c), (d), (e) or (f) of the definition of “Curtailed Energy” set forth below.
- 1.32 “Condemnation Event” means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility, by any Governmental Authority or otherwise pursuant to Applicable Law.
- 1.33 “Contract Price” is defined in Section 4.4.
- 1.34 “Contract Quantity” is defined in Section 4.2.
- 1.35 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s) under this Agreement, and all reasonable attorneys’ fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination of such transactions. In the case of Seller, Costs shall include any costs and expenses reasonably incurred in connection with any Facility Debt.
- 1.36 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.37 “Curtailed Energy” means Energy that could have been generated by the Facility and delivered to the Delivery Point but that was not so generated and delivered due to complete or partial curtailment of the Facility as a result of: (a) an Emergency Condition (specifically including any curtailment initiated

by Buyer, Transmission Provider, FRCC Reliability Coordinator or CFTOD System Operator pursuant to Section 20.2), or the complete or partial curtailment of the Facility pursuant to Section 20.3 or a Force Majeure; (b) the exercise by Buyer of its right to curtail deliveries of Energy output of the Facility pursuant to Section 20.1, (c) the failure by Buyer to submit an offer or schedule for energy generated by the Facility, the submission by Buyer of an offer or schedule that is not compliant with the (then-current) OATT or that is less than Seller's energy forecasts submitted pursuant to Section 9.4, except if such deviation is caused by a failure of Seller to comply with the provisions of Section 9.4, (d) the submission by Buyer or CFTOD System Operator of an offer or schedule to Transmission Provider for energy generated by the Facility and such offer or schedule is not accepted in whole or part due to non-compliance with the (then-current) OATT, (e) an Event of Default of Buyer, or failure by Buyer to perform its obligations under this Agreement or breach by Buyer of this Agreement (other than due to a breach by Seller of its obligations under the Agreement), or (f) any delay or failure to consistently maintain DNR Approval rights sufficient to deliver, and allow for the delivery of, all Energy output from the Delivery Point to Buyer's load for the entire duration of the Delivery Period. The amount of Curtailed Energy for any period of complete or partial curtailment of the Facility shall be calculated based on the solar data during the period in question, and the availability of the Facility to produce electric energy during the period of the curtailment in question. For the avoidance of doubt, any curtailment to the Facility by Buyer, CFTOD System Operator or the Transmission Provider shall be considered "Curtailed Energy" for purposes of this Agreement.

- 1.38 "Daily LDs (Liquidated Damages)" is defined in Section 19.5.1.
- 1.39 "Damages" is defined in Section 12.1.
- 1.40 "Deemed Delivered Energy" means Curtailed Energy that is described in subparts (b), (c), (d), (e) or (f) of the definition of "Curtailed Energy" set forth above.
- 1.41 "DEF Transmission System" means the Duke Energy Florida Transmission System.
- 1.42 "Defaulting Party" is defined in Section 18.
- 1.43 "Delivery Period" is defined in Section 4.1.
- 1.44 "Delivery Point" means the point of interconnection between the Facility and the System, as further set out on Exhibit 4.
- 1.45 "Determination Date" is defined in Section 4.2.4.
- 1.46 "Development Performance Assurance" is defined in Section 5.1.

- 1.47 “Dispute” is defined in Section 23.2.
- 1.48 “DNR” means designated network resource assuming a 74.5 MWac Nameplate Capacity Rating.
- 1.49 “DNR Approval” means Designated Network Resource Approval and is further defined in Section 6.3.
- 1.50 “DNR Approval Deadline” means July 1, 2024.
- 1.51 “DNR Approval Period” means the period of time that the Facility is approved by the Transmission Provider to be a DNR for Buyer’s load on the DEF Transmission System. The Parties intend for the DNR Approval Period to be the entire duration of the Delivery Period.
- 1.52 “Downgrade Event” means that (i) the applicable Credit Rating (corporate or long-term senior unsecured debt) of Seller, Seller’s Qualified Guarantor, Buyer, or Buyer’s Qualified Guarantor (if any), as applicable, is below Investment Grade; or (ii) none of Fitch, Moody’s or S&P provides a Credit Rating for Seller, Seller’s Qualified Guarantor, Buyer, or Buyer’s Qualified Guarantor (if any), as applicable.
- 1.53 “Early Option Closing Date” is defined in Exhibit 8.
- 1.54 “Early Option Notice” is defined in Exhibit 8.
- 1.55 “Early Purchase Option” is defined in Exhibit 8.
- 1.56 “Early Termination Date” is defined in Section 19.1.
- 1.57 “Effective Date” is defined in the introductory paragraph hereto.
- 1.58 [REDACTED]
- 1.59 “Emergency Condition” means (a) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is existing on the System; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) CFTOD’s loss of load greater than fifty-one percent (51%) of CFTOD’s then electric load, or (ii) endangerment to human life or public safety; and/or, (c) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility and/or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on the System, (iv) failure of facilities that comprise the System that is likely to adversely affect the reliability of the System without automatic or immediate manual action, or (v) endangerment to human life or public safety; and/or, (d) any circumstance that requires emergency action by the Seller (i) to comply with standing NERC regulations

or standards to which Seller is subject, or (ii) to otherwise respond to, prevent, limit, or manage (A) loss or damage to the Facility, (B) loss or damage to the System, (C) disruption of generation by the Facility, (D) disruption of service on the System, (E) any abnormal condition on the System, and/or (F) endangerment to human life or public safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, or failure to perform as required under this Agreement, including, without limitation, failure to perform in accordance with Prudent Utility Practice. An Emergency Condition will be an excuse to Buyer's performance only if such condition is not due to Buyer's negligence, willful misconduct, or failure to perform as required under this Agreement, including, without limitation, failure to perform in accordance with Prudent Utility Practice.

1.60 "Energy" means three-phase, 60-cycle per second (nominal) alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.

1.61 [Reserved]

1.62 [Reserved]

1.63 "Environmental Attributes" means, in conjunction with the metered electric energy produced by the Facility, any and all fuel-related, emissions-related, air quality-related or other environmental-related aspects, claims, characteristics, benefits, credits, reductions, offsets, savings, allowances, efficiencies, certificates, tags, attributes, or similar products or rights (including all of those relating to greenhouse gases and all green certificates, green tags, renewable certificates and Renewable Energy Credits), howsoever entitled and whether known or unknown, whether existing as of the Effective Date or, subject to Section 9.3.8, in the future, and whether or not such Environmental Attributes have been certified or verified under any renewable standards or otherwise that arise or result from the generation of the Product. Environmental Attributes include any such Environmental Attributes that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program, renewable energy program, carbon reduction or greenhouse gas reduction initiative, electricity savings program, licensing requirement, verification or certification procedure, federal contract, or other environmental program, incentive mandate or objective, in each case whether voluntary or mandatory, and whether created by Requirements of Law, or by any Governmental Authority, partnership, coalition, advisory committee, or independent certification board, group or scientific panel. Environmental Attributes include the right to report such Environmental Attributes to any Governmental Authority or other Person. Environmental Attributes do not include any state or federal: (a) production tax credits associated with the Facility; (b) investment tax credits, production tax credits, and other tax credits

associated with the Facility; or (c) grants in lieu of investment tax credits, production tax credits, other Tax Attributes, or any similar financial payment or grant with respect to the Facility or the metered electric energy output thereof.

- 1.64 “EPT” or “Eastern Prevailing Time” means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.65 “Event of Default” is defined in Section 18.
- 1.66 “Exercise Price” means at a price equal to the sum of (a) the higher of (i) the Fair Market Value and (ii) the Net Book Value of the Facility Assets, plus (b) the Breakage Costs.
- 1.67 “Expected Annual Output” means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.
- 1.68 “Facility” is defined in the recitals to this Agreement.
- 1.69 “Facility Assets” means the Facility and related assets, including contracts, permits and real property interests, owned or held by Seller, which are to be acquired by Buyer pursuant to an exercise by Buyer of the Early Purchase Option or Final Purchase Option, as applicable. Facility Assets shall not include any cash that would be reflected as such on the Seller’s balance sheet on the date of consummation of Buyer’s purchase of the Facility Assets pursuant to any such exercise of the Early Purchase Option or Final Purchase Option.
- 1.70 “Facility Debt” means the obligations of Seller or Seller’s Affiliate pursuant to the Financing Documents, including distributions, indemnities, principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts to fund reserves, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any claims of interest due with respect to any of the foregoing, including reasonable attorney fees. For the avoidance of doubt, Facility Debt shall include tax equity transactions.
- 1.71 “Facility Lender(s)” means any lender, including Tax Investors, providing Facility Debt to Seller or Seller’s Affiliate, or other Persons interested in investing in, the Facility, and any successors and assigns thereof.
- 1.72 “Fair Market Value” means the price a willing buyer would pay a willing seller for the Facility Assets neither being under compulsion to buy or sell and both being reasonably aware of the relevant facts and circumstances.
- 1.73 “FERC” means the Federal Energy Regulatory Commission or any successor thereto.
- 1.74 “Final Option Notice” is defined in Exhibit 8.

- 1.75 “Final Purchase Option” is defined in Exhibit 8.
- 1.76 “Financing Documents” means documents associated with the investment by the Tax Investors, the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, equity contribution agreements and other documents relating to the development, bridge, construction and/or permanent debt financing or equity financing for the Facility (on a stand-alone basis or part of a portfolio), including any credit enhancement, Performance Assurance, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.
- 1.77 “Fitch” means Fitch Ratings, Inc., or any successor-rating agency thereto.
- 1.78 “FL-Peninsular Region” means that part of the State of Florida subject to regulation by SERC, pursuant to delegated authority from NERC, for the purpose of proposing and enforcing standards to ensure the reliability and security of the bulk electric power supply system within the SERC Region.
- 1.79 “Florida Government in the Sunshine Laws” is defined in Section 16.1.
- 1.80 “Force Majeure” is defined in Section 14.1.
- 1.81 “Forced Outage” means any unintended or unplanned condition impacting the Facility that requires immediate removal from service of the Facility or some part thereof.
- 1.82 “FPSC” means the Florida Public Service Commission, its staff, or any Governmental Authority succeeding to the powers and functions thereof.
- 1.83 “FRCC” means the Florida Reliability Coordinating Council, Inc.
- 1.84 “FRCC Reliability Coordinator” means the FRCC, or any successor thereto, as the Reliability Coordinator for the FL-Peninsular Region of SERC.
- 1.85 “Future Attribute Costs” is defined in Section 9.3.8.
- 1.86 “Future Attributes” means any Environmental Attributes that become recognized and marketable after the Effective Date.
- 1.87 “GAAP” shall mean generally accepted accounting principles for financial reporting in the United States.
- 1.88 “Gains” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any

(exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).

- 1.89 “Governmental Authority” means any federal, state or local government, legislative body, court, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, FPSC, having jurisdiction over this Agreement, the Facility or either Party.
- 1.90 “Indemnified Party” is defined in Section 12.1.
- 1.91 “Indemnifying Party” is defined in Section 12.1.
- 1.92 “Independent Force Majeure” is defined in Section 14.2.
- 1.93 [REDACTED]
- 1.94 “Interconnection Agreement” means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System and the requirements for transmission service.
- 1.95 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by Applicable Law.
- 1.96 “Investment Grade” shall mean, with respect to any entity, such entity has a Credit Rating that meets any two of the following three rating requirements: (a) BBB- or higher from S&P, or (b) BBB- or higher from Fitch, or (c) Baa3 or higher from Moody’s (if such entity is rated by all three agencies, the two highest ratings will be used).
- 1.97 “kW” means kilowatt ac.
- 1.98 “kWh” means kilowatt-hour ac.
- 1.99 “Letter(s) of Credit” means one or more irrevocable standby letters of credit, substantially in the form of Exhibit 7 hereto or in a form reasonably



acceptable to the beneficiary, issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of either Party, which has a Credit Rating of at least A- from S&P or Fitch, or A3 from Moody's, and assets of at least Ten Billion Dollars (\$10,000,000,000), permitting the Party not providing Performance Assurance to make full or partial draws on the letter of credit in accordance with the terms of this Agreement, including the right to make a full draw of the entire amount if such Letter of Credit is not renewed or replaced at least twenty (20) Business Days prior to its stated expiration date.

- 1.100 "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.101 "Liquidated Deficit Damages" is defined in Section 4.2.4.
- 1.102 "Loss Event" means (a) any property casualty or loss or other similar event affecting the Facility that reduces the installed Capacity by ten percent (10%) or more as compared to the installed Capacity prior to such event or related series of such events, or (b) any Condemnation Event.
- 1.103 "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.104 "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.105 "Milestone Deadline" means the date by which Seller shall achieve each Operational Milestone as set forth in Exhibit 3, as each such date may be extended pursuant to the terms of this Agreement.
- 1.106 "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.107 "MW" means megawatt ac.

- 1.108 “MWh” means megawatt-hour ac.
- 1.109 “Nameplate Capacity Rating” means the installed AC nameplate capacity rating of the Facility as set forth in Exhibit 4.
- 1.110 “National Electrical Safety Code” or “NESC” is also known as American National Standard C2. It is a consensus standard that has been prepared by the National Electrical Safety Code Committee under procedures approved by the American National Standards Institute (ANSI).
- 1.111 “NERC” means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC and FERC, including as of the date hereof the SERC Region, specifically the FL-Peninsular Region.
- 1.112 “Net Book Value” means, as of the estimated closing date, (a) the initial cost of the Facility as of the date of substantial completion, plus (b) costs incurred after the date of substantial completion to acquire additional property, plant and equipment for the Facility or replace existing property, plant and equipment of the Facility, less (c) accumulated depreciation. The foregoing shall be determined consistently with GAAP, Property, Plant, and Equipment. Notwithstanding the foregoing, Net Book Value shall not include any cash that would be reflected as such on Seller’s balance sheet on the closing date. FERC’s Uniform System of Accounts shall be disregarded in the determination of Net Book Value.
- 1.113 “Net Settlement Amount” is defined in Section 19.3.
- 1.114 “Network Resource Interconnection Service” or “NRIS” means a large generator interconnection service that allows the Seller to connect and integrate its Facility with the Transmission Provider’s System in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers.
- 1.115 “Network Upgrades” shall mean the additions, modifications, and upgrades to the System required at or beyond the Delivery Point to accommodate the interconnection of the Facility to the System.
- 1.116 “Non-Defaulting Party” is defined in Section 19.1.
- 1.117 “NRIS Deadline” means May 1, 2024, which date, notwithstanding anything herein to the contrary, shall not be subject to extension based on Force Majeure or otherwise.
- 1.118 “OATT” means the Open Access Transmission Tariff of Transmission Provider, as filed with FERC (as the same may be amended or modified by the Transmission Provider or FERC requirements from time-to-time and approved by FERC).

- 1.119 “Operating Representatives” is defined in Section 8.3.
- 1.120 “Operational Milestone” means each operational event and result that Seller shall achieve as set forth in the Operational Milestone Schedule (Exhibit 3), with such supporting documentation as may be requested by Buyer from time-to-time in its Commercially Reasonable discretion.
- 1.121 “Operational Milestone Schedule” means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller shall fully complete by the Milestone Deadline.
- 1.122 “Operational Performance Assurance” is defined in Section 5.2.
- 1.123 “Option Closing” is defined in Exhibit 8.
- 1.124 “Outage” means any Planned Outage, Maintenance Outage or Forced Outage.
- 1.125 “Party” or “Parties” is defined in the introductory paragraph hereto.
- 1.126 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, and/or, subject to Section 5.1, a guaranty from a Qualified Guarantor, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5), that a Party is required to establish and maintain pursuant to Section 5 as security for such Party’s performance under this Agreement. Notwithstanding the foregoing, in the case of Seller, NextEra Energy Capital Holdings, Inc. shall be a Qualified Guarantor provided it maintains an Investment Grade Credit Rating and retains any direct or indirect membership interest, economic interest, or other ownership in Seller or any Affiliate of Seller.
- 1.127 “Permit” means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.128 “Permitted Excuse to Perform” means Seller’s obligation to generate, deliver, and sell, and/or Buyer’s obligation to receive and purchase, is partially or wholly excused and no damages will be payable by either Party to the other Party for such excused lack of performance, if and to the extent such failure is due solely to any of the following occurrences: (a) an Emergency Condition in which the Emergency Condition is not due to the negligence, willful misconduct, or failure to perform as required under this Agreement, including, without limitation, failure to perform in accordance with Prudent Utility Practice, of the party claiming such Emergency Condition (it being understood that such negligence, willful misconduct, or failure of such claiming party shall not adversely affect the non-claiming party’s Permitted Excuse to Perform based upon the claimed Emergency Condition); (b) an enforceable directive of the FRCC Reliability Coordinator; (c) a directive from the Transmission

Provider pursuant to a valid provision of the Interconnection Agreement between Transmission Provider and Seller or of Transmission Provider's applicable transmission tariffs; or (d) a Force Majeure event in which the party claiming Force Majeure has complied with Section 14 (it being understood that such party's failure to comply with Section 14 shall not adversely affect the non-claiming party's Permitted Excuse to Perform based upon the claiming party's attempted claim of Force Majeure).

- 1.129 "Permitted Transfer" means any of the following: (a) transactions among Affiliates of Seller, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving only Seller and its Affiliates, provided, that (i) the Seller's Ultimate Parent Company retains the authority, directly or indirectly, to control such Party (with "control" having the meaning provided in Section 1.5), or (ii) a wholly-owned, indirect subsidiary of Seller's Ultimate Parent Company operates the Facility, (b) any exercise by a Facility Lender or Tax Investor of its rights and remedies under the Financing Documents, (c) a Change of Control of Seller's Ultimate Parent Company or NextEra Energy Resources, LLC, (d) any change of economic and voting rights triggered in Seller's organization documents arising from the financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change, (e) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Investor; or (f) a transfer of the Facility (or the direct or indirect ownership or equity interests of Seller) in whole or in part to a Person that acquires, directly or indirectly, (i) one hundred percent (100%) or less of the membership interests of Seller, or (ii) all or substantially all or a lesser portion of the Facility's assets, provided that, (A) following such transfer pursuant to part (f), the entity that operates the Facility is (or contracts with) a Qualified Operator and (B) Seller (or such Person) satisfies the applicable Performance Assurance requirements.
- 1.130 "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.131 "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility. Seller shall use its Commercially Reasonable efforts in accordance with Prudent Utility Practice not to schedule Planned Outages during the months of May, June, July, August and September.
- 1.132 "Product" means the Energy generated by the solar Facility, inclusive of all components and any and all associated Environmental Attributes, subject to the other terms of this Agreement, including Section 9.3.8.

- 1.133 “Production Measurement Period” means a rolling period of two (2) calendar years, the first of which commences on January 1 of the calendar year next following the calendar year in which the Commercial Operation Date occurs and ends on December 31 of the subsequent calendar year, and each succeeding period commences on January 1 of the calendar year next following the end date of the preceding period and ends on December 31 of the subsequent calendar year.
- 1.134 “Production Shortfall” means, with respect to any Production Measurement Period, the amount in MWh by which X is greater than Y for such Production Measurement Period, where:
- “X” = ██████████ of the Expected Annual Output for such Production Measurement Period, in MWh, after adjusting such Expected Annual Output by the amount, in MWh, of any Energy not delivered in such Production Measurement Period during any Seller Excused Hours.
- “Y” = the aggregate amount, in MWh, of net Energy production of the Facility delivered to the Delivery Point in such Measurement Period.
- 1.135 “Protected Information” is defined in Section 16.1.
- 1.136 “Prudent Utility Practice” means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.137 “Qualified Guarantor” means with respect to Seller or Buyer, a Person domiciled in the United States that, at the time such Person is to provide a guaranty (such guaranty in substantially the form attached hereto as Exhibit 9 or in a form reasonably acceptable to the beneficiary), has an Investment Grade Credit Rating.

- 1.138 “Qualified Operator” means Seller or an operator of photovoltaic solar generation facilities that has sufficient experience and technical capability to perform for Seller’s benefit the obligations of Seller under this Agreement related to the operation and maintenance of the Facility in accordance with the applicable requirements of this Agreement, as evidenced by such operator having operated three (3) or more photovoltaic solar generation facilities, each having a nameplate capacity rating of twenty (20) MW or more, for not less than three (3) years.
- 1.139 “Renewable Energy Credits” or “RECs” means any and all credits, including any emissions reduction credits, such as CO2 emission reduction credits, for renewable energy generated at the Facility that could qualify or do qualify for application toward compliance with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective, whether at the Effective Date or at any time during the Term.
- 1.140 [REDACTED]
- 1.141 “Replacement Energy” means, with respect to any Production Measurement Period in which a Production Shortfall occurred, the number of MWh of Energy purchased by Buyer to replace Energy required by this Agreement to be produced by the Facility and delivered by Seller to the Delivery Point during such Production Measurement Period but not produced by the Facility and delivered by Seller to the Delivery Point during such Production Measurement Period, up to the amount in MWh of such Production Shortfall.
- 1.142 “Replacement Power Costs” means, with respect to any Production Measurement Period in which a Production Shortfall occurred, the actual costs reasonably incurred by Buyer to purchase Replacement Energy and replacement RECs that Seller was required to provide to Buyer under this Agreement during such Production Measurement Period but failed to provide, up to the amount in MWh of such Production Shortfall, less the sum of any payments from Buyer to Seller under this Agreement that were eliminated as a result of such Production Shortfall. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of all hours where the following calculation achieves a positive number:

Replacement Power Costs = (A + B + C) – D, where:

“A” is the product of (i) the Replacement Energy (MWh) for the applicable hour and (ii) the actual transaction price for Energy delivered to Buyer’s system at the Point of Delivery for the applicable hour.

“B” is either (a) in any case where, after the Effective Date, Buyer has become obligated to comply, as a result of a change in Requirements

of Law applicable to Buyer, or Buyer has committed to voluntarily comply, as communicated by Buyer's management to Buyer's Board of Supervisors or publicly announced, with any local, state, federal or international renewable energy portfolio standard, green pricing program or other renewable energy or environmental mandate or objective during the applicable Production Measurement Period, the product of (i) the Replacement Energy (MWh) for the applicable hour, and (ii), the actual costs reasonably incurred by Buyer in purchasing replacement RECs required by Buyer for such compliance, or, if replacement RECs are not purchased by Buyer but are required by Buyer for such compliance, the applicable market price of such replacement RECs as determined by Buyer in a commercially reasonable manner, or, if Buyer, acting in a commercially reasonable manner, elects to pay any monetary amount the payment of which is in lieu of such compliance, such monetary amount, or (b) in any other case, zero.

"C" is an amount equal to the actual cost of transmission, ancillary services, fuel and fuel transportation and related penalties that could not be avoided or mitigated and transaction charges to deliver reasonably available Replacement Energy to Buyer.

"D" is the product of the MWh of Energy equal to the reasonably allocated portion of the Production Shortfall that was not delivered under this Agreement in the applicable hour and the applicable Contract Price for such Energy.

- 1.143 "Required Approvals" is defined in Section 6.1.
- 1.144 "Requirements of Law" means any applicable legally binding federal, state, or local law, constitution, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree, consent decree, directive, or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) those pertaining to the creation and delivery of the Product, (ii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iii) those under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage, or for the creation or maintenance of any nuisance or dangerous condition in general.
- 1.145 "Seller" is defined in the introductory paragraph hereof.
- 1.146 "Seller Board Approval" is defined in Section 3.3.3.
- 1.147 "Seller Excused Hours" means those hours during which Seller is unable to schedule or deliver Energy produced by the Facility to the Delivery Point as a

result of (a) a curtailment under the definition of “Curtailed Energy,” (b) a Permitted Excuse to Perform, or (c) a Planned Outage or Maintenance Outage.

- 1.148 “Seller’s Ultimate Parent Company” means the ultimate parent of Seller, which as of the Effective Date is NextEra Energy, Inc.
- 1.149 “Senior Executive” is defined in Section 23.2.
- 1.150 “SERC” means the SERC Reliability Corporation or any successor thereto.
- 1.151 “SERC Region” means the region subject to regulation by SERC, pursuant to delegated authority from NERC, for the purpose of proposing and enforcing standards to ensure the reliability and security of the bulk electric power supply system within such region.
- 1.152 “S&P” means Standard & Poor’s Ratings Services, Inc. or any successor-rating agency thereto.
- 1.153 “Station Power” means any Energy generated or received by the Facility and, whether metered or unmetered, used on site to supply the Facility’s auxiliary load and parasitic load and/or for powering the electric generation equipment, and any Environmental Attributes associated with such Energy.
- 1.154 “System” means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, and/or operated by the Transmission Provider, including, without limitation, facilities to provide retail and/or wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.
- 1.155 “Target COD” means [REDACTED], as such date may be extended pursuant to the terms of this Agreement.
- 1.156 “Target Determination Date” is defined in Section 4.2.4.
- 1.157 “Tax Attributes” means (i) investment tax credits and production tax credits (including any grants or payments in lieu thereof) and any other tax deductions or benefits under federal, state or other law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits, payments in lieu thereof and accelerated and/or bonus depreciation, and including any investment tax credits under Section 48 of the Code and production tax credits under Section 45 of the Code); and (ii) present or future (whether known or unknown) cash payments, or outright grants of money relating in any way to the Facility.
- 1.158 “Tax Attribute Losses” means an amount in U.S. Dollars equal to (a) the Tax Attributes Rate; *multiplied by* (b) Deemed Delivered Energy; *plus* (c) a “gross up” amount to take into account the federal, state and local income tax to Seller



on such payments in lieu of the Tax Attributes so that the net amount retained by Seller, after payment of federal, state and local income taxes, is equal to the amount set forth in clause (a) of this definition. For purposes of determining the foregoing, Seller shall be deemed to be subject to tax at the highest statutory corporate income tax rates for the highest income bracket (federal, state or local, as applicable) for the Seller or its parent, as appropriate, that are in effect or scheduled to be in effect for the tax year in which the receipt of such Tax Attributes payment is taxed.

- 1.159 “Tax Attributes Rate” means the then-current rate of investment tax credits, production tax credits, and any other tax deductions, tax credits or tax benefits under federal, state or other Applicable Law available as a result of the operation of the Facility or the output generated by the Facility (including tax credits, payments in lieu thereof and accelerated or bonus depreciation), per MWh, on an after-tax basis, as set forth in applicable Internal Revenue Service guidance.
- 1.160 “Taxes” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.161 “Tax Investor” means an equity investor in the Facility that is not an Affiliate of Seller prior to the execution of the Financing Documents, pursuant to a financing structure that assigns such investor rights, title and benefits to the Tax Attributes of Seller.
- 1.162 “Term” is defined in Section 3.1.
- 1.163 “Testing Period” is defined in Section 4.3.
- 1.164 “Third Party Appraiser” is defined in Exhibit 8.
- 1.165 “Transmission Provider” means the Person that will provide interconnection or electric transmission service, or both, to Seller to enable delivery of the Product to Buyer at the Delivery Point, and any such Person will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.166 “Transmission Provider Facilities” means those facilities, equipment and upgrades that are located on land further described in Exhibit 6, and as depicted in the diagram included in Exhibit 6, which such Exhibit 6 shall be updated by Seller with a listing of the Transmission Provider Facilities and a One-Line Diagram subsequent to the execution of the Interconnection Agreement.
- 1.167 “Upgrade Event” means that the applicable Credit Rating (corporate or long-term senior unsecured debt) of Buyer, Buyer’s Qualified Guarantor or Seller’s Qualified Guarantor (if and as applicable) equals or exceeds Investment Grade, and which circumstance is preceded by a Downgrade Event.

**2. Interpretation.**

Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) the reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) the reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), when following any general statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope (regardless of whether it is followed by the phrase "without limitation" or any similar phrase); (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of this Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

**3. Term and Termination.**

3.1 Term. This Agreement shall be effective as of the Effective Date and, subject to termination as provided in this Agreement, shall remain in full force and effect until the date that is twenty (20) years from the Commercial Operation Date



[REDACTED]

3.2 Reserved.

3.3 Seller Early Termination Rights. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated by Seller as follows:

3.3.1 In the event a Change in Tax Law occurs; provided, (a) Seller may only terminate this Agreement pursuant to this Section 3.3.1 on or prior to

[REDACTED]

If there is any conflict between the provisions of this Section 3.3.1 and the provisions of Section 7.3, the provisions of this Section 3.3.1 shall control.

3.3.2 Prior to the Target COD, without any further financial or other obligation to Buyer as a result of such termination, if (a) the cost to construct the Network Upgrades could reasonably be expected to exceed [REDACTED], as determined by Seller in good faith on the basis of the then most recent written estimate provided by the Transmission Provider of such cost and the margin of error for such estimate specified by the Transmission Provider, and (b) the Parties fail to agree, after delivery by Seller of notice to Buyer pursuant to clause (i) below of this Section 3.3.2, upon a mutually agreeable (in each respective Party's sole discretion) increase in the Contract Price that would equitably compensate Seller for the expected economic detriment to Seller that would result from such expected excess cost to construct the Network Upgrades; provided, that Seller may only exercise its right to terminate the Agreement pursuant to this Section 3.3.2 by (i) first, providing notice (which shall include the Transmission Provider's written estimate) to Buyer in reasonable detail of such determination by Seller, no later than thirty (30) days after the Transmission Provider informs Seller of the Transmission Provider's written estimate, or any material increase in the amount of the Transmission Provider's written estimate, of the cost to construct the Network Upgrades, and the margin of error specified by the Transmission Provider for such estimate, upon which such determination by Seller is based, which notice specifies both the

amount of such expected excess of costs to construct the Network Upgrades and the amount of the increase in the Contract Price that Seller in good faith believes would equitably compensate Seller for the expected economic detriment to Seller that would result from such expected excess cost to construct the Network Upgrades, (ii) second, reasonably consulting with Buyer, as reasonably requested by Buyer, with respect to both such amounts, and negotiating in good faith with Buyer to seek to reach mutual agreement with Buyer upon a mutually agreeable increase in the Contract Price that would equitably compensate Seller for such expected economic detriment, for a period of sixty (60) days following delivery by Seller of such notice to Buyer pursuant to the preceding clause (i) of this Section 3.3.2, and (iii) third, if (and only if) the Parties fail to agree upon such mutually agreeable increase in the Contract Price within such period of sixty (60) days, notifying Buyer, no later than ten (10) Business Days after expiration of such period, of termination by Seller of this Agreement pursuant to this Section 3.3.2.

3.3.3 If Seller has not received all approvals of the management and board of directors (or equivalent governing body) of Seller and its Affiliates, including, if applicable, the approval of the board of directors of NextEra Energy, Inc. or a committee thereof, as Seller determines in its sole discretion are required under its and their respective constituting documents for the performance by Seller of its obligations under this Agreement (“Seller Board Approval”) on or before [REDACTED], by providing written notice of termination to Buyer by the date that is ten (10) Business Days after such date. [REDACTED]

3.4 Termination and Survival. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, or Event of Default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing (associated with billing cycles that occurred prior to the termination of this Agreement), billing adjustments (associated with billing cycles that occurred prior to the termination of this Agreement), limitations or liabilities, dispute resolution, return of Performance Assurance, confidentiality, and any other provisions necessary to interpret or

enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.

**4. Purchase and Sale Obligations.**

- 4.1 Delivery Period. The “Delivery Period” for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours beginning with the hour ending at 1:00 A.M., Eastern Prevailing Time, on the Commercial Operation Date and continuing through the end of the last hour on the last day of the Term, unless this Agreement is terminated earlier pursuant to this Agreement.
- 4.2 Contract Quantity. The “Contract Quantity” is one hundred percent (100%) of the Product that is produced by the Facility and delivered to the Delivery Point, as measured at the Delivery Point. The Contract Quantity does not include any Station Power.
- 4.2.1 During the Delivery Period, Seller shall sell and deliver all of the Product produced by the Facility, net of any Station Power, on an as-available basis exclusively and solely to Buyer. Seller shall have no obligation to sell, deliver, or pay any damages associated with not selling or delivering the Product due to a Permitted Excuse to Perform, a curtailment under the definition of “Curtailed Energy,” or any other explicit and applicable exception provided for in this Agreement, including during any Outages.
- 4.2.2 During the Delivery Period, Buyer shall receive, purchase, and pay for all of the Contract Quantity delivered to the Delivery Point. Buyer shall have full and exclusive rights to such Contract Quantity for its purposes and uses in its sole and exclusive discretion. Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform or any other explicit and applicable exception provided for in this Agreement.
- 4.2.3 Seller’s estimate as of the Effective Date of the monthly amount of net Energy production of the Facility that will be delivered to the Delivery Point during the initial year of the Delivery Period is set forth in Exhibit 1 hereto. Seller’s estimate as of the Effective Date of the annual amount of net Energy production of the Facility that will be delivered to the Delivery Point is set forth in Exhibit 5 hereto. The estimates of such quantities of net Energy production of the Facility in Exhibit 1 and Exhibit 5 were prepared by Seller in good faith and Seller disclaims any other representation or warranty whatsoever with respect to the accuracy or reliability of such estimates. Buyer acknowledges and accepts that there exists a reasonable likelihood that the actual net Energy production of the Facility will be materially different from

such estimated quantities, and that Seller's estimates of such quantities of net Energy production of the Facility will change after the Effective Date, due to differences between Seller's plans for the development and construction of the Facility as of the Effective Date and the actual, as-built condition of the Facility and other factors beyond the reasonable control of Seller or not anticipated by Seller in preparing such good faith estimates. Notwithstanding anything to the contrary in this Agreement, at any time after the Effective Date and prior to the last to occur of, as applicable, (a) the Commercial Operation Date (if the Facility achieves Commercial Operation with an installed Capacity of at least 74.5 MWac), (b) the Target Determination Date (if, pursuant to Section 4.2.4, the Facility achieves Commercial Operation with an installed Capacity that is less than 74.5 MWac, but achieves an installed Capacity of 74.5 MWac or more as of the Target Determination Date), or (c) the Determination Date (if, pursuant to Section 4.2.4, the Facility achieves Commercial Operation with an installed Capacity that is less than 74.5 MWac and the Facility's installed Capacity is not at least 74.5 MWac as of the Target Determination Date), in order to reflect the impact of any such differences and other factors upon Seller's good faith estimates, Seller shall be entitled, upon notice to Buyer, to update the estimates in Exhibit 1 and Exhibit 5 with Seller's then-current good faith estimates of such quantities of net Energy production of the Facility. Notwithstanding the foregoing, but subject to Section 4.2.4, Seller shall construct the Facility to have an actual Nameplate Capacity Rating that is at least 74.5 MWac, but less than 76 MWac.

- 4.2.4 Notwithstanding anything to the contrary in this Agreement, subject to the other terms of this Section 4.2.4, the Facility may achieve Commercial Operation with an installed Capacity that is greater than or equal to [REDACTED]. If the Facility achieves Commercial Operation based on an installed Capacity that is less than 74.5 MWac, then Seller shall have until the date that is [REDACTED] days after the Commercial Operation Date (the "Target Determination Date"), as the same may be extended pursuant to this Agreement, to continue adding to the Facility's installed Capacity to achieve an installed Capacity of at least 74.5 MWac. If, as of the Target Determination Date, the Facility's installed Capacity is at least 74.5 MWac, then such installed Capacity shall become the Nameplate Capacity Rating and Seller shall owe no Daily LDs or other damages to Buyer associated with the initial deficit in the Facility's installed Capacity. However, if, as of the Target Determination Date, the Facility's installed Capacity is not equal to at least 74.5 MWac, then (a) Seller shall pay to Buyer an amount of liquidated damages ("Liquidated Deficit Damages") equal to [REDACTED] [REDACTED] per MW by which the current installed Capacity is under 74.5 MWac, per day after the Target Determination Date, until the earlier of (i) the date that the Facility's installed Capacity is at least 74.5 MWac or (ii) the aggregate Liquidated Deficit Damages owed

and/or paid pursuant to this Section 4.2.4 reaches [REDACTED] (as to such date, the “Determination Date”), and (b) the Facility’s installed Capacity as of the Determination Date shall become the Nameplate Capacity Rating (and Exhibit 4 shall be revised accordingly). The Parties agree that such Liquidated Deficit Damages are the sole and exclusive remedy of Buyer with respect to Seller’s failure to cause the Facility to achieve Commercial Operation, and Seller’s failure to construct and operate the Facility, based on a Nameplate Capacity Rating of at least 74.5 MWac.

- 4.3 Testing Period. Prior to the Commercial Operation Date, Seller may test the Facility’s capability to operate and generate the Product (the “Testing Period”). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period and Seller shall ensure the Transmission Provider is prepared to receive such test power and that any required System upgrades to accommodate the transaction are complete. Upon reaching the Commercial Operation Date, Buyer shall pay Seller [REDACTED] of the Contract Price for the Contract Quantity that had been produced by the Facility during the Testing Period and delivered to Buyer at the Delivery Point, as measured at the Delivery Point, which amount payable will be included in the first invoice provided by the Seller to the Buyer pursuant to this Agreement, [REDACTED]  
[REDACTED]  
[REDACTED]
- 4.4 Contract Price. The “Contract Price” for the Product shall be the price per MWh in U.S. Dollars set forth in Exhibit 2.
- 4.5 Delivery. Seller shall deliver the Contract Quantity to the Delivery Point. Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Contract Quantity to the Delivery Point. Any costs, charges, expenses, and requirements associated with delivering the Contract Quantity past the Delivery Point shall be the sole responsibility of Buyer. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point, except the obligation of Buyer to pay for Deemed Delivered Energy as provided in Section 20. Buyer shall be responsible for the scheduling of all Energy delivered by Seller to the Delivery Point in accordance with this Agreement, including any associated tagging and transmission scheduling.
- 4.6 Payment for Product. During the Term of this Agreement, Buyer agrees to receive, in accordance with and subject to this Agreement, the Product generated by the Facility and delivered at the Delivery Point by Seller to Buyer, and Buyer agrees to pay Seller the product of (i) the applicable Contract Price for the Energy multiplied by (ii) the amount of metered Energy, as measured at the Delivery Point, delivered by Seller to Buyer at the Delivery Point during the

Delivery Period.

- 4.7 Transfer. In no event will Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point. Seller shall be responsible for any costs and charges imposed on or associated with the delivery of the Product to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the possession or use of the Product beyond the Delivery Point.
- 4.8 Purchase Option. Buyer shall have the options set forth in Exhibit 8 to purchase the Facility from Seller.

**5. Performance Assurance and Related Provisions.**

- 5.1 Development Security. No later than [REDACTED] after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the amount of [REDACTED] per MW of the Nameplate Capacity Rating of the Facility (the “Development Performance Assurance”); provided that, notwithstanding anything to the contrary in this Agreement, the Development Performance Assurance shall [REDACTED]
- 5.2 Operational Security. Within ten (10) Business Days after the Facility achieves Commercial Operation, Buyer shall return to Seller the Development Performance Assurance, and Seller shall provide and deliver to Buyer, Performance Assurance in the amount of [REDACTED] per MW of the Nameplate Capacity Rating of the Facility (the “Operational Performance Assurance”) which shall remain in place for the remainder of the Delivery Period.
- 5.3 Maintenance of Performance Security. Seller is required to provide the applicable Performance Assurance and/or to maintain the applicable Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement. The applicable Performance Assurance provided by Seller shall be available to pay any amount due Buyer pursuant to this Agreement and to provide Buyer security to cover damages should Seller fail to perform its obligations under the Agreement beyond any applicable cure period. Buyer shall promptly return the applicable Performance Assurance to Seller upon the later to occur of: (i) the expiration or termination of this Agreement; and (ii) the payment of all of Seller’s payment obligations that are outstanding under this Agreement as of such expiration or termination; except that if the Facility achieves Commercial Operation, Buyer shall return to Seller the Development Performance Assurance pursuant to Section 5.2. Notwithstanding the foregoing or anything else in this



Agreement to the contrary, (A) Seller shall have no obligation to replenish any Development Performance Assurance in the event Buyer draws upon any or all of such Development Performance Assurance and [REDACTED]

[REDACTED]

Any failure to draw upon the Performance Assurance for any damages or other amounts due to Buyer shall not be considered a waiver or otherwise prejudice Buyer's rights to recover such damages or amounts in any other manner, subject to the other terms of this Agreement.

5.4 Seller Performance Assurance Requirements. If at any time any existing Performance Assurance provided by Seller fails to meet any of the requirements under this Agreement, Seller shall, within ten (10) Business Days of Buyer providing Seller with written notice of the same, replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer (in addition to other rights and remedies under this Agreement) shall be entitled, for the purpose of securing the performance of Seller's obligations under this Agreement, to draw and hold as collateral security hereunder the full amount of the Performance Assurance until and unless Seller provides a substitute form of such Performance Assurance meeting the requirements of this Section 5.

5.5 Buyer Performance Assurance Requirements. If Buyer has experienced a Downgrade Event (or, if at any time during the Term, Buyer or Buyer's Qualified Guarantor experiences a Downgrade Event), then Seller will provide Buyer written notice requesting Performance Assurance in an amount equal to Sixteen Thousand Dollars (\$16,000) per MW of the Nameplate Capacity Rating of the Facility (the "Buyer Required Level"). Upon receipt of such notice, Buyer shall have ten (10) Business Days to provide Performance Assurance to Seller in an amount equal to the Buyer Required Level. In the event Seller draws on the Performance Assurance, then, within ten (10) Business days of such draw, Buyer shall be obligated to replenish such Performance Assurance within ten (10) Business Days and thereafter maintain the Performance Assurance in the applicable amount required in accordance with this Section 5.5, provided that the Buyer's cumulative obligation with respect to Performance Assurance shall not exceed (\$32,000/MW).

5.5.1 The Performance Assurance provided by Buyer pursuant to the provisions of this Section 5.5 shall be available to pay any amount due Seller pursuant to this Agreement and to provide Seller security to cover damages should Buyer fail to perform its obligations under this Agreement beyond any applicable cure period. Any failure to draw upon the Performance Assurance for any damages or other amounts due to Seller shall not be considered a waiver or otherwise prejudice Seller's rights to recover such damages or amounts in any other manner, subject to the other terms of this Agreement.

5.5.2 Promptly following the end of the Term and the completion of all of Buyer's obligations under this Agreement, Seller shall return the Performance Assurance to Buyer.

5.6 Upgrades. If a Party's Qualified Guarantor experiences an Upgrade Event, then the Buyer or Seller, as applicable, may provide the other Party with written notice of such Upgrade Event, and upon receipt of notice of such Upgrade Event, Buyer or Seller, as applicable, shall promptly, but in any case no later than ten (10) Business Days from receipt of such notice (i) to the extent that the Performance Assurance was in the form of United States currency, release and wire transfer such cash to the account designated by Buyer or Seller, as applicable, (ii) to the extent the Performance Assurance was in the form of a Letter of Credit, deliver to Buyer or Seller, as applicable, the original Letter of Credit together with a letter indicating such credit should be cancelled as well as any other documents reasonably requested by the credit issuer to cancel such credit, or (iii) to the extent the Performance Assurance was in the form of a guaranty by a Qualified Guarantor, return such guaranty to Buyer or Seller, as applicable, marked cancelled and released. For the avoidance of doubt, the return of any Performance Assurance pursuant to this Section 5.6 shall not negate either Party's obligations to otherwise provide Performance Assurance pursuant to this Section 5.

## **6. Buyer and Seller Compliance Requirements.**

6.1 Seller Required Approvals. Seller shall at its sole cost and expense, as and when required, timely obtain, maintain, and comply with all Required Approvals (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:

6.1.1 All Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the FPSC or FERC, for Seller to design, construct, build, own, operate, modify and maintain the Facility, sell and deliver the Product to Buyer, and meet its requirements under this Agreement.

6.2 Interconnection. As provided in Section 7.4, at its sole cost and expense, Seller

shall request Network Resource Interconnection Service for the Facility from the Transmission Provider as soon as reasonably practicable and shall thereafter diligently pursue such study work and required approvals through the NRIS Deadline.

- 6.3 DNR Approval. Within ten (10) days following the Effective Date, Buyer shall, at its sole cost and expense, request that the Transmission Provider approve the Facility as a DNR for Buyer's load on the DEF Transmission System (the "DNR Approval") for the entire duration of the Delivery Period by the DNR Approval Deadline. Buyer shall use Commercially Reasonable efforts to obtain DNR Approval by the DNR Approval Deadline. If Buyer does not obtain DNR Approval by the DNR Approval Deadline, despite Buyer's Commercially Reasonable efforts and provided that such failure is not caused in whole or in part by any wrongful action or inaction on the part of Buyer, then the Parties shall reasonably consult with each other and negotiate in good faith (but in each respective Party's sole discretion) on whether and for how long to extend the DNR Approval Deadline and/or the Target COD, the Commercial Operation Date Deadline, the other Milestone Deadlines, and, as applicable, the Target Determination Date and the Determination Date; provided that, if the Parties fail to reach a final agreement on such proposed delay by [REDACTED], then either Party may, unless and until the earliest of (a) such an agreement being reached between the Parties, or (b) Buyer receiving a DNR Approval from the Transmission Provider that provides the DNR Approval Period will begin on or before [REDACTED] (in which case the below extensions shall apply, as applicable), terminate this Agreement upon five (5) Business Days' prior written notice to the other Party without any further financial or other obligation to the other Party as a result of such termination.

If Buyer obtains DNR Approval, Buyer shall thereafter consistently maintain DNR Approval rights sufficient to deliver, and allow for the delivery of, all Energy output from the Delivery Point to Buyer's load for the entire duration of the Delivery Period. Within five (5) Business Days of Buyer receiving the DNR Approval from the Transmission Provider, Buyer shall advise Seller of the start and end dates of the DNR Approval Period. If the DNR Approval provides that the DNR Approval Period will not begin before [REDACTED], but provides that the DNR Approval Period will begin on or before [REDACTED], then, notwithstanding anything to the contrary in this Agreement, the Target COD, the Commercial Operation Date Deadline, the other Milestone Deadlines, and, as applicable, the Target Determination Date and the Determination Date, shall be extended on a day-for-day basis for the greater of (a) the number of days the DNR Approval Period is then-stated to begin after [REDACTED], or (b) the number of days the DNR Approval Period actually begins past [REDACTED].

If the DNR Approval provides that the DNR Approval Period will not begin on or before [REDACTED], then the Parties shall reasonably consult with each other and negotiate in good faith (but in each respective Party's sole discretion) on whether and for how long to delay the Target COD, the Commercial

Operation Date Deadline, the other Milestone Deadlines, and, as applicable, the Target Determination Date and the Determination Date; provided that, if the Parties fail to reach a final agreement on such proposed delay by [REDACTED], then either Party may, unless and until the earliest of (a) such an agreement being reached between the Parties, or (b) Buyer receiving a new DNR Approval statement from the Transmission Provider that the DNR Approval Period will begin on or before to [REDACTED] (in which case the above extensions shall apply), terminate this Agreement upon five (5) Business Days' prior written notice to the other Party without any further financial or other obligation to the other Party as a result of such termination.

- 6.4 Certain Developments. If either Party receives notice from the Transmission Provider or otherwise reasonably determines that any of the following developments has occurred: (i) a material delay or denial of Seller's application for Network Resource Interconnection Service to the Facility; (ii) the Commercial Operation Date is not likely to be achieved by the Commercial Operation Date Deadline due to delays in the construction of required Transmission Provider Facilities as further described in Section 7.4 below; or (iii) a material increase in the time required by Buyer to request or obtain the DNR Approval past the DNR Approval Deadline as further discussed in Section 6.3 above, then, without limiting any other provision of this Agreement (for the avoidance of doubt), the Party that received such notice or made such determination shall provide written notice of such development to the other Party, following which the Parties shall reasonably consult with each other and negotiate in good faith (but in each respective Party's sole discretion) concerning mitigation of any material adverse impact of such development on the respective benefits and burdens expected by the Parties as of the Effective Date to be realized by the transactions provided for in this Agreement.

## 7. Seller's Facility Requirements.

- 7.1 Seller Requirements. Seller covenants as set forth below (except as, or to the extent, otherwise expressly set forth in this Agreement): the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, interconnected, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with all applicable Requirements of Law and Prudent Utility Practice. All material contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, construction permits, grading and building permits, and contracts and licenses to obtain all services and materials needed to install and operate the Facility,

and to deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall be responsible for all costs, charges, and expenses associated with generating, forecasting, and delivering the Product to Buyer.

- 7.2 Seller Responsibilities. Except as otherwise explicitly provided in this Agreement, Seller agrees that: (a) Buyer shall have no responsibility for any costs and/or Taxes for the design, development, construction, maintenance, ownership, or operation of the Facility (including, but not limited to, any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to any emissions from or relating to the Facility, and including, but not limited to, costs and/or Taxes related to any emissions allowances for any emissions of any type whatsoever), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, production tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.
- 7.3 No Exclusions. Except as otherwise provided in Section 3.3.1, if any production or investment tax credit, production tax credit, or grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; or, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.
- 7.4 Transmission Provider. As of the Effective Date, Seller shall have submitted an interconnection study request for the Facility to the Transmission Provider, and Seller shall use Commercially Reasonable efforts to execute an Interconnection Agreement providing for Network Resource Interconnection Service. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible under the Interconnection Agreement. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on

the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties, obligations, and liabilities hereunder (except as otherwise provided in this Agreement). However, if the expected duration of construction of the Transmission Provider Facilities extends beyond Target COD, or there is a delay in the construction of the Transmission Provider Facilities that is not caused in whole or in part by any wrongful action or inaction on the part of Seller, and as a result, Seller fails to achieve Commercial Operation (including the required testing) on or before the Target COD, then the Target COD, the Commercial Operation Date Deadline, the other Milestone Deadlines, and, as applicable, the Target Determination Date and the Determination Date shall be extended on a day-for-day basis until the Transmission Provider Facilities are completed plus the period of any delay in achieving Commercial Operation due to such delay by the Transmission Provider. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement (although, except as otherwise provided in this Agreement, Seller is not excused from performance under this Agreement as a result of Seller's or Transmission Provider's failure to perform under the Interconnection Agreement), and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider regarding Seller's performance under the Interconnection Agreement.

7.5 CFTOD System Operations. Seller agrees and acknowledges that the CFTOD System Operator will be solely responsible for the functions of said CFTOD System Operator, and that nothing in this Agreement will be construed to create any rights between Seller and the CFTOD System Operator. Seller agrees that it is obligated to engage in interconnected operations with Transmission Provider and the System, and the Seller agrees to fully comply with all valid and binding directions of Transmission Provider and the FRCC Reliability Coordinator, and to the extent authorized by, consistent with, and not in conflict with any requirements of the Interconnection Agreement, or directives of Transmission Provider and the FRCC Reliability Coordinator, with CFTOD System Operator Instructions.

7.6 Insurance Obligations. Commencing with the initiation of construction activities of the Facility, and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows: (a) Workers' Compensation in accordance with the statutory requirements of the state of Florida and Employer's Liability Insurance of not less than [REDACTED] each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] in the aggregate including contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises

and operations liability with no exclusion for explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least [REDACTED] each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability or Sudden and Accidental Pollution Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of [REDACTED] per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year). All insurance policies provided and maintained by Seller or any applicable contracted party shall:

- (i) be underwritten by insurers which are rated A.M. Best “A-VII” or higher;
- (ii) specifically include Buyer as an additional insured, excluding, however, for Worker’s Compensation/Employer’s Liability and Property Damage insurance;
- (iii) be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and (iv) provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self- insurance or coverage available to Buyer. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. Seller’s compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller’s liability pursuant to this Agreement. Any failure to comply with these provisions shall not be deemed a waiver of any rights of Buyer under this Agreement or with respect to any insurance coverage required hereunder.

7.6.1 Evidence of Insurance. In connection with all insurance coverage that Seller is required to maintain or cause to be maintained pursuant to this Agreement, Seller shall, on or before commencement of Facility construction, provide Buyer with two certificates of insurance in ACORD form or otherwise reasonably acceptable to Buyer evidencing insurance coverages that are in compliance with the applicable requirements for such insurance coverage set forth in Section 7.6.

7.6.2 Modification of Insurance. If any insurance that Seller is required to maintain or cause to be maintained under Section 7.6 ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide to Buyer written notice thereof, accompanied by a certificate from an independent insurance advisor of recognized national standing certifying that such insurance

is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and design as that of the Facility. Upon delivery to Buyer of such notice and accompanying certificate, Seller shall use Commercially Reasonable efforts to obtain and maintain, or cause to be obtained and maintained by contracted parties at the Facility, such other insurance as would provide comparable protection against the risk to be insured by the insurance that is the subject of such certificate, to the extent such other insurance is then reasonably available and commercially feasible in the commercial insurance market and Buyer shall not unreasonably withhold, condition or delay its consent to modify or waive, as reasonably requested by Seller to reflect such conditions with respect to the insurance that is the subject of such certificate and the results of such Commercially Reasonable efforts by Seller, the applicable requirements of Section 7.6.

## **8. Facility Performance Requirements.**

- 8.1 Planned Outages. No later than sixty (60) days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with forty-five (45) days advance written notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility.
- 8.2 Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall use Commercially Reasonable efforts to comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3 Notice. No later than three (3) months prior to Seller's projected Commercial Operation Date, Seller and Buyer shall exchange contact information for their respective operational personnel responsible for the daily administration and implementation of this Agreement during the Testing Period and the Delivery Period ("Operating Representatives") and proposed protocols for



those matters within the daily administration of this Agreement that may be communicated by an Operating Representative of a Party to an Operating Representative of the other Party in the manner specified and using the contact information for the Operating Representative of the recipient Party, without necessarily complying with the requirements for notice in Section 25 of this Agreement, provided that the Parties have agreed on the format of communication, and provided further that the Parties hereby agree that communication by email (without, for the avoidance of doubt, any need to comply with the requirements for notice in Section 25 of this Agreement) is and shall remain an acceptable format of communication (“Operating Procedures”). The Parties will then reasonably consult and communicate with each other as necessary to finalize and agree upon the Operating Procedures no later than thirty (30) days before the project Commercial Operation Date. The daily administration of this Agreement governed by the Operating Procedures may include activities such as, but not limited to, the establishment and setup of communications and telemetry from the Facility to Buyer, establishing operational and invoicing contact lists, and establishing daily operational procedures. Such Operating Procedures may address: (i) deliveries of energy during start-up and testing of the Facility; (ii) the method of day-to-day communications, including Buyer’s communications to Seller of any request for Curtailed Energy; (iii) clearance and switching practices; (iv) Hourly energy forecasting; (v) daily energy reports; (vi) Facility operations log, including any safety events; (vii) reactive power output; (viii) technical limitations of Facility operation; (ix) coordination of maintenance scheduling; (x) designation of Protected Information; (xi) the procedure for substantiating the transfer of Environmental Attributes under this Agreement; (xii) the verification of information with respect to the production of Environmental Attributes transferred to Buyer hereunder for purposes of certification; and (xiii) such other matters as the Operating Representatives agree are appropriate. The Operating Representatives will be responsible for modifying the Operating Procedures in writing to reflect any mutually agreed-upon changes. In the event of inconsistency or conflict between the Operating Procedures and specific terms of this Agreement, the specific terms of this Agreement will take precedence. In regards to the reporting of Facility outages, if either ten percent (10%) of the Facility’s Capacity is affected for more than three (3) calendar days or in Seller’s Commercially Reasonable judgment five percent (5%) of the Facility Capacity is likely to be affected for more than thirty (30) days, Seller shall promptly provide to Buyer’s Operating Representatives an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable (but not later than three (3) Business Days), all oral reports shall be confirmed in writing. Seller

shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.

8.4 Availability of Records and Data. Seller will keep complete and accurate records and data for the purpose of proper administration of this Agreement in accordance with the following guidelines:

8.4.1 Seller shall keep, subject to Seller's reasonable internal email and other electronic data retention policies, for a minimum of five (5) years after the creation of such records and data and for any additional period of time required by any Requirements of Law or Governmental Authority, complete and accurate records and data (a) required by Seller for the purposes of proper administration of this Agreement, including such records as required by any Governmental Authority, the Transmission Provider, or NERC, as applicable, or (b) otherwise necessary for metering, billing and payment. Seller's requirement to keep such records and data in the foregoing sentence shall be deemed to include a requirement that Seller to maintain an accurate and up-to-date operating log with records of: (a) real power production for each hour; (b) changes in operating status and scheduled maintenance; (c) any unusual condition found during inspections; and (d) any significant event related to the operation of the Facility.

8.4.2 Buyer may, at Buyer's sole expense, audit and examine from time to time, upon reasonable advance written request, and during normal business hours, such records and data kept by Seller relating to transactions under and administration of this Agreement, and for compliance with this Agreement.

8.4.3 No later than sixty (60) days prior to the Target COD, Seller, at its own expense, shall install and maintain at least one stand-alone meteorological station at the Site to monitor and report meteorological data. The meteorological data shall include one (1) minute and hourly time-averaged measurements from data samples at ten (10) seconds or greater frequency for the following parameters at the Facility: total global horizontal irradiance, total global radiation within the plane of the array, air temperature, wind speed, relative humidity, precipitation, barometric pressure, back of module surface temperature and other pertinent meteorological conditions. Seller will maintain the meteorological station as necessary to provide accurate data with respect to the Facility site. Once per calendar year during the Term but after the Commercial Operation Date, Seller shall make available to Buyer, within twenty (20) Business Days of Buyer's written request, the meteorological data that Seller obtains pursuant to this Section 8.4.3.

8.5 Performance. Seller shall operate the Facility in a safe manner consistent with all applicable codes, including the National Electrical Safety Code, and with Prudent Utility Practice. Further, Seller shall use Commercially Reasonable efforts to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product consistent with Prudent Utility Practice. Seller agrees to comply with all valid and binding directives or orders of the FRCC Reliability Coordinator.

**9. Information Requirements.**

9.1 Accounting Information. If Buyer determines that, under (i) the Accounting Standards Codification (ASC) 810, Consolidation of Variable Interest Entities, and (ii) Requirements of Law, Buyer may hold a variable interest in Seller, but Buyer lacks the information necessary to make a definitive conclusion regarding such possible holding of a variable interest in Seller, Seller shall provide, upon Buyer's written request, sufficient financial and ownership information so that Buyer may confirm whether such a variable interest does exist under ASC 810 and Requirements of Law. If Buyer determines that, under ASC 810, Buyer holds a variable interest in Seller, Seller shall provide, upon Buyer's written request, sufficient financial and other information to Buyer so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 and Requirements of Law. Buyer shall reimburse Seller for Seller's reasonable costs and expenses, if any, incurred in connection with Buyer's requests for information under this Section 9.1.

9.2 Facility Information. Within each calendar quarter, starting with the first thirty (30) days after the Effective Date of this Agreement until the Commercial Operation Date is achieved, Seller shall prepare and submit to Buyer a written status report which shall cover the previous calendar quarter, shall be prepared in a manner and format (hard copy or electronic) reasonably acceptable to Buyer and shall include (a) a detailed description of the progress of the Facility's development and construction activity, (b) a statement of any significant issues which remain unresolved and Seller's recommendations for resolving the same, (c) a summary of any significant events which are scheduled or expected to occur during the following ninety (90) days, and (d) all additional information reasonably requested by Buyer to inform Buyer of Seller's performance under this Agreement. If Seller has reason to believe that the Facility is not likely to timely achieve any Operational Milestone before the applicable Milestone Deadline, including the Commercial Operation Date, Seller shall promptly provide written notice to Buyer with all relevant facts, and will provide Buyer with any other information Buyer may request from Seller in its Commercially Reasonable discretion in respect to such failure of Seller. For each Operational Milestone other than the Target COD and Commercial Operation Date Deadline, the foregoing notices shall constitute Buyer's sole remedy for any failure of Seller to timely achieve such Operational Milestone. Seller shall provide written notice to Buyer when the Commercial

Operation Date has occurred. Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Contract Quantity, or to otherwise audit the Contract Quantity delivered to Buyer.

9.3 Provision of Environmental Attributes, Consents, and Other Information.

9.3.1 All Environmental Attributes provided by Seller to Buyer under this Agreement shall be sourced from the Facility.

9.3.2 Subject, for the avoidance of doubt, to Section 9.3.8, Buyer will have exclusive rights to all Environmental Attributes associated with the Contract Quantity, which will include the exclusive right to: (i) claim that such Contract Quantity was generated from a solar energy resource; (ii) report to any Governmental Authority, or other Person for compliance with any Requirements of Law or other purpose, that it owns such Environmental Attributes; and (iii) claim such Environmental Attributes to the media, the public, customers or potential customers for purposes of marketing and advertising; provided, however, Seller and its Affiliates will be entitled to issue marketing materials and other statements, subject to the limitations of Section 16, regarding their respective operations and business activities, but only so long as the issuance of such materials and statements does not reduce the economic value of the Environmental Attributes to be transferred to Buyer hereunder or otherwise reduce Buyer's claims to such Environmental Attributes or result in the double counting of such Environmental Attributes.

9.3.3 [Reserved]

9.3.4 Seller will maintain and provide to Buyer (or, if directed by Buyer, other applicable Persons), such information, as Buyer may reasonably request in order to substantiate, account for, or track the quantity of Environmental Attributes delivered to Buyer under this Agreement, including any reasonably requested additional information necessary for Buyer to comply with the requirements of any Governmental Authority or other certifying or standard-setting body relating to the Environmental Attributes to be provided under this Agreement. Buyer will have the right to disclose such information publicly or to any third party, without the prior consent of Seller, as reasonably required in connection with the operation of Buyer's business, including disclosures: (i) to any Person that purchases the Environmental Attributes from Buyer; (ii) to any Governmental Authority; (iii) to any auditor or any Person that certifies or sets standards with respect to Environmental Attributes; and (iv) as necessary for Buyer to defend, verify or substantiate its ownership of the Environmental Attributes under this Agreement.

- 9.3.5 Notwithstanding anything to the contrary in this Agreement, to the extent that Seller incurs costs (including direct costs, reasonably allocated indirect costs and out-of-pocket expenses) in excess of Fifteen Thousand Dollars (\$15,000) per year associated with maintaining and providing such reasonably requested additional information pursuant to Section 9.3.4, or registering, qualifying or recording any Environmental Attributes included in the Contract Quantity delivered to Buyer hereunder with any such applicable Governmental Authority or other certifying or standard-setting body pursuant to Section 9.3.4 or complying with Seller's obligations under Section 9.3.7, Buyer shall reimburse Seller for those costs reasonably documented that are in excess of Fifteen Thousand Dollars (\$15,000) per year.
- 9.3.6 In no way will the right to, transfer of, or acquisition of Environmental Attributes cause Buyer to be deemed an owner or operator of the Facility, cause Buyer to be responsible for the Facility's compliance with any Requirements of Law, create any liability or responsibility of Buyer with respect to the design, construction, operation and/or maintenance of the Facility, or in any way be deemed to create a joint venture or partnership between Seller and Buyer.
- 9.3.7 Subject to Section 8.4 and Section 9.3.5, at the request of Buyer, Seller shall provide to Buyer such information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as reasonably requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to be necessary to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority.
- 9.3.8 If Buyer desires to receive any certain Future Attributes, Buyer shall provide Seller with written notice describing such Future Attributes, advising Seller that it desires for the Facility to qualify for, and for Buyer to receive, such Future Attributes, and requesting Seller to prepare an estimate of Seller's direct and indirect costs to take the actions necessary or appropriate (which may include an upgrade or modification of the Facility) in order to qualify and deliver to Buyer such Future Attributes (as to such actions, the "Appropriate Actions", and as to such costs, the "Future Attribute Costs"). Seller shall prepare and provide to Buyer a written estimate of the Future Attribute Costs, a timeline for Buyer's repayment to Seller for such costs, and an estimated timeline for Seller's completion of the Appropriate Actions. Within fifteen (15) days of its receipt of Seller's written notice, Buyer shall respond to the same by written notice to Seller in which Buyer either (i) agrees to fully indemnify Seller for the Future Attribute Costs on the timeline provided

by Seller, and requests Seller to proceed with the Appropriate Actions, or (ii) notifies Seller that it no longer desires to receive such Future Attributes, after which point Buyer shall no longer have any right to request or receive the particular type of Future Attributes described in its initial written notice to Seller unless otherwise agreed to in writing by the Parties.

If Buyer provides the written notice described in subsection (i) above, then Seller shall undertake the Appropriate Actions, and Buyer shall pay to Seller the actual amount of the Future Attribute Costs incurred by Seller on such timeline agreed to between Buyer and Seller. Upon Seller's completion of the Appropriate Actions and the Facility's qualification for such Future Attributes, Seller shall begin delivering to Buyer such Future Attributes accrued by the Facility as part of the Product. For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, under no circumstances shall Seller or the Facility be required to qualify for or provide any Future Attributes to Facility prior to Seller's completion of the Appropriate Actions and the Facility's actual qualification for, and accrual of, such Future Attributes. The terms of this Section 9.3.8 shall apply notwithstanding anything to the contrary in this Agreement, and Buyer shall have no right to receive any Future Attributes, and no Future Attributes will be included in the Product, except as provided in this Section 9.3.8.

9.4 Forecasts. Following the Commercial Operation Date, Seller shall prepare and provide Buyer's Operating Representatives with the Facility's forecasted Energy production as described below. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a change in the forecast relative to the most previously provided forecast.

9.4.1 Year-Ahead Forecasts. Seller shall, by April 1, 2025, and every January 1<sup>st</sup> of each subsequent year during the Term (except for the last year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.

9.4.2 Day-Ahead Forecasts. No later than 0600 EPT of each Day, Seller will provide a non-binding forecast of Energy deliveries for the remainder of such Day and the following seven (7) Days. Each such notice will clearly identify, for each hour, Seller's forecast of all deliveries of Energy. In the event that Seller has any information or other Commercially Reasonable basis to believe that the production

from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts previously provided, then Seller will inform Buyer of such and provide Buyer with an updated forecast. Buyer may also request Seller to update its prior forecasts at any time, including for intraday updates.

- 9.4.3 Communication. Seller shall communicate forecasts in a form, template, substance, and manner (e.g., Excel template) as specified in the Operating Procedures, which form, template, substance, and manner may be mutually modified by Seller and Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: [RCID.Broker@disney.com](mailto:RCID.Broker@disney.com)) or by other media (e.g., website upload), as Buyer may instruct Seller from time to time.

## 10. Metering.

In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). As between Buyer and Seller, Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the Billing Meter from a remote location. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the Billing Meter. Subject to the approval of the Transmission Provider, and the requirements of the Interconnection Agreement, Seller hereby grants Buyer the right to install and operate (at Buyer's sole discretion and cost) a meter at the Facility substation identified on Exhibit 4. Upon at least five (5) Business Days' prior written notice to Seller requesting such access, Seller shall provide Buyer physical access to such Buyer-installed meter at reasonable times during normal working hours, with Seller reserving the right to have Seller employees accompany Buyer's employees during such access visits, including any calibration tests. For avoidance of doubt, and subject to the malfunction or failure of the Billing Meter as described in Sections 11.2 and 11.3 in which case the meter installed by Buyer may be used as a check meter to determine an estimate of the Energy produced, any meter installed by the Buyer shall not be used for purposes of billing and the Billing Meter shall be the sole instrument used to measure the Energy delivered for purposes of preparing the invoice. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at least once per every two calendar years. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test

shall incur the costs associated with such test.

**11. Billing Period and Payment.**

- 11.1 Billing Period. Seller shall read/obtain data from the Billing Meter at the end of each calendar month (each, a “Billing Period”). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Seller shall provide Buyer with an invoice detailing the amount of Energy delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Energy. Seller shall also invoice Buyer for any amounts due related to Compensable Curtailment as described in Section 20. Buyer shall pay Seller the invoiced amounts for each Billing Period. Payment by Buyer shall be due thirty (30) days after the date the invoice is deemed delivered to Buyer. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.
- 11.2 Meter Malfunction. In the event the Billing Meter fails to register, or if the measurement made by the Billing Meter is found upon testing to be inaccurate by more than two percent (2%), then an adjustment shall be made correcting all affected measurements by the Billing Meter for purposes of preparing (or adjusting) any affected invoice in the following manner. Seller shall adjust the amount of measured Energy for the amount of inaccuracy and period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter. Within ten (10) Business Days of Buyer’s written request to Seller, and provided that Buyer may only make one such request per calendar year, Seller shall provide the calibration results for all of the recalibrations that have occurred during the lesser of (a) the period since Buyer’s last such request, and (b) the five (5) year period immediately preceding the date such request is received by Seller.



- 11.3 Meter Out of Service. If the Billing Meter is out of service, then for purposes of preparing any such invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Buyer's meter (if any) may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the (x) the time and duration of the applicable period, (y) the solar exposure conditions actually recorded at the Facility during that period, and (z) the Facility design described in Exhibit 4, using a modeling program agreed upon by the Parties in a Commercially Reasonable Manner.
- 11.4 Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; *provided, however*, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twenty-four months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 11.5 Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with any applicable interest at the Interest Rate) shall be made in accordance with such correction; *provided, however*, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four months after the date of such invoice, statement, charge, computation, or payment.

## 12. Indemnification

- 12.1 Indemnification. Each Party (the “Indemnifying Party”) agrees to indemnify, and hold harmless the other Party and its Affiliates, and each of their respective directors, officers, managers, employees, and agents (each an “Indemnified Party”) from and against all third party claims, demands, losses, liabilities, and expenses (including attorneys’ fees) (collectively, “Damages”) for personal injury or death to third party persons and damage to a third party’s real property and tangible personal property to the extent arising out of, resulting from, or caused by (i) a violation of any Applicable Law, or [REDACTED] of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.
- 12.1.1 This indemnification obligation shall apply notwithstanding any negligent or intentionally wrongful acts, errors, or omissions of the Indemnified Party, but the Indemnifying Party’s liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party’s negligent or intentional acts, errors, or omissions caused or contributed to the Damages.
- 12.1.2 Neither Party shall be indemnified for its Damages resulting from its sole negligence, intentional wrongful acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- 12.1.3 Nothing in this Section 12.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Nothing in this Section 12.1 or anywhere else in this Agreement is intended to waive or release CFTOD’s sovereign immunity protections or any other privilege, immunity or defense afforded by law with respect to third party claims.
- 12.2 Notice of Claim. Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Section 12 may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; provided that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding. The Indemnifying Party shall have the right, but not the obligation, to assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party; provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at

the Indemnified Party's expense, unless a liability insurer is willing to pay such costs.

- 12.3 Settlement of Claim. If the Indemnifying Party elects not to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim; provided, however, that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Any statements set forth in such settlement asserting full or partial negligence of the Indemnified Party shall not be binding upon the Indemnified Party unless agreed to in writing by the Indemnified Party.
- 12.4 Amounts Owed. Except as otherwise provided in this Section 12, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Section 12, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds. The Indemnifying Party shall be subrogated to the Indemnified Party's rights to pursue such insurance proceeds against the Indemnified Party's insurer.
- 12.5 Indemnification Cap. Notwithstanding anything to the contrary in this Agreement, the Indemnifying Party's indemnification liability for any one claim and any one incident, respectively, pursuant to this Section 12, shall not exceed the then-current recovery limitation amounts for tort claims under Florida law for the State of Florida, its agencies and subdivisions for any one claim and any one incident, respectively, regardless, for the avoidance of doubt, of which Party is the Indemnifying Party and whether any such recovery limitation, other sovereign immunity cap or the like would apply to such Party, claim, or incident. As of the Effective Date, such recovery limitations are \$200,000 per individual claim and \$300,000 per incident or occurrence through which one or more claims may arise.

### **13. Taxes**

- 13.1 Seller. Seller shall be liable for and shall pay either Buyer or the respective Governmental Authority, as applicable, or Seller shall reimburse Buyer if Buyer has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior to its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller), except for sales, use, or excise tax related to the sale of the Product at the Delivery Point. Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation

expenses.

- 13.2 Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller) as well as sales, use or excise tax related to the sale of the Product at the Delivery Point. Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3 Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and shall remit payment thereof in accordance with Section 11. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds associated with such Taxes shall be handled in the same manner.
- 13.4 Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to Applicable Law.
- 13.5 Resale. Purchase of Product under this Agreement is for resale.

#### **14. Force Majeure.**

- 14.1 Definition. "Force Majeure" means any event or circumstance which prevents or delays performance by a Party of any of its obligations hereunder to the extent that such event or circumstance: (i) is beyond the reasonable control of such Party; (ii) is not the result of the willful misconduct or negligent act or omission of such Party, or any person over whom that Party has control; (iii) is not an act, event or condition that such Party reasonably could have anticipated and avoided, or the risk or consequence of which such Party has expressly assumed under the Agreement; and (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by such Party, or any Person over whom that Party has control. Subject to the foregoing, events or circumstances that may constitute "Force Majeure" include: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, and named storm events, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes; (C) insurrection, rebellion, nationwide, regional or general strikes,

slowdowns or labor disruptions; (D) an act of god, plague, epidemic, pandemic or other such significant and material event or circumstance; (E) actions or inactions by any Governmental Authority taken after the date hereof (including the adoption or change of any Requirements of Law or environmental constraint lawfully imposed by such Governmental Authority) but only if and to the extent such actions, inactions, Requirements of Law or constraint prevents or delays performance; and (F) inability, despite due diligence, to obtain or maintain any Permit required by any Governmental Authority.

- 14.2 Exclusions. Notwithstanding anything to the contrary herein, Force Majeure will *not* include the following: (a) delays in obtaining or failure to obtain goods or services from any contractor, subcontractor or supplier, except to the extent caused by the occurrence of any other event or circumstance that prevents or delays performance by the affected contractor, subcontractor or supplier of any of its obligations under a contract or subcontract to furnish such goods or services to the Party claiming Force Majeure, or to such Party's contractor, subcontractor or supplier, and which event or circumstance qualifies as "Force Majeure" under Section 14.1 and this Section 14.2 (an "Independent Force Majeure"); (b) any strike or slowdown by or labor dispute with the employees of either Party or any of their respective contractors, suppliers or subcontractors that is not part of a nationwide, regional or general strike, slowdown or labor dispute; (c) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the obligations of the Party claiming Force Majeure in accordance with the requirements of this Agreement, except to the extent due to an Independent Force Majeure; (d) normal wear and tear or obsolescence of any equipment; (e) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (f) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (g) loss by Seller of any contractual arrangement to the extent that it is not caused by an Independent Force Majeure; (h) loss or failure of Seller's supply of the Product or inability to generate the Product to the extent that it is not caused by an Independent Force Majeure; (i) unavailability, variability, or lack of adequate solar insolation or photovoltaic or solar rays to the extent that it is not caused by an Independent Force Majeure; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) to the extent that it is not caused by an Independent Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) any delay, alleged breach of contract, or failure under any other agreement or arrangement between the Party claiming Force Majeure and another entity, including without limitation, an agent or subcontractor of the Party claiming Force Majeure, to the extent that it is not caused by an Independent Force Majeure; or (n) increased cost of electricity, steel, materials, equipment, labor, or transportation.

- 14.3 Notice. If either Party is delayed or prevented from performing due to a Force Majeure event, such Party shall provide notice and details of the Force Majeure event to the other Party as soon as reasonably practicable after becoming aware of the Force Majeure event and its impact on the performance of the Party claiming Force Majeure (but in no event later than [REDACTED] after such Party becomes aware of the Force Majeure event and its impact on such Party's performance). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within [REDACTED] of the Party becoming aware of the Force Majeure event and its impact on such Party's performance); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.
- 14.4 Effect. Subject to the terms and conditions of this Section 14, for so long as any Force Majeure is continuing to demonstrably prevent or delay the performance by the Party claiming Force Majeure of any of its obligations under this Agreement (including, for the avoidance of doubt, when Buyer is the Party claiming Force Majeure, Buyer's obligation to receive all of the Contract Quantity (subject to the other terms of this Agreement), and when Seller is the Party claiming Force Majeure, Seller's obligation to produce the Product or deliver all of the Product produced by the Facility (subject to the other terms of this Agreement)), such Party shall not be responsible or liable for any delay or failure in its performance of such obligations, and such obligations shall be suspended and the time for performance by such Party of such obligations extended to the extent and for the duration made necessary by the Force Majeure, such Party will not be deemed to be in breach of such obligations nor will such delay or failure in its performance constitute or become (with notice or lapse of time or both) an Event of Default, and performance of such obligations and termination of this Agreement will be governed exclusively by this Section 14.
- 14.5 Remedy. The Party experiencing or claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure and its impact on the claiming Party's performance. If a demonstrable Force Majeure persists for a continuous period of [REDACTED], then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party [REDACTED] advance written notice; provided, however, that where the Force Majeure cannot be remedied within [REDACTED] and the claiming Party can reasonably demonstrate to the non-claiming Party its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure within an additional [REDACTED] after the initial [REDACTED] period, and the claiming Party uses Commercially Reasonable efforts to implement such plan, the non-claiming Party shall not have the right to terminate the Agreement until the

expiration of such additional [REDACTED] period.

- 14.6 Termination. Upon the expiration of the applicable period set forth above in Section 14.5, and assuming the Force Majeure has not yet been remedied, this Agreement may be terminated by either Party upon five (5) days' prior written notice to the other Party without further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination, and each Party shall within five (5) Business Days return the Performance Assurance provided to it by the other Party pursuant to Section 5. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

**15. Change in Law; Loss Event**

- 15.1 Change in Law. Except as otherwise provided in Section 3.3.1 with respect to any Change in Tax Law, Section 9.3.8 with respect to Future Attributes, Section 21.1 with respect to a Change in Market Design, or as otherwise explicitly provided in this Agreement, if, after the Effective Date, a change of law occurs that causes a Party to incur additional costs in carrying out its obligations under this Agreement, such Party agrees to pay all costs incurred by such Party associated with such change in law. The Parties agree and acknowledge that any such payments made or amounts payable by Buyer to Seller pursuant to this Agreement will not be increased as a result of such change in law.
- 15.2 Loss Event. Seller shall have one hundred and twenty (120) days following the occurrence of a Loss Event in which to elect to either repair and restore the portion of the Capacity affected by the Loss Event or determine that it is unable or unwilling to do so. Notwithstanding anything to the contrary in this Agreement (including Section 14), if during such one hundred and twenty (120) day period, Seller elects to repair and restore the portion of the Capacity affected by the Loss Event, then Seller will be afforded a period of three hundred and sixty-five (365) days following the occurrence of the Loss Event in which to complete such repair and restoration; *provided* that such period will be extended on a day-for-day basis by the number of days as reasonably necessary for Seller to complete such repairs and restoration, provided Seller is using Commercially Reasonable Efforts to diligently repair and restore the Facility. If Seller determines that it is unable or unwilling to repair and restore the portion of the

Capacity affected by the Loss Event, or if Seller fails to complete such repair and restoration within such three hundred and sixty-five (365) day period (subject to such extensions), then, notwithstanding anything to the contrary in this Agreement, from and after such date, and as applicable, the minimum Nameplate Capacity Rating and minimum installed Capacity amounts set out in Sections 4.2.3 and 4.2.4, the Nameplate Capacity Rating, and the Expected Annual Output shall be permanently reduced in proportion to the Capacity lost due to the Loss Event. Subject to the preceding sentence but otherwise notwithstanding anything to the contrary in this Agreement, from the occurrence of a Loss Event until the repair and restoration of the portion of the Capacity affected by the Loss Event in accordance with the terms of this Section 15.2, for the purposes of this Agreement, the minimum Nameplate Capacity Rating and minimum installed Capacity amounts set out in Sections 4.2.3 and 4.2.4, the Nameplate Capacity Rating, and the Expected Annual Output shall be temporarily reduced by the portion affected by the Loss Event and, for the avoidance of doubt, Seller shall be excused from the performance of its obligations (including that, if not yet achieved, any Milestone Deadlines, the Target COD, the Commercial Operation Date Deadline, and, if applicable, the Target Determination Date and/or the Determination Date, shall be extended on a day-for-day basis) to the extent such Loss Event prevents Seller from carrying out, in whole or part, its obligations under this Agreement.

## **16. Confidentiality.**

16.1 Protected Information. Except as otherwise set forth in this Agreement, neither Party shall, without the other Party's prior written consent, disclose any term of this Agreement or any information relating to this Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the "Protected Information") to any third party, other than the Party's Affiliates and its and their respective directors, officers, employees, contractors, consultants, counsel, accountants, auditors, and current and prospective lenders and investors ("Representatives") who each have a need to know such information, have been informed of such Party's obligation hereunder to keep such Protected Information confidential for two (2) years after end of the Term, and for whom such Party shall be liable in the event of a breach of such confidentiality obligation at any time during the Term or for two (2) years after the expiration or early termination of this Agreement. Each Party shall be entitled to seek all remedies available at law or in equity (including, but not limited to, specific performance and/or injunctive relief) to enforce, or seek relief in connection with any breach or threatened breach of, this confidentiality obligation. Notwithstanding the foregoing, Seller agrees, acknowledges and understands that Buyer is a political subdivision of the State of Florida and is subject to the State of Florida's broad public record and open meetings laws (collectively, "Florida Government in the Sunshine Laws"). The Protected Information will remain the property of the Disclosing Party. It is understood and agreed that neither this Agreement nor disclosure of any Protected Information by the Disclosing



Party to the Receiving Party shall be construed as granting to the Receiving Party or any of its Representatives any license or rights in respect of any part of the Protected Information disclosed to it, including any trade secrets included in any such Protected Information.

16.2 Non-Protected Information. Protected Information does not include information:

(i) that is or becomes available to the public other than by disclosure of Receiving Party (such Party receiving the Protected Information, the “Receiving Party”) in breach of this Agreement; (ii) known to receiving Party prior to its disclosure by the Disclosing Party (such Party disclosing the Protected Information, the “Disclosing Party”); (iii) available to Receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the Receiving Party without reliance upon the Protected Information. Protected Information does not and shall not include any information that Seller or Buyer is required to produce or disclose to FERC, including, but not limited to, under any one or more of 18 C.F.R. § 1b.9, Part 33, Part 34, Part 35, or Part 292, or that must be reported by or on behalf of Seller to the U.S. Energy Information Administration, FERC, NERC, SERC, FRCC, or the FPSC, unless such information is designated as confidential or otherwise exempt from public disclosure by applicable regulation, order, or other authority of any Governmental Authority receiving the information.

16.3 Return of Protected Information. Upon request of Disclosing Party, Receiving Party shall either (i) return to the Disclosing Party any Protected Information disclosed by the Disclosing Party to the Receiving Party that the Disclosing Party has requested be returned or destroyed (which shall be deemed not to include any term of this Agreement), including all copies of such Protected Information in the possession or control of the Receiving Party; (ii) destroy such Protected Information, including all copies of such Protected Information in the possession or control of the Receiving Party, and present written assurances of the destruction to the Disclosing Party; or (iii) retain such Protected Information to the extent permitted pursuant to Section 16.4. Notwithstanding the foregoing, the Receiving Party may retain the necessary amount of copies of such Protected Information in Receiving Party’s files or Back-Up Media for audit, records management and retention, corporate, or compliance purposes (including pursuant to any Requirements of Law, including any requirements of any Florida Government in the Sunshine Law); *provided, however*, such retained Protected Information shall be kept confidential for the duration of its retention and otherwise in accordance with the terms of this Agreement.

16.4 Back-Up Media. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails) may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring

data in the event of a system failure (collectively, “Back-Up Media”). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to return or destroy any Protected Information stored on Back-Up Media; *provided, however*, any Protected Information not returned or destroyed pursuant to this Section 16.4 shall be kept confidential for the duration of its existence, subject, for the avoidance of doubt, to Section 16.5.

16.5 Required Disclosures. Notwithstanding the confidentiality and anti-publicity requirements set forth herein (including those set forth in Section 26.16), a Party may, subject to the limitations set forth herein, disclose Protected Information (or, for the avoidance of doubt, any other information) to comply with lawful and proper requests for such information made by any Governmental Authority, applicable Requirements of Law (including any Florida Government in the Sunshine Laws), or any exchange, control area (including the FRCC Reliability Coordinator) or similar rule, in response to an order of a court or an arbitrator, or in connection with any court or regulatory proceeding. As to any Protected Information, such disclosure shall not terminate the obligations of confidentiality unless the Protected Information falls within one of the exclusions of this Agreement. To the extent the disclosure of Protected Information is requested or compelled as set forth above, the receiving Party shall, to the extent permitted by applicable Requirements of Law, give Disclosing Party reasonable notice of any discovery request or order, subpoena, or other legal process requiring disclosure of any Protected Information. Such notice by the Receiving Party shall give Disclosing Party an opportunity, at Disclosing Party’s discretion and sole cost, to seek a protective order or similar relief, and the Receiving Party shall not oppose such request or relief. If such protective order or other appropriate remedy is not sought and obtained within at least ten (10) Business Days of Receiving Party’s notice, Receiving Party shall disclose only that portion of the Protected Information that is required or necessary in the opinion of Receiving Party’s legal counsel; *provided, however*, Receiving Party shall use Commercially Reasonable efforts, where not otherwise prohibited by Florida Government in the Sunshine Laws or other Requirements of Law, to obtain assurances that confidential treatment will be accorded to any Protected Information so disclosed (it being understood that Florida Government in the Sunshine Laws or other Requirements of Law may not allow the Receiving Party to obtain assurances that confidential treatment will be accorded to Protected Information so disclosed).

17. Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

17.1 It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.2 It has all authorizations under the Requirements of Law necessary for it to

legally perform its obligations and consummate the transactions contemplated hereunder or will use Commercially Reasonable efforts to obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

- 17.3 The execution, delivery, and performance of this Agreement will not, subject to obtaining Required Permits and Seller Board Approval, conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound, except as would not have a material adverse impact on its ability to perform its obligations under this Agreement; provided that, as of the Effective Date Seller will have full internal approvals to execute this Agreement and provide and deliver to Buyer the Development Performance Assurance;
  - 17.4 This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, subject to the effects on enforceability of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other applicable laws relating to or affecting creditors' rights generally and general equitable principles;
  - 17.5 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment; in so doing it is not relying upon the advice or recommendation of the other Party or the representations of the other Party other than those representations and warranties of the other Party set forth in this Agreement; it is capable of assessing the merits of this Agreement; and it understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
  - 17.6 No Event of Default or event which, with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
  - 17.7 There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any of its Affiliates, that materially adversely affects its ability to perform its obligations under this Agreement; and
  - 17.8 Each person who executes this Agreement on behalf of such Party has due authorization to do so, and that such Party will be bound by such execution.
- 18. Events of Default.** An "Event of Default" means with respect to the non-performing or defaulting Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the following, each of which, individually, shall constitute a separate Event of Default:
- 18.1 Any of the following shall constitute an Event of Default of Seller upon

its occurrence:

- 18.1.1 Seller's dissolution or liquidation; provided that a corporate reorganization of Seller, including pursuant to a consolidation, amalgamation or merger, that does not have an adverse effect on Seller's (or its successor's) ability to perform its obligations under this Agreement shall not constitute dissolution or liquidation.
- 18.1.2 Seller makes a general assignment for the benefit of creditors (except for an assignment permitted under this Agreement to the Facility Lenders or Seller's lenders as security under Seller's routine borrowing practices).
- 18.1.3 Seller (a) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against Seller under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to Seller, (b) admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of Seller, or (c) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of Seller or of a major part of Seller's property, which is not dismissed within sixty (60) days.
- 18.1.4 The sale by Seller to a third party, or diversion by Seller for any use, of any Product (or any component portion of any Product) committed to Buyer by Seller, other than in mitigation of damages for any breach by Buyer of this Agreement or any use as Station Power, if it remains uncured for three (3) Business Days after the date of written notice from Buyer to Seller.
- 18.1.5 Seller's failure to establish and maintain Performance Assurance in accordance with Section 5, if it remains uncured for ten (10) Business Days after the date of written notice from Buyer to Seller.
- 18.1.6 Seller Abandons the Facility, if it remains uncured for [REDACTED] [REDACTED] after the date of written notice from Buyer to Seller.
- 18.1.7 Seller's failure to comply with any other material obligation under this Agreement (other than a material obligation for which the failure to comply with constitutes a separate Event of Default of Seller under another provision of this Section 18)), which would result in an adverse impact on Buyer, shall constitute an Event of Default if it remains uncured for thirty (30) Business Days after the date of written notice from Buyer to Seller and the Facility Lenders; provided, that if such

failure is not reasonably capable of being remedied within the thirty (30) Business Day cure period specified above, Seller shall have such additional time (not exceeding an additional sixty (60) Business Days) as is reasonably necessary to remedy such failure, so long as Seller advises Buyer of its plan for such cure and promptly commences and diligently pursues such remedy.

18.1.8 Seller's Assignment of this Agreement, except as permitted in accordance with Section 24.

18.1.9 If any representation or warranty made by Seller in this Agreement shall prove to have been false or misleading in any material respect when made, or, except for Sections 17.6 and 17.7, ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer, and it remains uncured for thirty (30) Business Days after the date of written notice from Buyer to Seller and the Facility Lenders; provided, that if such failure is not reasonably capable of being remedied within the thirty (30) Business Day cure period specified above, Seller shall have such additional time (not exceeding an additional sixty (60) Business Days) as is reasonably necessary to remedy such failure, so long as Seller advises Buyer of its plan for such cure and promptly commences and diligently pursues such remedy; and provided further, if such inaccuracy or cessation is not reasonably capable of being cured other than by the payment of Buyer's damages, and Buyer's damages resulting from such inaccuracy or cessation can be reasonably ascertained, such inaccuracy or cessation shall not constitute an Event of Default of Seller unless and until the payment of the amount of such damages to Buyer is not made within thirty (30) Business Days after a notice of such damages is provided by Buyer to Seller.

18.1.10 The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period shall constitute an Event of Default of Seller if Seller fails to cure the same within one hundred twenty (120) days after the date of written notice from Buyer to Seller and the Facility Lenders.

18.2 The following shall constitute an Event of Default of Seller if Seller fails to cure any such failure within ten (10) days after the date of written notice from Buyer of such failure to Seller and the Facility Lenders: the failure by Seller to make, when due and to the extent not subject to good faith dispute in accordance with this Agreement, any payment required pursuant to this Agreement.

- 18.3 From and after the first anniversary of COD, if for any Production Measurement Period during the Term, Seller fails to produce and deliver to Buyer at the Delivery Point at least [REDACTED] of the Expected Annual Output for such Production Measurement Period after adjusting such Expected Annual Output by the amount of any Energy not delivered in such Production Measurement Period during any Seller Excused Hours, if such failure remains uncured for thirty (30) Business Days after the date of written notice from Buyer to Seller, provided Seller may cure any such failure by payment to Buyer of Replacement Power Costs in the amount of the deficiency below such adjusted [REDACTED] threshold.
- 18.4 Any of the following shall constitute an Event of Default of Buyer upon its occurrence:
- 18.4.1 Buyer's dissolution or liquidation; provided that a corporate reorganization of Buyer, including pursuant to a consolidation, amalgamation or merger, that does not have an adverse effect on Buyer's (or its successor's) ability to perform its obligations under this Agreement shall not constitute dissolution or liquidation;
- 18.4.2 Buyer makes a general assignment for the benefit of creditors (except for an assignment permitted under this Agreement to Buyer's lenders as security under Buyer's routine borrowing practices);
- 18.4.3 Buyer (a) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against Buyer under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to Buyer, (b) admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of Buyer, or (c) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of Buyer or of a major part of Buyer's property, which is not dismissed within sixty (60) days;
- 18.4.4 If Buyer is required to provide Performance Assurance under Section 5, Buyer's failure to provide such Performance Assurance in accordance with Section 5 if it remained uncured for ten (10) Business Days after the date of Seller's written notice to Buyer;
- 18.4.5 Buyer's failure to timely request the Transmission Provider to grant the DNR Approval pursuant to Section 6.3, if it remains uncured for ten (10) Business Days after the date of Seller's written notice to Buyer.
- 18.4.6 Buyer's failure to comply with any other material obligation under

this Agreement (other than a material obligation for which the failure to comply with constitutes a separate Event of Default of Buyer under another provision of this Section 18), which would result in an adverse impact on Seller, shall constitute an Event of Default of Buyer if it remains uncured for thirty (30) Business Days after the date of written notice from Seller to Buyer; provided, that if such failure is not reasonably capable of being remedied within the thirty (30) Business Day cure period specified above, Buyer shall have such additional time (not exceeding an additional sixty (60) Business Days) as is reasonably necessary to remedy such failure, so long as Buyer advises Seller of its plan for such cure and promptly commences and diligently pursues such remedy.

18.4.7 Buyer's assignment of this Agreement, except as permitted in accordance with Section 24.

18.4.8 If any representation or warranty made by Buyer in this Agreement shall prove to have been false or misleading in any material respect when made, or, except for Sections 17.6 and 17.7, ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller; provided, if such inaccuracy or cessation is not reasonably capable of being cured, other than by the payment of Seller's damages, and Seller's damages resulting from such inaccuracy or cessation can be reasonably ascertained, such inaccuracy or cessation shall not constitute an Event of Default of Buyer unless and until the payment of the amount of such damages to Seller is not made within thirty (30) Business Days after a notice of such damages is provided by Buyer to Seller.

18.4.9 The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer that could materially impact Buyer's ability to perform its obligations hereunder; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period shall constitute an Event of Default of Buyer if Buyer fails to cure the same within one hundred twenty (120) days after the date of written notice from Seller to Buyer.

18.4.10 The failure by Buyer to make, when due and to the extent not subject to good faith dispute in accordance with this Agreement, any payment required pursuant to this Agreement, if Buyer fails to cure any such failure within ten (10) days after the date of Seller's written notice to Buyer.

## **19. Early Termination**

19.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party has occurred and is continuing, then the other Party (such Party, the

“Non-Defaulting Party”) shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, setoff, and early terminate this Agreement and any other agreement between the Parties (such day, the “Early Termination Date”). Additionally, Seller shall have the right to sell Product to third parties for so long as any Buyer Event of Default has occurred and is continuing.

- 19.2 Effectiveness of Default and Remedies. Subject to the exclusivity of Daily LDs provided for in Section 19.5 and the limitations on liability in Section 22, where an Event of Default is specified herein all of the remedies and provisions set forth in this Section 19 shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 19.3 Net Settlement Amount. If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date (including, in the case of Seller, any Gains or Losses related to lost Tax Attributes), in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement, including any payments for Product owed to Seller hereunder prior to the Early Termination Date, and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the “Net Settlement Amount”). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount, which notice shall include documentation in reasonable detail supporting the calculation by the Non-Defaulting Party of the Net Settlement Amount. Subject to the limitations in Section 22, if the Net Settlement Amount is greater than zero, the Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount to the Non-Defaulting Party within thirty (30) days of delivery to the Defaulting Party of the notice of the Net Settlement Amount in accordance with this Section 19.3.
- 19.4 Payment. Any Net Settlement Amount will be due and payable only to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party as a result of the Defaulting Party’s default. The Non-



Defaulting Party shall be entitled to recover any Net Settlement Amount payable to it by drawing upon any Performance Assurance, netting or setoff, or to otherwise pursue recovery of such Net Settlement Amount.

19.5 Failure to Achieve Target COD.

19.5.1 In the event that the Facility does not achieve Commercial Operation by the Target COD, Seller shall pay Buyer an amount of liquidated damages equal to [REDACTED] for each day after the Target COD that the Facility has not achieved Commercial Operation until the earlier of (i) the Commercial Operation Date or (ii) the Commercial Operation Date Deadline (“Daily LDs”). Such amount owed of Daily LDs shall be payable by Seller to Buyer within thirty (30) days after Seller receives an invoice from Buyer for the same. Buyer may invoice Seller for Daily LDs payable no more frequently than monthly. Notwithstanding anything to the contrary in this Agreement, for the purpose of reducing Daily LDs payable to Buyer and otherwise for purposes of this Agreement, Seller shall be entitled to equitably extend the Target COD, the Commercial Operation Date Deadline, the other Milestone Deadlines, and, as applicable, the Target Determination Date and the Determination Date, on a day-for-day basis as provided in Section 6.3, or anywhere else in this Agreement plus the period of any delay in achieving Commercial Operation that was caused by Force Majeure, a breach by Buyer of this Agreement, or a delay by Transmission Provider in completing performance of its obligations under the Interconnection Agreement as set forth in Section 7.4. Notwithstanding the immediately foregoing sentence, if Commercial Operation has not occurred by [REDACTED] due to a delay by Transmission Provider (and, for the avoidance of doubt, Seller is not already required to pay Daily LDs), then beginning on [REDACTED], Seller will pay Daily LDs to Buyer until the earlier of (i) the actual Commercial Operation Date, or (ii) the Commercial Operation Date Deadline; provided, that, notwithstanding anything to the contrary in this Agreement, such [REDACTED] date shall also be extended as if it were the Commercial Operation Date Deadline on a day-for-day basis as provided in Section 6.3 or anywhere else in this Agreement, plus the period of any delay in achieving Commercial Operation that was caused by Force Majeure or a breach by Buyer of this Agreement, but such [REDACTED] date shall not, for the avoidance of doubt, be extended by a Transmission Provider delay.

19.5.2 If the Facility does not achieve Commercial Operation by the Commercial Operation Date Deadline, Buyer shall be entitled to terminate this Agreement at any time thereafter by providing notice to Seller; *provided, however*, that Buyer shall not be entitled to provide such notice after Commercial Operation is achieved, and Buyer receives (including, for the avoidance of doubt, Buyer being deemed

to have received pursuant to Section 25) written notice of Commercial Operation being achieved, unless Seller does not notify Buyer of such achievement of Commercial Operation within five (5) Business Days of such achievement, in which case Buyer may provide such termination notice after Commercial Operation is achieved but only until such time as Seller notifies Buyer of such achievement of Commercial Operation. If Buyer provides notice to Seller terminating this Agreement under this Section 19.5.2, this Agreement shall immediately terminate. Upon such termination, neither Party shall have any further obligation or liability under this Agreement (except, for the avoidance of doubt, for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination).

If Seller notifies Buyer under this Section 19.5.2 that Commercial Operation will not be achieved, or if Buyer provides notice to Seller terminating this Agreement under this Section 19.5.2, then: (a) this Agreement shall immediately terminate and upon such termination, as the sole and exclusive remedy of Buyer for such failure and termination, Buyer shall be entitled to [REDACTED]

[REDACTED] and (b) neither Party shall have any further obligation or liability under this Agreement, (except, for the avoidance of doubt, as provided in (a) and for obligations and liabilities that survive termination as provided in this Agreement or which accrue prior to or at termination).

19.5.3 Buyer may draw upon the Development Performance Assurance to recover any amounts required to be paid (but, for the avoidance of doubt, not yet paid) by Seller under this Section 19.5 and Buyer will thereafter return the remaining Development Performance Assurance to Seller, provided, that Buyer shall provide Seller with at least three (3) Business Days prior written notice before drawing upon the Development Performance Assurance.

## 20. Curtailed Energy.

20.1 Economic Curtailment by Buyer. For such reasons as Buyer shall deem sufficient, including, but not limited to, Buyer balancing events (but specifically not including a curtailment effected pursuant to Section 20.2 below to address an Emergency Condition or a Force Majeure event claimed by Buyer where Buyer has complied with Section 14, and specifically including any negative locational marginal price), Buyer shall have the right to notify Seller, by telephonic communication (or as otherwise agreed by the Parties) and/or

confirmed in writing via email within a reasonable time and specifying that the curtailment is pursuant to this Section 20.1, to curtail generation and delivery of all or a portion of the Energy output of the Facility during such period of time as Buyer shall specify in such notice (which period of time may be left indefinite as to duration, in which case deliveries of the Energy output of the Facility to the Delivery Point shall not recommence until Buyer has notified Seller, by telephonic communication confirmed in writing within a reasonable time, to recommence such deliveries).

- 20.2 Emergency Condition Curtailment Effected by Buyer, Transmission Provider, FRCC Reliability Coordinator or the CFTOD System Operator. In addition to the right of economic curtailment as provided in Section 20.1 above, Buyer, Transmission Provider, FRCC Reliability Coordinator or the CFTOD System Operator, in order to address an Emergency Condition, shall have the right to notify Seller to curtail generation and delivery of all or a portion of the Energy output of the Facility during such period of time as Buyer, Transmission Provider, FRCC Reliability Coordinator or the CFTOD System Operator shall specify in such notice.
- 20.3 Transmission Provider Dispatch Instructions. Seller shall be responsible for the operation of the Facility in accordance with Transmission Provider dispatch instructions as required under the (then-current) OATT or other approved regulation or tariff, whether received directly from Transmission Provider or indirectly from another Person with requisite authority for transmitting such instructions. Buyer and Seller shall coordinate in good faith regarding any upgrades to their respective equipment and facilities that are required under the (then-current) OATT or other approved regulation or tariff and that are necessary to allow the Parties to respond to the dispatch instructions of Transmission Provider, whether received directly from Transmission Provider or another Person with the requisite authority for transmitting such instructions. As part of such good faith coordination, the Parties shall consider whether any modifications to this Agreement are required in order to accommodate the Parties' installation and operation of such upgrades. Seller shall be responsible for any penalties, charges, or legal costs caused by Seller's operation of the Facility in violation of any reliability curtailment instructions of Transmission Provider, and shall promptly reimburse Buyer for any and all such amounts assessed to Buyer.
- 20.4 Compliance with Curtailment Notification. Seller shall comply with any such curtailment notification as soon as practicable after receiving the notification, but in any event will comply within fifteen (15) minutes after receiving the notification to the extent such compliance is within the capabilities of the Facility control systems and can be achieved through remote capabilities, and if such compliance cannot be achieved through remote capabilities, then Seller shall comply as promptly as reasonably practicable consistent with Good Utility Practices.

- 20.5 Compensable Curtailment. Buyer shall not be required to pay any compensation to Seller with respect to Curtailed Energy that does not qualify as a Compensable Curtailment. For each period in which a Compensable Curtailment occurs, Buyer shall pay to Seller an amount equal to the Contract Price plus the Tax Attribute Losses for each MWh (or portion thereof) of Deemed Delivered Energy in connection with the Compensable Curtailment in question.
- 20.6 Invoicing and Payment for Compensable Curtailment. Any additional payments owing to Seller pursuant to this Agreement shall be invoiced by Seller in its monthly invoices and shall be due and payable at the times other amounts covered by such invoice are due and payable hereunder, which invoice shall be accompanied by Seller's reasonably detailed calculations of such payments and supporting evidence thereof. Upon written request, Buyer shall have the right to review Seller's records (such as solar data) pertaining to such calculations. Seller shall install sufficient measuring equipment at the Facility to collect solar data necessary to reasonably determine the amount of Deemed Delivered Energy, which solar data shall be used to calculate any amounts due Seller under Section 20 based on the generating characteristics and availability of the Facility during the period of curtailment. The failure of Seller to either (a) provide the applicable solar data to Buyer at Buyer's written request or (b) otherwise provide reasonable support for such calculations to Buyer, shall relieve Buyer of the obligation to pay for the Deemed Delivered Energy for which Buyer requested solar data but no applicable solar data or other reasonable support was provided.

## **21. Change in Market Design.**

- 21.1 Good Faith Negotiations. If a Change in Market Design renders this Agreement or any terms herein incapable of being performed or administered, then either Party, on written notice to the other Party, may request the other Party to enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. Upon receipt of a written notice requesting negotiations, the Parties shall negotiate in good faith; provided however that it shall not be bad faith (nor lack of good faith) for either Party to refuse to amend this Agreement if such amendment would materially increase the cost to such Party or otherwise materially increase (determined in that Party's sole discretion) the contractual or legal obligations imposed upon the Party as a result of such amendment, or [REDACTED]
- 21.2 Referral to Mediation. If the Parties are unable, within sixty (60) days of written notice requesting negotiations, to agree upon or resolve changes to this Agreement, then either Party may issue a Dispute Notice to the other Party in an effort to submit the Dispute to Senior Executives for the initiation of the dispute

resolution proceedings. In the event a Change in Market Design renders it impossible for (a) Seller to generate and deliver, or (b) Buyer to take delivery of Product delivered to the Delivery Point, then pending the resolution of a Dispute related to a Change in Market Design, neither Party shall be obligated to perform under this Agreement. In the event that (b) as described above occurs, Seller shall be entitled to sell the Energy output of the Facility and associated Environmental Attributes to any Person at any rate and upon any terms and conditions that Seller may determine in its sole discretion without liability to Buyer hereunder and without liability from Buyer to Seller hereunder. However, performance hereunder shall resume promptly following the resolution of the Dispute (and, in any event, no later than fifteen (15) Business Days following such resolution). For avoidance of doubt, a change in cost shall not in itself be deemed to render this Agreement or any terms herein incapable of being performed or administered, or constitute or form the basis of a Force Majeure event.

**22. Limitation of Liability & Liquidated Damages.**

22.1 Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES, COVER COSTS, AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

22.2 Limitation of Liability. EXCEPT FOR INDEMNIFICATION OBLIGATIONS ARISING PURSUANT TO THIS AGREEMENT AND

BUYER'S OBLIGATION PURSUANT TO THIS AGREEMENT TO PAY LOSSES ASSOCIATED WITH LOST SELLER TAX ATTRIBUTES, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR THEIR RESPECTIVE AFFILIATES PURSUANT TO THIS AGREEMENT FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, TORT, CONTRACT, OR OTHERWISE. WHERE A REMEDY IS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, SUCH REMEDY SHALL BE THE SOLE AND EXCLUSIVE REMEDY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, THERE IS NO REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED, AND SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE SATISFACTION OF CFTOD'S CAPACITY NEEDS OR SYSTEM RESERVE REQUIREMENTS. [REDACTED]

22.3 Additional Limitation Prior to Commercial Operation Date. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT [REDACTED], PRIOR TO THE COMMERCIAL OPERATION DATE, THE AGGREGATE LIABILITY OF SELLER UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LIABILITY TO PAY DAILY LDs OR A NET SETTLEMENT AMOUNT THAT ARISES PRIOR TO THE COMMERCIAL OPERATION DATE, SHALL NOT EXCEED THE REQUIRED AMOUNT OF DEVELOPMENT PERFORMANCE ASSURANCE.

22.4 Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Section 19 and 22 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Section 19 and 22 are direct damages, will be deemed to be a direct loss, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.

23. **Dispute Resolution**.

23.1 Applicability. Except for matters requiring immediate injunctive relief or as

otherwise provided in the Agreement with regard to Change in Market Design or in Exhibit 8 with regard to any Dispute over the amount of Breakage Costs, any dispute or claim between the Parties arising out of or related in any way to this Agreement will be resolved pursuant to this dispute resolution process set forth in this Section 23.

23.2 Dispute Notice. Before either Party pursues any remedy available at law or in equity, subject to any limitations set forth herein, the Parties shall first attempt to in good faith to resolve any claim, dispute or other controversy arising out of or relating to this Agreement (each, a “Dispute”) by negotiation between Senior Executives. Each Party’s Senior Executive need not be the senior most executive of the Party, but each Senior Executive shall be designated the authority to settle the Dispute and be at a higher level of management than the persons with direct responsibility for administration of this Agreement (a “Senior Executive”). Notwithstanding the foregoing, Seller acknowledges, understands, and agrees that Buyer’s Board of Supervisors must ultimately approve the settlement of any Dispute at a duly called public meeting. A senior executive from Seller’s Qualified Guarantor (if any) and Buyer’s Qualified Guarantor (if any) shall also participate in the Dispute pursuant to this Section 23. A Party may give the other Party written notice (the “Dispute Notice”) of a Dispute that has not been resolved. Such notice shall include: (a) a statement of that Party’s position and a summary of arguments supporting such position, (b) the name and title of the Senior Executive who will be representing that Party; (c) the name of the senior executive who will be representing (i) Seller’s Qualified Guarantor (if any) (if Seller gives the Dispute Notice) or (ii) Buyer’s Qualified Guarantor (if any) (if Buyer gives the Dispute Notice); and (d) any other persons who will be in attendance. Within ten (10) Business Days after delivery of the Dispute Notice, the receiving Party shall respond with (a) a statement of position and a summary of arguments supporting such position, and (b) the name and title of the Senior Executive who will represent that Party and of any other persons who will accompany the Senior Executive; and (c) (i) the name of the senior executive who will be representing Seller’s Qualified Guarantor (if any) (if Buyer gives the Dispute Notice) or (ii) the name of the senior executive who will be representing Buyer’s Qualified Guarantor (if any) (if Seller gives the Dispute Notice). Within twenty (20) Business Days after delivery of the Dispute Notice, the designated Executives of both Parties shall meet at a mutually agreeable location in Orlando, Florida, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement, consistent with the confidentiality provisions of Section 16, to cover any Dispute and discussions related thereto. If a Dispute is not resolved within thirty (30) Business Days after delivery of the Dispute Notice, then either Party may exercise any right or remedy available under this Agreement or at law or in equity, subject, for the avoidance of doubt, to the terms of this Agreement (including Section 22).

23.3 Arbitration.

- 23.3.1 If a Dispute has not been resolved, the Parties may mutually agree (but shall have no obligation to agree) to settle the Dispute by binding arbitration administered by the American Arbitration Association (“AAA”). The Arbitration shall be conducted in accordance with the Commercial Arbitration Rules then in effect, and shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16. To the extent the Commercial Arbitration Rules conflict with any provision of Section 23 of this Agreement, the terms of this Agreement shall govern and control. Litigation in the court and venue permitted by this Agreement is appropriate to resolve a Dispute if Arbitration is not mutually elected by the Parties.
- 23.3.2 All arbitration proceedings, if mutually elected by the Parties, shall take place at a mutually agreeable location in Orlando, Florida.
- 23.3.3 A single arbitrator will arbitrate all Disputes where the amount in controversy is less than Two Million Dollars (\$2,000,000). If the Parties are unable to agree on the selection of an arbitrator, one will be selected by the AAA. Any such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The Parties agree to equally share the costs of any such arbitration; however, each Party shall bear its own costs and its own expenses relating to such arbitration.
- 23.3.4 A panel of three (3) arbitrators will conduct the proceeding when the amount in controversy is equal to or more than Two Million Dollars (\$2,000,000). If the Parties are unable to agree on three (3) arbitrator(s) on or before thirty (30) days following the Parties’ mutual agreement to settle the Dispute by arbitration, then each Party, by providing notice to the other Party, may designate one arbitrator (who shall not be a current or former officer, director, employee or agent of such Party or any of its Affiliates). Any such arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry. The two (2) arbitrators, one arbitrator appointed by each Party, will then work together to endeavor to promptly designate a third (3rd) arbitrator.
- 23.3.5 If either Party fails to designate an arbitrator on or before forty-five (45) days following the Parties’ mutual agreement to settle the Dispute by arbitration, or if the Parties’ designated arbitrators have not yet designated a third (3rd) arbitrator any Party may request the AAA to designate the remaining arbitrator(s) pursuant to its Commercial Arbitration Rules. Such third (3rd) arbitrator shall be a licensed attorney with at least ten (10) years of experience in the electric utility industry.
- 23.3.6 If any arbitrator resigns, becomes incapacitated, or otherwise refuses or fails to serve or to continue to serve as an arbitrator, (i) then the Party



entitled to designate that arbitrator shall designate a successor arbitrator; or (ii) if applicable, the two (2) arbitrators designated by the Parties shall endeavor to promptly designate a third (3<sup>rd</sup>) arbitrator.

23.3.7 Discovery. Either Party may apply to the arbitrator(s) to conduct discovery. The right to conduct discovery shall be granted by the arbitrator(s) in their sole discretion with a view to avoiding surprise and providing reasonable access to necessary information or to information likely to be presented during the course of the arbitration, provided that such discovery period shall not exceed sixty (60) Business Days.

23.3.8 Binding Nature. The arbitrator(s)' decision shall be by majority vote (or by the single arbitrator if a single arbitrator is used) and shall be issued in writing that sets forth in separately numbered paragraphs all of the findings of fact and conclusions of law necessary for the decision. Findings of fact and conclusions of law shall be separately designated as such. The arbitrator(s) shall not be entitled to deviate from the construct, procedures or requirements of this Agreement. The award rendered by the arbitrator(s) in any arbitration shall be final and binding upon the Parties, and judgment may be entered on the award in accordance with applicable law in any court of competent jurisdiction.

23.4 Mediation. At any time, the Parties may mutually agree to (but are not obligated to) attempt to resolve any Dispute by non-binding mediation, using a mutually agreed upon mediator. The mediation shall be completed within thirty (30) Business Days from the date on which the Parties agree to mediate. Each Party shall pay its own costs associated with mediation and the Parties shall share any mediator's fees or costs equally. The mediation shall take place at a mutually agreeable location in Orange County, Florida, or such other location in Central Florida as the Parties may mutually agree. Agreements reached in mediation shall be enforceable as settlement agreements in any court of competent jurisdiction.

23.5 Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to Section 23 of this Agreement are to be deemed confidential and subject to the confidentiality terms set forth in Section 16 and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.

24. Assignment.

24.1 Limitation. Except as (a) set forth below in Section 24.2 with respect to assigning as collateral security or (b) in the case of any Permitted Transfer, neither Party shall assign, and/or encumber (collectively, the “Assignment”) this Agreement or the Facility, any rights or obligations under this Agreement, or any portion hereunder, without the other Party’s prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. [REDACTED]

[REDACTED]

[REDACTED] provided, however, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to the other Party such Performance Assurance in the required amount, [REDACTED]

[REDACTED]

[REDACTED] Further notwithstanding anything to the contrary herein, Seller may, without the prior written consent of Buyer, assign, transfer, or otherwise pledge this Agreement in connection with any Permitted Transfer.

24.2 Financing Matters. Either Party may, without prior consent of the other Party, but with no less than ten (10) Business Days’ prior written notice, pledge or assign as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement. Any pledge or assignment by either Party of this Agreement as collateral security will not relieve such Party of any obligation or liability under this Agreement. The Parties shall in good faith work together and such financing party to agree upon a consent to collateral assignment of this Agreement, which consent to collateral assignment agreement shall be in form and substance customary in the industry and reasonably agreed to by Buyer, Seller and such financing party as soon as reasonably applicable and practicable.

24.3 Accommodation of Facility Lender. To facilitate Seller’s obtaining of financing to construct and operate the Facility, Buyer shall provide such certifications, representations, information or other documents, including an estoppel certificate with respect to a tax equity financing, as are customary and

reasonably requested by Seller or the Facility Lender(s) in connection with the financing of the Facility. In addition, Buyer agrees to deliver to the Facility Lender(s) a consent to collateral assignment in substantially the form attached hereto as Exhibit 11, or, with respect to a tax equity financing, an estoppel containing terms substantially similar to those set forth in Exhibit 12. Seller shall reimburse, or shall cause the Facility Lender(s) to reimburse, Buyer for all direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lender(s), and provided by Buyer, pursuant to this Section 24.3.


- 24.4 Change of Control. Except in the case of any Permitted Transfer, any Change of Control of Seller shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed. Buyer, in its sole discretion, may withhold its consent to any Change of Control of Seller that is not a Permitted Transfer if (a) the ultimate parent entity of Seller is a company other than NextEra Energy, Inc., and (b) the ultimate parent entity of Seller following a Change of Control does not meet the requirements for an assignee of Seller pursuant to Section 24.1.
- 24.5 Voidable. Any sale, transfer, Change of Control, and/or assignment of any interest in the Facility or in the Agreement made without satisfying the applicable requirements of this Agreement shall be null and void.

## 25. Notices.

- 25.1 Process. All notices, requests, or invoices shall be in writing and shall be sent to the applicable Party at the address specified below for such Party. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be deemed delivered when (a) when delivered by hand; (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail (postage prepaid and return receipt requested), or (d) when e-mailed (if written notice follows by nationally recognized overnight courier, receipt requested) (it being understood that if an email address is not provided for any “copy to” recipients, then written notice shall not be provided by email to such recipient, but deemed delivery to such recipient’s corresponding Party shall occur when emailed to such Party even if the “copy to” recipient does not receive an email). This section shall be applicable whenever words such as “notify,” “submit,” “give,” or similar language are used in the context of giving notice to a Party.

### To Seller:

Florida Renewable Partners  
700 Universe Boulevard,  
B2C/JB Juno Beach, FL 33408



[REDACTED]

with a copy to:

NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408

[REDACTED]

[REDACTED]

To Buyer:

For US Mail:  
Central Florida Tourism Oversight  
District c/o Utility Business Affairs  
P.O. Box 10000  
Lake Buena Vista, FL 32830-1000

For Overnight or Personal  
Delivery:  
751 Backstage Lane  
Central Energy Plant, Maintenance Building, 2nd  
Floor. Lake Buena Vista, FL 32830  
Attention: Director Utility Business Affairs  
Telephone: 407-448-3315  
Email: RCID.Broker@disney.com

with a copy to:

For US Mail:  
Central Florida Tourism Oversight District  
Attn: Contracting Officer  
PO Box 690519  
Orlando, FL 32869

For Overnight or Personal  
Delivery:  
1900 Hotel Plaza Blvd.  
Lake Buena Vista, FL 32830  
Attention: General Counsel

- 25.2 Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the

tracking receipt, as applicable. Notwithstanding anything to the contrary, if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day.

**26. Miscellaneous.**

26.1 Costs. Unless otherwise specified, each Party shall be responsible for its own costs and fees associated with negotiating, disputing or taking any other action with respect to this Agreement, including, without limitation, attorneys' fees and costs.

26.2 Access. Upon reasonable prior written notice to Seller, Seller shall provide to Buyer and its authorized agents, employees, and inspectors, reasonable access to the Facility to: (i) ascertain the status of the Facility with respect to construction, start-up and testing, operation, or any other obligation of Seller under this Agreement; and, (ii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement.

[REDACTED]

While at the Facility, Buyer shall, and Buyer shall cause Buyer's employees, authorized agents, contractors, inspectors, members and guests to, observe and comply with all safety and security rules and precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and otherwise adhere to all of Seller's reasonable rules, restrictions, and procedures applicable to Facility visitors. Seller shall have the right to have a representative present during any such access. Buyer's technical review or inspection of the Facility will not be construed as endorsing the design or construction thereof or as any warranty of the safety, durability or reliability of the Facility. Seller will cooperate and will cause its contractors to cooperate in providing the information requested by Buyer and in such physical inspections of the Facility as may be reasonably requested by Buyer during and after completion of construction.

- 26.3 Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a “utility,” as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, setoff, liquidate, or terminate the Agreement early. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by, construed, enforced, and performed in accordance with the laws of the State of Florida without regard to principles of conflicts of law, and, if applicable, by the federal law of the United States of America.
- 26.5 Venue/Consent to Jurisdiction. Any judicial or legal action, suit, or proceedings arising out of, resulting from, or in any way relating to this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought exclusively in the United States District Court for the Middle District of Florida located in Orlando, Florida, and federal appellate courts therefrom, or if such United States District Court lacks jurisdiction, the courts of the State of Florida located in Orange County, Florida, and state appellate courts therefrom. The Parties hereto irrevocably consent to the jurisdiction of such federal courts or, if such federal courts lack jurisdiction, such courts of the State of Florida, and hereby submit to venue in such federal courts or, if such federal courts lack jurisdiction, such courts of the State of Florida. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in any such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the such federal courts; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between the Parties pursuant to this Agreement shall occur in such United States District Court located in Orlando, Florida, and federal appellate courts therefrom, or if such United States District Court lacks jurisdiction, the courts of the State of Florida located in Orange County, Florida, and state appellate courts therefrom.
- 26.6 Waiver of Rights to Jury Trial. SELLER AND BUYER EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND

IRREVOCABLY WAIVE ANY RIGHTS THEY 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 OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF SELLER AND BUYER RELATED HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT AND SHALL SURVIVE ANY EXPIRATION OR TERMINATION OF THIS AGREEMENT.

- 26.7 Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. Items 1, 3, 4, 6, and 7 to Exhibit 4 can be updated by the Parties without further amendment to the Agreement, and Seller reserves the right to modify layout, equipment type, manufacturer, model, and/or quantity based on prevailing market conditions at time of engineering and construction. Except as otherwise explicitly provided in this Agreement for Exhibits 1, 4, 5, and 6 no amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8 Drafting. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9 Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership, joint venture or other relationship that may invoke fiduciary obligations between the Parties.
- 26.11 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement and such transactions and the intention of the Parties.
- 26.12 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and

the same Agreement.

- 26.13 No Third-Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any third party not a party hereto.
- 26.14 Waivers. The failure of a Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of a Party thereafter to enforce each and every such provision. A waiver under this Agreement must be in writing and state that it is a waiver. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.
- 26.15 Buyer Support. Buyer understands and acknowledges that the Seller intends to obtain financing for the construction of the Facility. Buyer agrees to use Commercially Reasonable efforts to assist the Seller in obtaining any such financing, which may include without limitation providing information, providing access to management and executing reasonably requested consents, agreements or similar documents to the extent reasonably acceptable to Buyer.
- 26.16 Publicity. Upon request, Seller will provide Buyer with photographs of the Facility for use by Buyer for informational purposes and for promoting awareness of Buyer's renewable development efforts. Buyer, subject to written consent and approval of Seller, will be allowed to add its logo to all signage at the Facility, if desired. Seller is also aware that information about the Facility will be used by Buyer on its website, in its external press releases, and in other Buyer publications. Subject to the exceptions set out in Section 16 (including, for the avoidance of doubt, exceptions for required disclosures pursuant to Section 16.5), and except for the purpose of fulfilling its obligations pursuant to this Agreement or adhering to any Applicable Law or any Requirements of Law, and also except to the extent that Buyer's logo is installed, at Buyer's discretion, on signage at the Facility, which signage (and images and video of the same) can be used by Seller for promotional purposes and as part of any other announcements or releases: (a) Seller shall not make any announcement or release any information concerning this Agreement to any member of the public, press, Person, official body, or otherwise without Buyer's prior written consent and approval, which shall not be unreasonably withheld, conditioned or delayed, and (b) Seller shall have no right, without Buyer's written consent which Buyer may grant or withhold in its sole and absolute discretion, to use the name, logo or intellectual property of Buyer in any press releases or websites for purely promotional purposes for the benefit of Seller. Subject to the immediately preceding sentence or as otherwise explicitly set out in this Agreement, the Parties acknowledge and agree that this Agreement does not by itself create for Seller any right to use the name, logo or intellectual property of any businesses or other taxpayers located or doing business within Buyer's jurisdiction in any press releases, websites, or any other public documents, statements or publications, nor does this



Agreement limit any otherwise existing Seller right, or any Seller right that may otherwise be later created, including pursuant to any agreements or any rights at law, to use the name, logo or intellectual property of any businesses or other taxpayers located or doing business within Buyer's jurisdiction, including in any press releases, websites, or any other public documents, statements or publications.

26.17 [REDACTED]

26.18 Buyer Affiliates. Buyer represents and warrants that it has no Affiliates. The Parties have caused this Agreement for the Purchase of Solar Energy and Environmental Attributes to be executed by their respective duly authorized representatives as of the Effective Date.

*[signature page follows]*

BUYER:

**CENTRAL FLORIDA TOURISM  
OVERSIGHT DISTRICT**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

SELLER:

**BRONSON SOLAR, LLC**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**Exhibit 1**

**Estimated Monthly Energy Production of the Facility (First Year of Operation)**

<b>Month</b>	<b>Estimated Facility Energy Production (MWh)</b>
January	██████
February	██████
March	██████
April	██████
May	██████
June	██████
July	██████
August	██████
September	██████
October	██████
November	██████
December	██████

Seller has taken into consideration the expected solar panel degradation and Station Power in the amounts reflected in this Exhibit 1, but has not, for the avoidance of doubt, taken into account all Outages, Curtailed Energy, or the like.

For purposes of the estimates on this Exhibit 1, the Commercial Operation Date is treated as being January 1 and each month is treated as being the complete calendar month.

**Exhibit 2**  
**Contract Price**

[REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

**Exhibit 3**

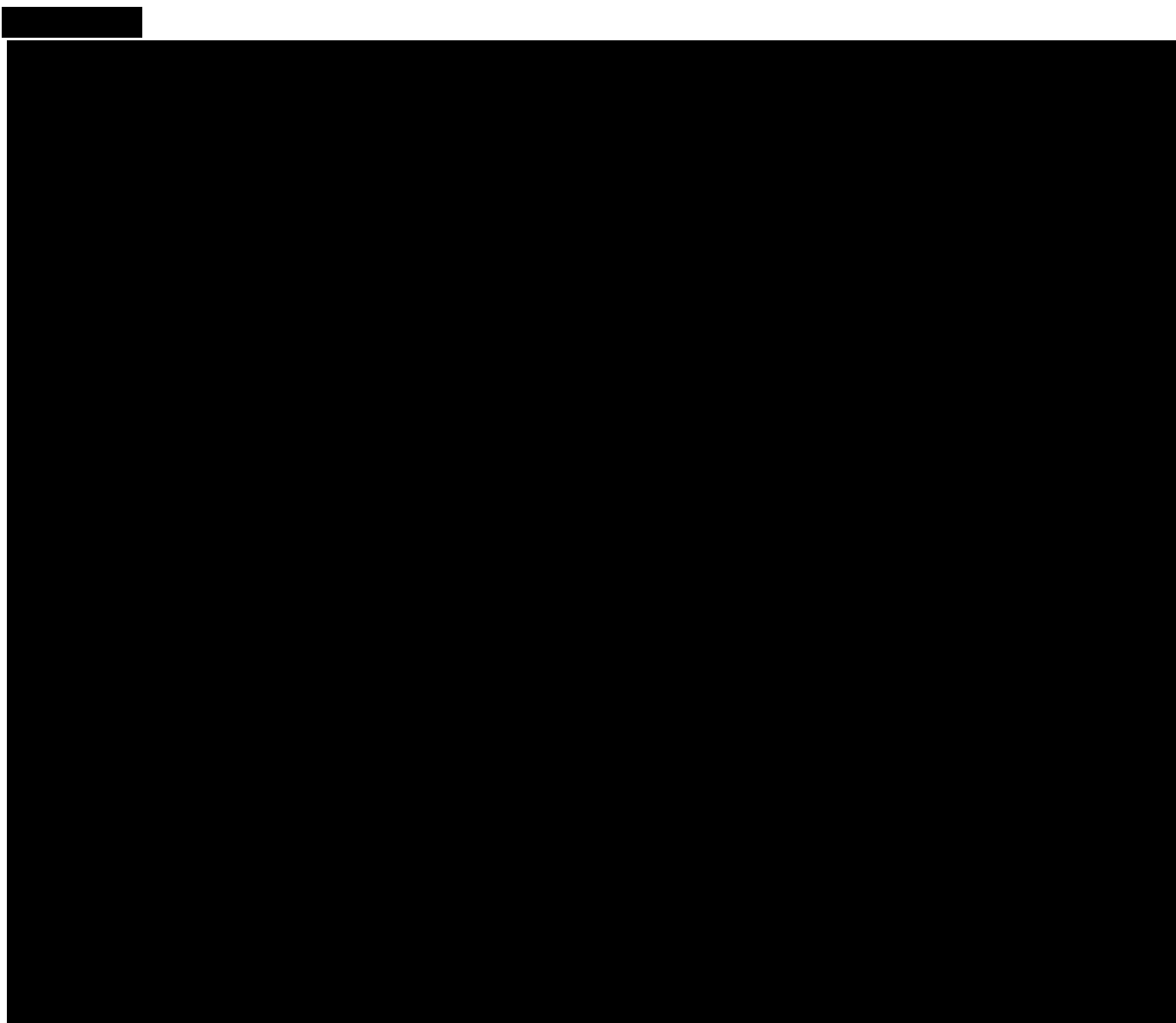
**Operational Milestone Schedule**

<b>Deadline</b>	<b>Performance/Result Seller Shall Timely Achieve</b>
[REDACTED]	Developmental Performance Assurance Delivery at [REDACTED]
[REDACTED]	NRIS Approval and Executed Interconnection Agreement
[REDACTED]	Seller issues full notice to proceed (“NTP”) to its engineering, procurement and construction contractor under a definitive engineering procurement and construction contract that provides for the engineering, procurement and construction of the Facility (“EPC Contract”)
[REDACTED]	Construction and Key Milestone Schedule/Identification of Key Seller Personnel for Facility construction
[REDACTED]	Identification of Key Seller Personnel for Facility operations
[REDACTED]	Seller shares test plan for the Facility.
[REDACTED]	“Functional Testing” (as defined in the EPC Contract) of the Facility has been achieved
[REDACTED]	Target COD
[REDACTED]	Commercial Operation Date Deadline

**Exhibit 4**

**Facility Information**

1. Facility Name: Bronson Solar, LLC
2. Facility Address or Location: Levy County Florida
3. Description of Facility: 74.5 MWac photovoltaic solar generating facility
4. Nameplate Capacity Rating: 74.5 MW as limited by the firmware associated with the equipment for the Facility as measured at the Delivery Point.
5. Fuel Type/Generation Type: Solar Photovoltaic



7. Delivery Point Diagram (include Delivery Point, metering, Facility substation): POI location on diagram above includes Delivery Point, metering and Facility Substation
8. Transmission Provider: Duke Energy Florida

Items 1, 3, 4, 6 and 7 to Exhibit 4 can be updated as provided in this Agreement by the Parties without further amendment to the Agreement. Seller reserves the right to modify layout, equipment type, manufacturer, model, and/or quantity based on prevailing market conditions at time of engineering and construction.

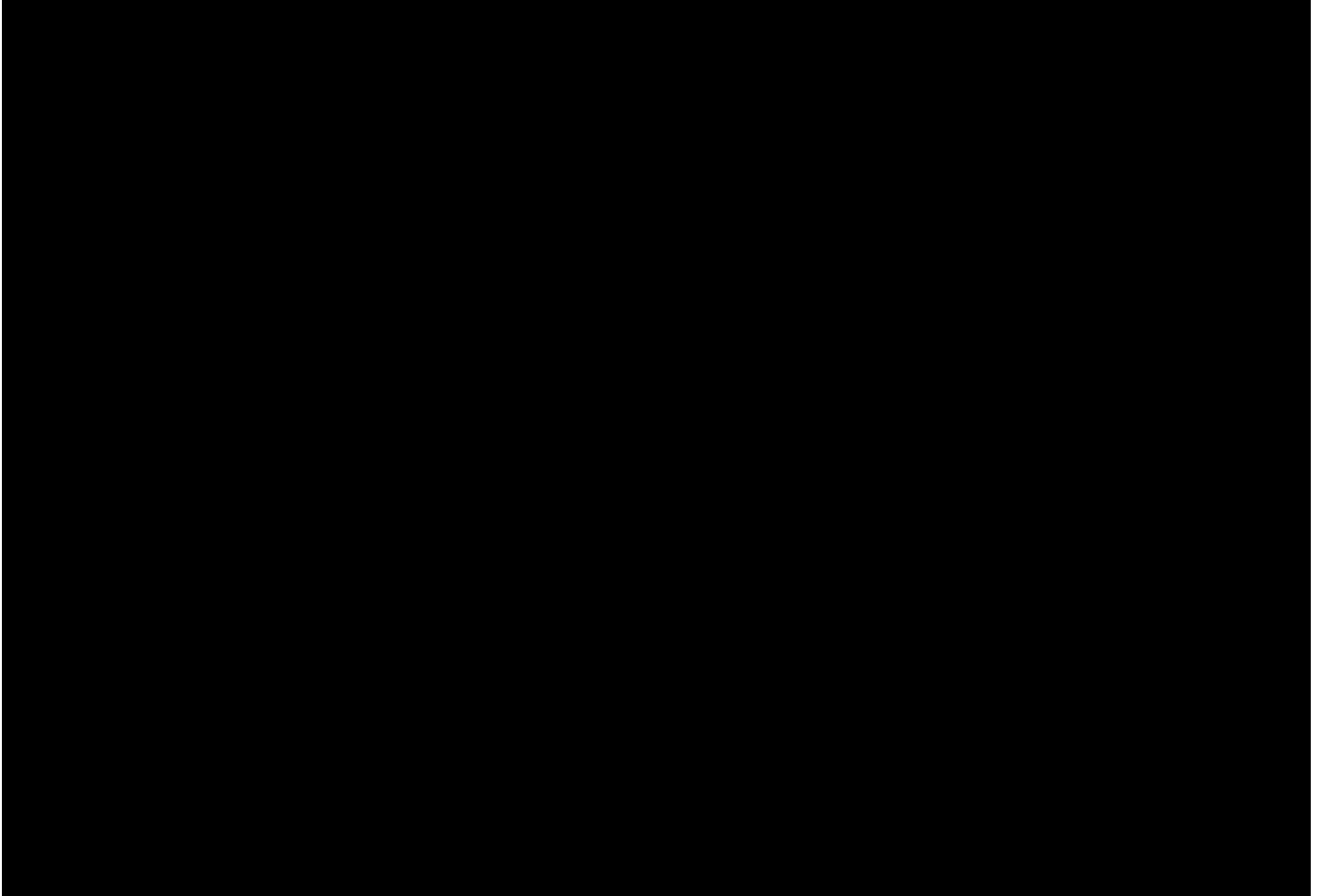




**Exhibit 6**

**Transmission Provider Facilities and Facility One-Line Diagram**

Seller shall provide Buyer a listing of the Transmission Provider Facilities and a One-Line Diagram after execution of the Interconnection Agreement.



**Exhibit 7**

**SAMPLE FORM OF LETTER  
OF CREDIT**

**DATE:** \_\_\_\_\_, \_\_\_\_\_

**BENEFICIARY:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**APPLICANT:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTN:** \_\_\_\_\_

**ATTN:** \_\_\_\_\_

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF

\_\_\_\_\_  
("APPLICANT"), WE HEREBY ESTABLISH, EFFECTIVE IMMEDIATELY, IN FAVOR OF

\_\_\_\_\_  
(THE "BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER \_\_\_\_\_ IN THE AGGREGATE AMOUNT OF

\_\_\_\_\_ AND 00/100 UNITED STATES DOLLARS (\$\_\_\_\_\_)

(AS SUCH AMOUNT MAY BE REDUCED FROM TIME TO TIME BY PARTIAL DRAWS HEREUNDER, THE "STATED AMOUNT").

WE ARE INFORMED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS BEING ISSUED IN CONNECTION WITH THAT CERTAIN AGREEMENT FOR THE PURCHASE OF SOLAR ENERGY AND ENVIRONMENTAL ATTRIBUTES BETWEEN BENEFICIARY AND APPLICANT DATED \_\_\_\_\_, 20 (AS MAY BE AMENDED, ASSIGNED, RESTATED OR REPLACED).

THIS LETTER OF CREDIT IS ISSUED, PRESENTABLE AND PAYABLE AT OUR COUNTERS AT \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ AND EXPIRES WITH OUR CLOSE OF BUSINESS ON \_\_\_\_\_, \_\_\_\_\_ (AS MAY BE EXTENDED AS SET FORTH BELOW, THE "EXPIRY DATE").

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT AND THE EXPIRY DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT WRITTEN AMENDMENT FOR PERIODS OF ONE (1) YEAR FROM THE PRESENT EXPIRY DATE, AND THEN FROM EACH FUTURE EXPIRY DATE, UNLESS AT LEAST NINETY (90) DAYS PRIOR TO ANY SUCH EXPIRY DATE WE SEND YOU NOTICE BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, OR COURIER SERVICE OR HAND DELIVERY AT THE ABOVE STATED ADDRESS THAT THE EXPIRY DATE FOR THIS LETTER OF CREDIT WILL NOT BE EXTENDED BEYOND THE THEN APPLICABLE EXPIRY DATE.

FUNDS IN PAYMENT OF A DRAWING UNDER THIS LETTER OF CREDIT ARE

AVAILABLE TO THE BENEFICIARY BY PAYMENT AGAINST PRESENTATION AT OUR OFFICE OF THE FOLLOWING:

1. THE BENEFICIARY’S DEMAND FOR PAYMENT INCLUDING THE DOLLAR AMOUNT BEING DEMANDED SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER.
2. COPY OF THIS LETTER OF CREDIT AND ANY AMENDMENTS ATTACHED THERETO.
3. A DATED STATEMENT PURPORTEDLY SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BENEFICIARY CONTAINING ONE OR MORE OF THE FOLLOWING STATEMENTS WITH APPROPRIATE INSERTIONS:

(A) \_\_\_\_\_ OR ITS SUCCESSOR OR ASSIGNEE IS IN DEFAULT OR BREACH OF ONE OR MORE OF ITS OBLIGATIONS, AGREEMENTS OR WARRANTIES AND/OR IS THE DEFAULTING PARTY UNDER THAT CERTAIN AGREEMENT FOR THE PURCHASE OF SOLAR ENERGY AND ENVIRONMENTAL ATTRIBUTES DATED \_\_\_\_\_, 20\_\_\_\_, ORIGINALLY BETWEEN \_\_\_\_\_ AND \_\_\_\_\_, AS AMENDED, ASSIGNED, RESTATED OR REPLACED, AND/OR ANY RELATED DOCUMENT OR AGREEMENT; OR

(B) \_\_\_\_\_ (“BENEFICIARY”) OR ITS SUCCESSOR BY OPERATION OF LAW HAS DETERMINED OR HAS BEEN NOTIFIED THAT THE EXPIRY DATE FOR LETTER OF CREDIT NUMBER \_\_\_\_\_ HAS NOT BEEN OR WILL NOT BE EXTENDED AND BENEFICIARY OR ITS SUCCESSOR BY OPERATION OF LAW HAS NOT BEEN PROVIDED WITH SUBSTITUTE PERFORMANCE SECURITY IN FORM AND SUBSTANCE ACCEPTABLE TO BENEFICIARY OR ITS ASSIGNEE; OR

(C) \_\_\_\_\_ (“BENEFICIARY”) OR ITS SUCCESSOR BY OPERATION OF LAW IS ENTITLED TO MAKE DEMAND AND WITHDRAW ON THIS LETTER OF CREDIT NUMBER \_\_\_\_\_ PURSUANT TO THAT CERTAIN AGREEMENT FOR THE PURCHASE OF SOLAR ENERGY AND ENVIRONMENTAL ATTRIBUTES DATES \_\_\_\_\_ 20\_\_\_\_, ORIGINALLY \_\_\_\_\_

BETWEEN \_\_\_\_\_ AND \_\_\_\_\_, AS AMENDED,  
RESTATED OR REPLACED.

PRESENTATION BY FAX TRANSMISSION IS PERMITTED UNDER THIS LETTER OF CREDIT. FACSIMILES OF THE DEMAND FOR PAYMENT, STATEMENT AND A COPY OF THIS LETTER OF CREDIT ARE TO BE SENT TO FAX NUMBER

---

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED HEREUNDER. ANY DEMAND FOR PAYMENT HONORED HEREUNDER BY US SHALL REDUCE THE STATED AMOUNT BY THE DOLLAR AMOUNT PAID BY US PURSUANT THERETO.

It is a condition of this letter of credit that it is transferable and may be transferred in its entirety, but not in part, and may be successively transferred by you or any transferee hereunder to a successor transferee(s). Transfer under this letter of credit to such transferee shall be effected upon presentation to us of the original of this Letter of Credit and any amendments hereto accompanied by a request designating the transferee in the form of Annex A attached hereto appropriately completed Our transfer fee is for the Applicant.

ALL BANKING CHARGES ASSOCIATED WITH THIS LETTER OF CREDIT ARE FOR THE ACCOUNT OF THE APPLICANT.

WE ENGAGE WITH YOU THAT DEMANDS FOR PAYMENT UNDER AND IN CONFORMITY WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED ON PRESENTATION IF PRESENTED ON OR BEFORE THE EXPIRY DATE BY PAYMENT IN ACCORDANCE WITH THE BENEFICIARY'S PAYMENT INSTRUCTIONS. ALL PAYMENTS UNDER THIS LETTER OF CREDIT WILL BE MADE IN OUR OWN FUNDS. IF REQUESTED BY THE BENEFICIARY, PAYMENT UNDER THIS LETTER OF CREDIT WILL BE MADE BY WIRE TRANSFER OF IMMEDIATELY AVAILABLE FUNDS TO BENEFICIARY'S ACCOUNT AT ANY FINANCIAL INSTITUTION LOCATED IN THE CONTINENTAL UNITED STATES. WE SHALL HAVE A REASONABLE AMOUNT OF TIME, NOT TO EXCEED THREE (3) BANKING DAYS FOLLOWING THE DATE OF ITS RECEIPT OF DOCUMENTS FROM BENEFICIARY, TO EXAMINE THE DOCUMENTS

AND DETERMINE WHETHER TO TAKE UP OR REFUSE THE DOCUMENTS AND TO INFORM BENEFICIARY THEREOF ACCORDINGLY.

OUR OBLIGATIONS HEREUNDER ARE PRIMARY OBLIGATIONS THAT SHALL NOT BE AFFECTED BY THE PERFORMANCE OR NON-PERFORMANCE BY APPLICANT OF ANY OBLIGATIONS UNDER ANY AGREEMENT BETWEEN APPLICANT AND YOU OR BETWEEN APPLICANT AND US OR BETWEEN

APPLICANT AND ITS AGENTS.

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, REQUIREMENT OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT IS OUR INDIVIDUAL OBLIGATION AND IS IN NO WAY CONTINGENT UPON REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE INTERNATIONAL STANDBY PRACTICES (ISP98), INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590(“ISP98”).

AS TO MATTERS NOT COVERED BY ISP98, AND TO THE EXTENT NOT INCONSISTENT WITH ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, INCLUDING ARTICLE 5 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN THAT STATE.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND SUCH UNDERTAKING IS INDEPENDENT OF AND SHALL NOT IN ANY WAY BE MODIFIED, AMENDED OR AMPLIFIED BY REASON OF OUR REFERENCE TO ANY AGREEMENT OR INSTRUMENT REFERRED TO OR IN WHICH THIS LETTER OF CREDIT IS REFERRED TO. ANY SUCH AGREEMENT OR INSTRUMENT SHALL NOT BE DEEMED INCORPORATED HEREIN BY REFERENCE. THIS LETTER OF CREDIT MAY NOT BE AMENDED, CHANGED OR MODIFIED WITHOUT THE PRIOR WRITTEN CONSENT OF THE BENEFICIARY, THE APPLICANT AND US.

All parties to this Letter of Credit are advised that the U.S. Government has in place certain sanctions against certain countries, territories, individuals, entities, and vessels. Citigroup entities, including branches and, in certain circumstances, subsidiaries, are/will be prohibited from engaging in transactions or other activities within the scope of applicable sanctions.

SINCERELY,

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**Annex A**  
**REQUEST FOR FULL TRANSFER**  
**RELINQUISHING ALL RIGHTS AS**  
**BENEFICIARY**

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Re: Standby L/C No. \_\_\_\_\_

Issued by: \_\_\_\_\_.

\_\_\_\_\_ Ref: \_\_\_\_\_

Receipt is acknowledged of the original Standby referred to above, issued in favor of ourselves as the original or transferee beneficiary thereof. We hereby represent and warrant that: (i) we have not presented any demand or request for payment or transfer under the Standby affecting the rights to be transferred, (ii) the Transferee's name and address are correct and complete and the transactions underlying the Standby, and (iii) the execution, delivery, and performance of this transfer (a) are within the undersigned's powers,

(b) have been duly authorized, (c) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting the us or any of our properties, (d) do not violate any applicable domestic or foreign law, rule, or regulation, and (e) do not require any notice, filing, or other action to, with, or by any governmental authority. We agree to indemnify you and hold you harmless from and against any and all claims, liabilities, and expenses (including reasonable attorney's fees) in any way related to or arising out of or in connection (i) with any breach by us of the representations and warranties herein, and (ii) our failure to remit to you, upon demand, funds paid to us pursuant to a demand dated after the date of this transfer form. We hereby irrevocably transfer all of our rights to draw under the Standby and request you to transfer the said Standby in its entirety to:

\_\_\_\_\_

whose address is \_\_\_\_\_

\_\_\_\_\_

(the "Transferee")

(Optional) Please advise Beneficiary through the below-indicated Advising Bank:

\_\_\_\_\_

\_\_\_\_\_

**CONFIDENTIAL– TRADE SECRET**

We are returning the original Standby, including amendments to this date, to you herewith in order that you may deliver it to the Transferee, together with your customary letter of transfer.

It is understood that any amendments to the Standby which you may issue or receive are to be advised by you directly to the Transferee, and that the drafts and documents of the Transferee, if presented in accordance with the conditions of the Standby, are to be forwarded by you directly to the party for whose account the Standby was issued (or any intermediary) without our intervention.

\_\_\_\_\_ reference \_\_\_\_\_

We request that you notify the Transferee of the transfer of this Standby in such form and manner as you deem appropriate and the effective date shall be the date on which you acknowledge this request and give notice thereof to the Transferee.

SIGNATURE GUARANTEED

Sincerely yours,

The Beneficiary's signature(s)  
with title(s) conforms to that  
on file with us and such is/are  
authorized  
for the execution of this instrument.

\_\_\_\_\_  
(Name of Bank)  
transferee)

\_\_\_\_\_  
(Name of first Beneficiary or subsequent

\_\_\_\_\_  
(Bank Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Authorized Name and Title)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Name and Title)

\_\_\_\_\_  
(2<sup>nd</sup> Authorized Name and Title)  
(If applicable)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(2<sup>nd</sup> Authorized Signature)

(If applicable)



**Exhibit 8**

1.1 Early Purchase Option.

1.1.1 Seller hereby grants to Buyer an option to purchase (“Early Purchase Option”) the Facility as of the 13<sup>th</sup> Anniversary of the Commercial Operation Date (the “Early Option Closing Date”), at the Exercise Price by providing written notice to Seller no less than two-hundred and forty (240) days before the Early Option Closing Date (“Early Option Notice”).

1.1.2 Upon the acquisition of the Facility by Buyer pursuant to this Section 1, this Agreement shall terminate and neither Party shall have any liability to the other Party under this Agreement, except for any liability that arose prior to such termination.

1.2 Purchase Option at the End of Term.

1.2.1 Seller hereby grants to Buyer the option to purchase the Facility at the end of the Term for the Exercise Price (the “Final Purchase Option”) which option may be exercised by Buyer providing written notice to Seller no less than two-hundred and forty (240) days prior to the end of the Term of Buyer’s interest in exercising the Final Purchase Option (“Final Option Notice”).

1.3 Determination of Exercise Price and Related Matters.

1.3.1 If Buyer provides an Early Option Notice or Final Option Notice to Seller and the Parties are unable to mutually agree upon the Fair Market Value of the Facility Assets for purposes of establishing the amount of the Exercise Price within thirty (30) days after delivery of such Early Option Notice or Final Option Notice, the Parties shall, within fifteen (15) days after the end of such thirty (30) day period, jointly appoint a single third party, who shall be an experienced, industry-recognized expert in the valuation of photovoltaic solar energy generation projects, in each case mutually acceptable to Buyer and Seller (“Third-Party Appraiser”), who will then determine the Fair Market Value of the Facility Assets within thirty (30) days after such Third-Party Appraiser is appointed. If the Parties are unable to agree on a single Third-Party Appraiser within such fifteen (15) day period, each Party shall designate an experienced, industry-recognized expert in the valuation of photovoltaic solar energy generation projects, and those two parties shall jointly appoint a third independent, experienced, industry-recognized expert in the valuation of photovoltaic solar energy generation projects who will then be considered the Third-Party

Appraiser and shall determine the Fair Market Value of the Facility Assets within thirty (30) days after such appointment. If the Fair Market Value of the Facility Assets is determined by a Third-Party Appraiser, the fees and costs of such Third-Party Appraiser will be paid equally by Seller and Buyer. If it is necessary that each Party designate an experienced, industry-recognized expert in the valuation of photovoltaic solar energy generation projects in order to have them jointly appoint the Third-Party Appraiser who determines the Fair Market Value, each Party will pay the fees and costs of the experienced, industry-recognized expert in the valuation of photovoltaic solar energy generation projects whom such Party designated. The Fair Market Value of the Facility Assets determined by the Third-Party Appraiser pursuant to this Section 1.3.1 shall be final and binding on the Parties.

1.3.2 Notwithstanding anything herein to the contrary, if Buyer exercises the Early Purchase Option or Final Purchase Option, then, prior to the Option Closing, Buyer may, at Buyer's option, cancel and rescind such exercise upon notice of cancellation and rescission of such exercise to Seller within five (5) Business Days after the Exercise Price applicable to such exercise shall have been finally determined by mutual agreement of the Parties, by resolution of any Dispute related to the amount of the Exercise Price or Third Party Appraiser, as applicable, or by any combination of the foregoing that, in any such case, constitutes a determination of such Exercise Price that is final and binding on the Parties.

1.4 Efforts Required to Transfer Facility. If Buyer exercises the Early Purchase Option, the Final Purchase Option or otherwise agrees to purchase the Facility pursuant to Section 1.1 or 1.2, then after all necessary regulatory approvals are received, Seller will take all actions necessary to transfer by deed, bill of sale, or both, the Facility to Buyer, as well as all other improvements placed on the site by Seller that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance for which Seller or its representatives are responsible. In addition, Seller will assign to Buyer all transferrable permits, contracts, real property interests and other Facility Assets, including all transferrable warranties for the Facility. If Buyer agrees to purchase the Facility pursuant to Section 1.1 or 1.2, such purchase shall occur pursuant to a form of purchase and sale agreement with customary representations, warranties and covenants and in form reasonably acceptable to Buyer and Seller, which purchase shall be conditioned upon Buyer and Seller obtaining all necessary regulatory approvals.

1.5 Due Diligence; Cooperation; Regulatory Approvals; Notice of Rights. Seller will provide in a timely manner, information regarding the Facility which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of

the Facility pursuant to Section 1.1 or 1.2. Notwithstanding anything to the contrary in this Agreement, Buyer shall be entitled to exercise either the Early Purchase Option or the Final Purchase Option while Buyer is in breach of this Agreement, or if Buyer has committed an uncured Event of Default, including if this Agreement is terminated by Seller in relation to Buyer's Event of Default.

**Exhibit 9**

**SAMPLE FORM OF  
GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), is made by [\_\_\_\_\_] (“**Guarantor**”), in favor of [\_\_\_\_\_] (“**Counterparty**”).

**RECITALS:**

- A.** WHEREAS, Counterparty and [Guarantor’s indirect, wholly-owned subsidiary] [\_\_\_\_\_] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain [*Insert Name of Agreement*] [dated/made/entered into/effective as of] \_\_\_\_\_, 20\_\_ (the “**Agreement**”); and
- B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

\* \* \*

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement on or after the Effective Date (the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed \_\_\_\_\_ [*spell out the dollar amount*] U.S. Dollars (U.S. \$ \_\_\_\_\_) (the “**Maximum Recovery Amount**”).
- (b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including attorney’s fees) to the extent reasonably and actually incurred by the Counterparty (subject in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

- (a)** If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”).

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(b) Guarantor’s obligation hereunder to pay any particular Overdue Obligation(s) to Counterparty is conditioned upon Guarantor’s receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Overdue Obligation(s) covered by such demand, the specific date(s) upon which such Overdue Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Overdue Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; provided, however, that an amendment to this Guaranty increasing the Maximum Recovery Amount and/or extending the termination date of this Guaranty may be executed solely by Guarantor.

**6. WAIVERS AND CONSENTS.** Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Except as required in Section 2 above, Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) presentment and demand concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require

that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any law or statute that requires that Obligor or any other person be joined in, notified of or made part of any action against Guarantor; and (v) notice of extensions, modifications, renewals, or novations of the Obligations, of any new transactions or other relationships between Counterparty and Obligor, or of changes in the financial condition of, ownership of, or business structure of Obligor.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. **TERMINATION.** Guarantor may terminate this Guaranty by providing a written termination notice to Counterparty specifying the date upon which such termination will take effect (provided that no such termination shall take effect prior to 5:00 p.m. (Eastern Prevailing Time) on the fifth (5th) Business Day after the termination notice has been delivered to Counterparty in accordance with Section 9 hereof). No such termination shall be effective until the Counterparty has been provided with a replacement guaranty, letter of credit, or other financial accommodation on substantially the same terms as, or no less protection than the terms of this Guaranty from a party with a credit rating equal to or better than that of the Guarantor. Upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as may pertain pursuant to the last sentence of this paragraph. No such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

Unless terminated earlier, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately at \_\_\_\_\_ [*Insert Contract expiration date.*]; provided, however, that no such termination shall affect Guarantor's liability with respect to any Obligations arising under any Transactions entered into prior to the time the termination is effective, which Obligations shall remain subject to this Guaranty.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "**Notice**") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<i>TO GUARANTOR: *</i>	<i>TO COUNTERPARTY:</i>
_____	_____
_____	_____
_____	_____
<i>Attn:</i> Treasurer	<i>Attn:</i> _____
<i>[Tel: (____) ____-____ -- for use in connection with courier deliveries]</i>	<i>[Tel: (____) ____-____ -- for use in connection with courier deliveries]</i>

\* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to [ATTN: \_\_\_\_\_]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of Florida, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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- (f)** Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of any state or federal court of competent jurisdiction located in Orange County, Florida for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g)** COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY.
- (h)** Delivery of an executed signature page of this Guaranty by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words “execute,” “execution,” “signed,” “signature,” and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act

\* \* \*

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_, but it is effective as of the Effective Date.

[ \_\_\_\_\_ ]  
\_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_



**Exhibit 10**

**RESERVED**

EXHIBIT 11

SAMPLE FORM OF CONSENT AND AGREEMENT

This FACILITY LENDER CONSENT (as amended, modified or supplemented from time to time, this “Consent”), dated as of [\_\_\_\_\_], is executed by \_\_\_\_\_, a political subdivision organized and existing under the laws of the State of Florida (“Contracting Party”), \_\_\_\_\_, a Delaware limited liability company (“Assignor”), and [ ] (the “Lender”).

A. Assignor is undertaking the development, construction, completion, ownership and operation of a \_\_\_\_\_ MW<sub>AC</sub> a solar photovoltaic generating facility to be located in \_\_\_\_\_ County, Florida (the “Facility”);

B. In order to finance the development, construction, operation and use of the Facility, Assignor has entered into that certain Financing Agreement, dated as of [\_\_\_\_], 202\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), [between][among] Assignor [and the Lender][the Lender and the other lenders party thereto (“the Lenders”)], pursuant to which, among other things, the Lender has extended commitments to make loans to, and for the benefit of Assignor; [*Description of financing, relevant documents, parties and defined terms related thereto used in this Form of Facility Lender Consent are subject to change based on specifics of actual Facility Debt and Financing Documents.*]

C. Assignor and Contracting Party have entered into that certain Agreement for the Purchase of Solar Energy and Environmental Attributes Assignor and Contracting Party dated as of [\_\_\_\_\_] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Agreement”);

D. As collateral security for all obligations of Assignor to the Lender under the Financing Agreement and related documents, Assignor has granted to the Lender a first- priority security interest in all of Assignor’s right, title and interest in, to and under the Agreement (the “Assigned Interest”) pursuant to that certain [Security Agreement (Borrower)], dated as of even date herewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), made by Assignor in favor of the Lender for the benefit of the Lender[s]; and

E. It is a requirement under the Financing Agreement that Contracting Party and the other parties hereto shall have executed this Consent.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree, notwithstanding anything in the Agreement to the contrary, as follows:

1. Consent and Agreement. Contracting Party:

(a) consents to the assignment of the Assigned Interest as collateral security to the Lender;

(b) acknowledges the right (but not the obligation) of the Lender in the exercise of its rights and remedies under the Security Agreement to make all demands, give all notices, take all actions and exercise all rights of Assignor under the Agreement, and agrees to accept any such exercise; provided, however, that, insofar as the Lender exercises any of its rights under the Agreement or makes any claims with respect to payments or other obligations under the Agreement, the terms and conditions of the Agreement applicable to such exercise of rights or claims shall apply to the Lender to the same extent as to Assignor;

(c) agrees not to (i) cancel or terminate the Agreement or suspend performance of its services thereunder, except as provided in the Agreement or by operation of law and, in any event, except as in accordance with Section 4 of this Consent; and (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its right, title or interest in the Agreement, in each case without the prior written consent of the Lender, except for an assignment, sale or transfer of a security interest to Contracting Party's lender or lenders, or as otherwise permitted in the Agreement; and

(d) agrees to promptly deliver to the Lender copies of all notices of breach, default, suspension or termination delivered by Contracting Party under the Agreement.

2. Assignor's Acknowledgement. Assignor acknowledges and agrees that Contracting Party is permitted to perform its obligations under the Agreement upon the Lender's exercise of Assignor's rights in accordance with this Consent, and that Contracting Party shall bear no liability to Assignor solely as a result of performing its obligations under the Agreement upon such exercise by the Lender and Assignor will hold Contracting Party harmless as a result.

3. Transferees. Contracting Party agrees that if the Lender shall notify Contracting Party in writing that as a result of foreclosure (whether judicial or non-judicial) or deed-in-lieu-of-foreclosure, the Lender or any other applicable purchaser, successor, assignee or designee (in each case, a "Transferee") is to succeed to Assignor's rights in the Assigned Interest, then the Transferee shall be substituted for Assignor under the Agreement and Contracting Party shall (a) recognize the Transferee as its counterparty under the Agreement and (b) continue to perform its obligations under the Agreement in favor of the Transferee; provided, however, that such Transferee has (i) assumed in writing all of Assignor's obligations under the Agreement, other than any non-monetary obligations to cure any breaches or defaults which by their nature are incapable of being cured, (ii) delivered to the Contracting Party all performance security then-required under the Agreement, and (iii) is (or contracts with) a Qualified Operator. If the Lender or an entity controlled by the Lender is the initial Transferee, such initial Transferee shall have the right to assign all of its interest in the Agreement to

any subsequent Transferee, provided such subsequent Transferee has assumed in writing all of the initial Transferee's obligations under the Agreement and is (or contracts with) a Qualified Operator. If the subsequent Transferee meets the requirements of the proviso in Section 24.1 of the Agreement or is approved by the Contracting Party, which approval will not be unreasonably withheld, conditioned or delayed, upon such assignment, the initial Transferee shall be released from any further liability under the Agreement.

4. Right to Cure. In the event of a default or breach by Assignor in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate the Agreement or suspend its performance thereunder (a "Default"), Contracting Party shall not terminate the Agreement or suspend its performance thereunder until it first gives written notice of a Default by Assignor and affords the Lender the same cure period afforded to Assignor (such Lender cure period to run concurrent with the Assignor's cure period), plus an additional (a) fifteen (15) Business Days with respect to a payment obligation, and (b) forty-five (45) Business Days with respect to a non-payment obligation beyond Assignor's cure period. Lender shall be entitled to exercise all rights and to cure any defaults of Assignor under the Agreement. Contracting Party agrees to accept such exercise and cure by Lender and to render all performance due by it under the Agreement and this Consent (provided that during any such cure period provided by the Agreement, the Lender or Assignor continues to diligently attempt to cure such Default). If (i) possession of the Facility is necessary to cure any Default, and the Lender promptly commences and diligently pursues foreclosure or any other proceedings necessary to take possession of the Facility, or (ii) the Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Default or from commencing or prosecuting such proceedings, and provided all monetary obligations on Assignor's part under the Agreement have been performed, then in either case the cure period in clause (b) of this Section 4 shall be extended for a reasonable period not to exceed 90 days to allow the Lender to complete such proceedings and the Lender or the applicable Transferee to effect the cure.

5. Replacement Agreement. In the event that the Agreement is rejected or terminated as a result of any bankruptcy or insolvency proceeding, Contracting Party shall, at the option of the Lender exercised within forty five (45) days after such rejection or termination, enter into a new agreement with the Lender or a designated entity controlled by the Lender having identical terms as the Agreement, but with a term no longer than the remaining term of the Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree, the "Replacement Agreement") after curing all outstanding payment and performance obligations under the Agreement at the time of termination, excluding those non-monetary obligations that are not capable of being cured; provided that Lender or its designated entity is (or contracts with) a Qualified Operator. The Lender (or such designee, as the case may be) shall have the right to assign all of its interest in the Replacement Agreement to any person, provided such assignee has

assumed in writing all of the Lender's or such designee's obligations under the Agreement and is (or contracts with) a Qualified Operator. Upon an assignment as discussed in the immediately preceding sentence, the Lender or such designee shall be released from any further liability under the Agreement.

6. No Liability. Contracting Party acknowledges and agrees that the Lender (a) shall not have any liability or obligation under the Agreement until, if ever, the Lender expressly assumes such obligations in writing and (b) subject to Section 3 and Section 5, has no obligation to cure any Default Notwithstanding the foregoing, in the event the Lender or its designee(s) or assignee(s) succeed to Assignor's interest under the Agreement, Lender or its designee(s) or assignee(s) shall cure any defaults for failure to pay amounts owed under the Agreement. Notwithstanding anything to the contrary herein, the sole recourse of Contracting Party in seeking the enforcement against a Transferee who is a Lender of any obligations under this Consent, the Agreement or a Replacement Agreement shall be to any Transferee's right, title and interest in the Facility.

7. Payment of Monies. Commencing on the date of this Consent and so long as the Financing Agreement remains in effect, Contracting Party hereby agrees to make all payments required to be made by it under the Agreement in U.S. dollars and in immediately available funds, directly into the account to be established by Assignor and Lender, or to such other Person and/or at such other address or account as the Lender may from time to time specify in writing to Contracting Party, in either case, upon not less than five (5) business days' prior notice to the Contracting Party. Assignor hereby instructs Contracting Party, and Contracting Party accepts such instructions, to make all payments due and payable to Assignor under the Agreement as set forth in the immediately preceding sentence, and Assignor will hold Contracting Party harmless as a result.

8. Representations and Warranties. Contracting Party hereby represents and warrants to Assignor and the Lender as of the date of this Consent as follows:

(a) Contracting Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation/incorporation and has all requisite power and authority to execute, deliver and perform its obligations under the Agreement and this Consent.

(b) The execution, delivery and performance by Contracting Party of the Agreement and this Consent have been duly authorized by all necessary action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on Contracting Party.

(c) This Consent and the Agreement are legal, valid and binding obligations of Contracting Party, enforceable against Contracting Party in accordance with their respective terms except as enforceability may be limited by bankruptcy,

reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) The Agreement is in full force and effect and any amendment, supplement or modification thereto since the date of execution of the Agreement is reflected in the definition of "Agreement" set forth above.

(e) To the Contracting Party's actual knowledge, Assignor has fulfilled all of its obligations under the Agreement required as of the date hereof, and there are no breaches, Defaults or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow Contracting Party to terminate the Agreement or suspend its performance thereunder.

(f) To the Contracting Party's actual knowledge, there is no litigation, action, suit, proceeding or investigation pending or threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, could reasonably be expected to materially and adversely affect the performance by Contracting Party of its obligations hereunder or under the Agreement.

(g) The Agreement and this Consent are the only agreements between Assignor and Contracting Party with respect to the Facility, and all of the conditions precedent to effectiveness under the Agreement have been satisfied or waived.

(h) To Contracting Party's actual knowledge, no excusable delay, force majeure, or the like, has occurred under the Agreement.

9. Notices. Any communications between the parties hereto or notices provided herein to be given, may be given to the following addresses:

If to Contracting Party: [\_\_\_\_\_] [ ] Attn: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

with a copy  
to:

[\_\_\_\_\_] [\_\_\_\_\_] Attn: [\_\_\_\_\_]

Email: [\_\_\_\_\_]

If to Lender: [\_\_\_\_\_] [Address]  
[City/State/Zip  
Code] Attention:  
Telephone:  
Fax:  
Email:

With a copy, which shall not constitute  
notice, to: [\_\_\_\_\_] [Address]  
[City/State/Zip  
Code] Attention:  
Telephone:  
Facsimile:  
E-mail:

If to Assignor: Florida Renewable Partners  
700 Universe Boulevard,  
B2C/JB Juno Beach, FL  
33408  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:  
NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, FL 33408



All notices hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by telecopy, confirmed by telephone, or (e) if sent by electronic transmission, upon the sender’s receipt of an acknowledgement from the intended recipient (such as the “*return receipt requested*” function, as available, return email, or other written acknowledgement). Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a business day and, if not, on the next following business day) on which it is transmitted if transmitted before 4:00 p.m., recipient’s time, and if transmitted after that time, on the next following business day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder by giving of written notice to the other parties in the manner set forth herein above.

10. Binding Effect; Amendments; Confirmation. This Consent shall be binding upon and benefit the successors and assigns of Contracting Party, Assignor and the Lender and their respective successors, transferees and permitted assigns (including without limitation, any entity that refinances all or any portion of Assignor’s obligations under the Financing Agreement). No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by Contracting Party, the Lender and Assignor.

11. Governing Law. This Consent shall be governed by the laws of the State of Florida without reference to conflicts of laws rules thereof.

12. Waiver of Rights to Jury Trial. EACH OF CONTRACTING PARTY, ASSIGNOR AND THE LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

13. Counterparts. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

*[Signature page follows]*



**EXHIBIT 12**  
**SAMPLE FORM OF ESTOPPEL CERTIFICATE**

**ESTOPPEL CERTIFICATE**  
**(Agreement for the Purchase of Solar Energy and Environmental**  
**Attributes/Bronson Solar, LLC/Central Florida Tourism Oversight District)**

This **ESTOPPEL CERTIFICATE** (this “Estoppel Certificate”), dated as \_\_\_\_\_, 202\_ (“Effective Date”), is made and executed by \_\_\_\_\_, a political subdivision organized and existing under the laws of the State of Florida (“Buyer”). All capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement (defined below). and \_\_\_\_\_, a Delaware limited liability company (the “Project Company”).

A. \_\_\_\_\_, a Delaware limited liability company (the “Project Company”) and Buyer are parties to that certain Agreement for the Purchase of Solar Energy and Environmental Attributes, dated as of \_\_\_\_\_, 20\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Agreement”).

B. Pursuant to that certain [Equity Capital Contribution Agreement (the “ECCA”)], to be entered into by and among [\_\_\_\_\_] LLC, a [\_\_\_\_\_] \_\_\_\_\_], [\_\_\_\_\_] \_\_\_\_\_], a [\_\_\_\_\_] \_\_\_\_\_], the Project Company, and [\_\_\_\_\_] \_\_\_\_\_], a [\_\_\_\_\_] \_\_\_\_\_] (together with its successor and assigns, the “Tax Equity Investor”), the Tax Equity Investor shall acquire the [“Class B”] membership interests in the Project Company.

C. Pursuant to Section [ ] of the ECCA, the Tax Equity Investor requires that this Estoppel Certificate be delivered as a condition precedent to the consummation of the transactions contemplated by the ECCA.

**NOW, THEREFORE** consistent with the terms of Section 24.3 of the Agreement, and acknowledging that the Tax Equity Investor and the Project Company will rely hereon, Buyer hereby certifies, agrees and acknowledges as follows:

1. Representations and Certifications.

(a) Buyer hereby represents and certifies, as of the Effective Date, as follows:

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(1) No Amendments. Except as described in Schedule I hereto, there are no amendments, modifications or supplements (whether by waiver, estoppel certificate or otherwise) to the Agreement, either oral or written.

(2) No Previous Assignments. Buyer has no notice of any assignment relating to the right, title and interest of the Project Company in, to or under the Agreement.

(3) Representations or Warranties. To the best of Buyer's actual knowledge to date, after due inquiry, each representation or warranty made or given by Buyer in the Agreement is complete, true and correct.

(b) To the best of Buyer's knowledge to date, as of the Effective Date: 1) There exists no event or condition (a "Termination Event") that entitles or, with the passage of time or giving of notice, or both, would entitle either the Project Company or Buyer to terminate the Agreement or suspend the performance of its obligations under the Agreement and there are no unresolved disputes or legal proceedings between the parties under the Agreement; 2) There is no pending or, to Buyer's knowledge, threatened action or proceeding involving or relating to Buyer before any court, tribunal, governmental authority or arbitrator which purports to affect the legality, validity or enforceability of the Agreement; and 3) All amounts due under the Agreement as of the date hereof have been paid in full and Buyer owes no indemnity payments or other amounts to the Project Company under the Agreement.

(c) Buyer represents and warrants that (i) it has the power and authority to execute and deliver this Estoppel Certificate, (ii) this Estoppel Certificate constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, moratorium, insolvency and similar laws affecting the rights of creditors generally, and by general principles of equity, regardless of whether considered in a proceeding at law or in equity, (iii) the execution and delivery of this Estoppel Certificate by Buyer does not and will not violate or conflict with its charter or by-laws (or comparable constitutive documents), any statute, law, rule, regulation or ordinance, or any judgment, order, stipulation agreement, writ, injunction or decree of, any court or governmental authority applicable to it or any agreement to which it is a party or by which it or any of its property is bound, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of such party to provide this Estoppel Certificate, and (iv) the person signing this Estoppel Certificate on behalf of Buyer is authorized and duly empowered to do so.

**CONFIDENTIAL– TRADE SECRET**

2. Notices to Tax Equity Investor. Buyer agrees that any notices required to be delivered to Seller under Section [ ] of the Agreement, including notices of an Event of Default, shall be delivered by Buyer to the Tax Equity Investor at its notice addresses set forth on Schedule II hereto, and Buyer agrees that the Tax Equity Investor shall have the right (but not the obligation) to cure the defaults listed in any notice of default in accordance with Section [ ] of the Agreement within a cure period that is the same length as the cure period afforded to Seller under the Agreement with respect to such event (but in no event less than 90 days), and which starts on the later of (i) the same date that the Seller's cure period expires under the Agreement or (ii) the date that the Tax Equity Investor receive such notice that lists the default or defaults of the Seller under the Agreement.

3. Governing Law. This Estoppel Certificate shall be governed by and construed in accordance with the laws of the State of Florida without reference to conflicts of laws rules thereof.

**IN WITNESS WHEREOF**, Buyer has caused its duly authorized officer to execute and deliver this Estoppel Certificate as of the Effective Date.

**CENTRAL FLORIDA TOURISM OVERSIGHT  
DISTRICT**

By: \_\_\_\_\_

Name:

Title:

**CONFIDENTIAL- TRADE SECRET**

**SCHEDULE I**

**SCHEDULE II**

---

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 9.1**

**Board Meeting Date: 04/24/2024**

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Subject: FY2023 Annual Financial Statement presentation

Presented By: Susan Higginbotham

Department: Finance

---

**STAFF RECOMMENDATION (Motion Ready):** Approve Agenda Item 9.1, FY2023 Annual Financial Statement

**RELEVANT STRATEGIC GOALS:** Fiscal Sustainability

**PROOF OF PUBLICATION:** N/A

---

**BACKGROUND:** Presentation of the FY2023 Annual Financial Report by staff followed by the Audit Executive Summary presentation from Justin Conley and Lauren Strope of Cherry Bekaert, LLP, the District's external auditors.

**FINDINGS AND CONCLUSIONS:** Cherry Bekaert, LLP has performed the annual audit on the basic financial statements and have issued an unmodified opinion dated March 28, 2024. The independent auditors have issued favorable required compliance reports. Appendix A to the Independent Auditor's Management Letter included six "Statements of Condition" with best practice recommendations for improvement to certain District financial processes.

**FISCAL IMPACT:** Increase in net position of \$66,537,334 for the year ended September 30, 2023, resulting in total net position of \$630,136,373.

**PROCUREMENT REVIEW:** N/A

**LEGAL REVIEW:** N/A

**ALTERNATIVE:** N/A

**SUPPORT MATERIALS:** Power Point presentation of Annual Financial Statements and Audit Review from Finance, and Power Point presentation of Audit Executive Summary by Cherry Bekaert, LLP.



Lake Buena Vista, Florida

ANNUAL FINANCIAL REPORT  
AND COMPLIANCE REPORTS

Year Ended September 30, 2023

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
(LOCATED IN ORANGE AND OSCEOLA COUNTIES)  
1900 HOTEL PLAZA BOULEVARD  
LAKE BUENA VISTA, FLORIDA**

**BOARD OF SUPERVISORS**

**CHARBEL BARAKAT, VICE CHAIR  
BRIAN AUNGST, JR.  
RON PERI  
BRIDGET ZIEGLER  
CRAIG MATEER**

**DISTRICT ADMINISTRATOR**

**STEPHANIE KOPELOUSOS**

**CHIEF FINANCIAL OFFICER**

**SUSAN G. HIGGINBOTHAM, CPA**

**INDEPENDENT AUDITOR**

**Cherry Bekaert LLP  
Orlando, Florida**



CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
 ANNUAL FINANCIAL REPORT  
 Year Ended September 30, 2023

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CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
ANNUAL FINANCIAL REPORT  
Year Ended September 30, 2023

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## Report of Independent Auditor

To the District Administrator, Deputy District Administrator, and Board of Supervisors  
Central Florida Tourism Oversight District  
Lake Buena Vista, Florida

### Report on the Audit of the Financial Statements

#### **Opinions**

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information Central Florida Tourism Oversight District, formerly known as Reedy Creek Improvement District (the "District"), as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the District's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the District, as of September 30, 2023, and the respective changes in financial position, and, where applicable, cash flows thereof and the respective budgetary comparison for the General Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### **Basis for Opinions**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Our responsibilities under those standards are further described in the *Auditor's Responsibilities for the Audit of the Financial Statements* section of our report. We are required to be independent of the District, and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

#### **Responsibilities of Management for the Financial Statements**

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for twelve months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

### ***Auditor's Responsibilities for the Audit of the Financial Statements***

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinions. Reasonable assurance is a high level of assurance, but is not absolute assurance and, therefore, is not a guarantee that an audit conducted in accordance with generally accepted auditing standards and *Government Auditing Standards* will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the District's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control related matters that we identified during the audit.

### ***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis and required supplementary information, as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

**Other Reporting Required by *Government Auditing Standards***

In accordance with *Government Auditing Standards*, we have also issued our report dated March 28, 2024, on our consideration of the District's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the District's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the District's internal control over financial reporting and compliance.

*Cherry Bekaert LLP*

Orlando, Florida  
March 28, 2024

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

As management of the Central Florida Tourism Oversight District (the "District"), we offer readers of the District's financial statements this narrative overview and analysis of the financial activities of the District for the fiscal year ended September 30, 2023. We encourage readers to consider the information presented here in conjunction with the District's financial statements, which follow this section.

### **Financial Highlights**

- The assets plus deferred outflows of resources of the District exceeded liabilities plus deferred inflows of resources at the close of the most recent fiscal year by \$630,136,373 (net position).
- The District's total net position increased during the year by \$66,537,334.
- The District's total noncurrent liabilities decreased by \$57,234,672 during the year.
- As of September 30, 2023, the District's governmental funds reported combined ending fund balances of \$128,122,682, a decrease of \$19,883,927 in comparison with the prior year. Approximately 24% of this total amount is available for spending at the government's discretion (unassigned fund balance).
- At September 30, 2023, unassigned fund balance for the general fund was \$30,415,784, or 24% of total general fund expenditures, including transfers.

### **Overview of the Financial Statements**

This discussion and analysis is intended to serve as an introduction to the District's basic financial statements. The District's basic financial statements comprise three components: 1) government-wide financial statements, 2) fund financial statements, and 3) notes to the financial statements.

**Government-wide Financial Statements.** The government-wide financial statements are designed to provide readers with a broad overview of the District's finances, in a manner similar to a private-sector business.

The statement of net position presents information on all of the District's assets and deferred outflows of resources, and liabilities and deferred inflows of resources, with the difference between the two reported as net position. Over time, increases or decreases in net position may serve as a useful indicator of whether the financial position of the District is improving or deteriorating.

The statement of activities presents information showing how the government's net position changed during the most recent fiscal year. All changes in net position are reported as soon as the underlying event giving rise to the change occurs, regardless of the timing of related cash flows. Thus, revenues and expenses are reported in this statement for some items that will only result in cash flows in future fiscal periods (e.g., arbitrage rebate owed but not due until a future year and earned but unused vacation leave).

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Overview of the Financial Statements (continued)

Both of the government-wide financial statements distinguish functions of the District that are principally supported by taxes and charges for services (governmental activities) from other functions that are intended to recover all or a significant portion of their costs through user fees and charges (business-type activities). The governmental activities of the District include general government, public safety, physical environment and transportation. The business-type activities of the District include water, wastewater, reuse, gas, solid waste, chilled water, hot water and electric utility operations. The government-wide financial statements can be found on pages 14-17 of this report.

**Fund Financial Statements.** A fund is a grouping of related accounts that is used to maintain control over resources that have been segregated for specific activities or objectives. The District, like other state and local governments, uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements. All of the funds of the District can be divided into three categories: governmental, proprietary and fiduciary funds.

**Governmental funds.** Governmental funds are used to account for essentially the same functions reported as governmental activities in the government-wide financial statements. However, unlike the government-wide financial statements, governmental fund financial statements focus on near-term inflows and outflows of spendable resources, as well as on balances of spendable resources available at the end of the fiscal year. Such information may be useful in evaluating a government's near-term financing requirements.

Because the focus of governmental funds is narrower than that of the government-wide financial statements, it is useful to compare the information presented for governmental funds with similar information presented for governmental activities in the government-wide financial statements. By doing so, readers may better understand the long-term impact of the government's near-term financing decisions. Both the governmental fund balance sheet and the governmental fund statement of revenues, expenditures, and changes in fund balances provide a reconciliation to facilitate this comparison between governmental funds and governmental activities.

The District maintains three individual governmental funds. Information is presented separately in the governmental fund balance sheet and in the governmental fund statement of revenues, expenditures, and changes in fund balances for the general fund, debt service fund and the capital projects fund, all of which are considered to be major funds.

The District adopts an annual legally appropriated budget for its general fund and debt service fund. A budgetary comparison statement has been provided for the general fund to demonstrate compliance with this budget. The governmental fund financial statements can be found on pages 18-24 of this report.

**Proprietary fund.** Proprietary funds report the same functions presented as business-type activities in the government-wide financial statements. The District maintains a proprietary fund, the Utility Fund, which is an enterprise fund that accounts for eight utility operations. The Utility Fund provides the same type of information as the government-wide financial statements, only in more detail. The Utility Fund financial statements can be found on pages 25-29 of this report.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
MANAGEMENT'S DISCUSSION AND ANALYSIS

**Overview of the Financial Statements (continued)**

*Fiduciary funds.* Fiduciary funds are used to account for resources held for the benefit of parties outside the government. Fiduciary funds are not reflected in the government-wide financial statements because the resources of those funds are not available to support the District's own programs. The accounting used for fiduciary funds is much like that used for proprietary funds. The basic fiduciary fund financial statements can be found on pages 30-31 of this report.

**Notes to the Financial Statements.** The notes provide additional information that is essential to a full understanding of the data provided in the government-wide and fund financial statements. The notes to the financial statements begin on page 32 of this report.

**Government-wide Financial Analysis**

As noted earlier, net position may serve over time as a useful indicator of a government's financial position. In the case of the District, assets plus deferred outflows of resources exceeded liabilities plus deferred inflows of resources by \$630,136,373 at September 30, 2023.

**District's Net Position**

	Governmental activities		Business-type activities		Total	
	2023	2022	2023	2022	2023	2022
Current and noncurrent assets	\$ 148,576,244	\$ 161,883,709	\$ 226,836,296	\$ 246,767,538	\$ 375,412,540	\$ 408,651,247
Capital assets	957,726,780	935,526,776	303,890,494	300,420,959	1,261,617,274	1,235,947,735
Total assets	<u>1,106,303,024</u>	<u>1,097,410,485</u>	<u>530,726,790</u>	<u>547,188,497</u>	<u>1,637,029,814</u>	<u>1,644,598,982</u>
Deferred outflows of resources	50,250,933	58,530,045	982,520	1,683,931	51,233,453	60,213,976
Current liabilities*	66,820,484	58,923,659	42,935,982	46,900,790	109,756,466	105,824,449
Noncurrent liabilities	775,663,428	810,227,271	143,671,954	166,342,783	919,335,382	976,570,054
Total liabilities	<u>842,483,912</u>	<u>869,150,930</u>	<u>186,607,936</u>	<u>213,243,573</u>	<u>1,029,091,848</u>	<u>1,082,394,503</u>
Deferred inflows of resources	27,156,201	33,210,832	1,878,845	25,608,583	29,035,046	58,819,415
<b>Net position:</b>						
Net investment in capital assets	369,915,280	338,020,323	216,126,571	199,545,861	586,041,851	537,566,184
Restricted	2,930,018	1,020,949	52,964,183	53,222,270	55,894,201	54,243,219
Unrestricted (deficit)	<u>(85,931,454)</u>	<u>(85,462,505)</u>	<u>74,131,775</u>	<u>57,252,141</u>	<u>(11,799,679)</u>	<u>(28,210,364)</u>
	<u>\$ 286,913,844</u>	<u>\$ 253,578,767</u>	<u>\$ 343,222,529</u>	<u>\$ 310,020,272</u>	<u>\$ 630,136,373</u>	<u>\$ 563,599,039</u>

\*includes current liabilities payable from restricted assets



# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### **Government-wide Financial Analysis (continued)**

The District's net position includes: 1) net investment in capital assets (e.g., land, land improvements, buildings, machinery and equipment), less any related debt used to acquire those assets that is still outstanding and deferred outflows of resources and deferred inflows of resources attributable to the acquisition, construction, or improvement of those assets or related debt. The District uses these capital assets to provide infrastructure and services to businesses operating within the District; consequently, these assets are not available for future spending. Although the District's investment in its capital assets is reported net of related debt, it should be noted the resources needed to repay this debt must be provided from other sources, since the capital assets themselves cannot be used to liquidate these liabilities; 2) net position restricted by contract or enabling legislation for nonoperating uses such as capital and debt service, 3) net position assigned by the Board of Supervisors to be used for a specific purpose such as emergency reserves and 4) unrestricted net position (deficit). The net investment in capital assets continues to increase as the related debt is paid.

*Governmental activities.* Governmental activities reflect negative unrestricted net position balances primarily due to the District's net pension liability and net OPEB liability. The District recognized an increase in the proportionate share of the Florida Retirement System (FRS) pension liability, due largely to the passage of Senate Bill 7024, which increased the level of monthly benefits in the HIS Program.

The increase in ad valorem tax revenues is primarily the result of an increase in assessed values from the prior year. Interest and investment income was positive during the year after unrealized losses on investments in the prior year. The increase in general government expenses was due to an increase in personnel and operating costs associated with the transition to the new District with the passage of Chapter 2023-5, a significant increase in legal services for general counsel and litigation services related to pending lawsuits, and a self-reported IRS tax liability associated with the Disney passes and discounts previously provided to employees and retirees. The increase in public safety expenses was largely due to the newly approved A Unit union contract for emergency services. The increase in transportation expenses was due to budgeted roadway improvements.

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**MANAGEMENT'S DISCUSSION AND ANALYSIS**

**Government-wide Financial Analysis (continued)**

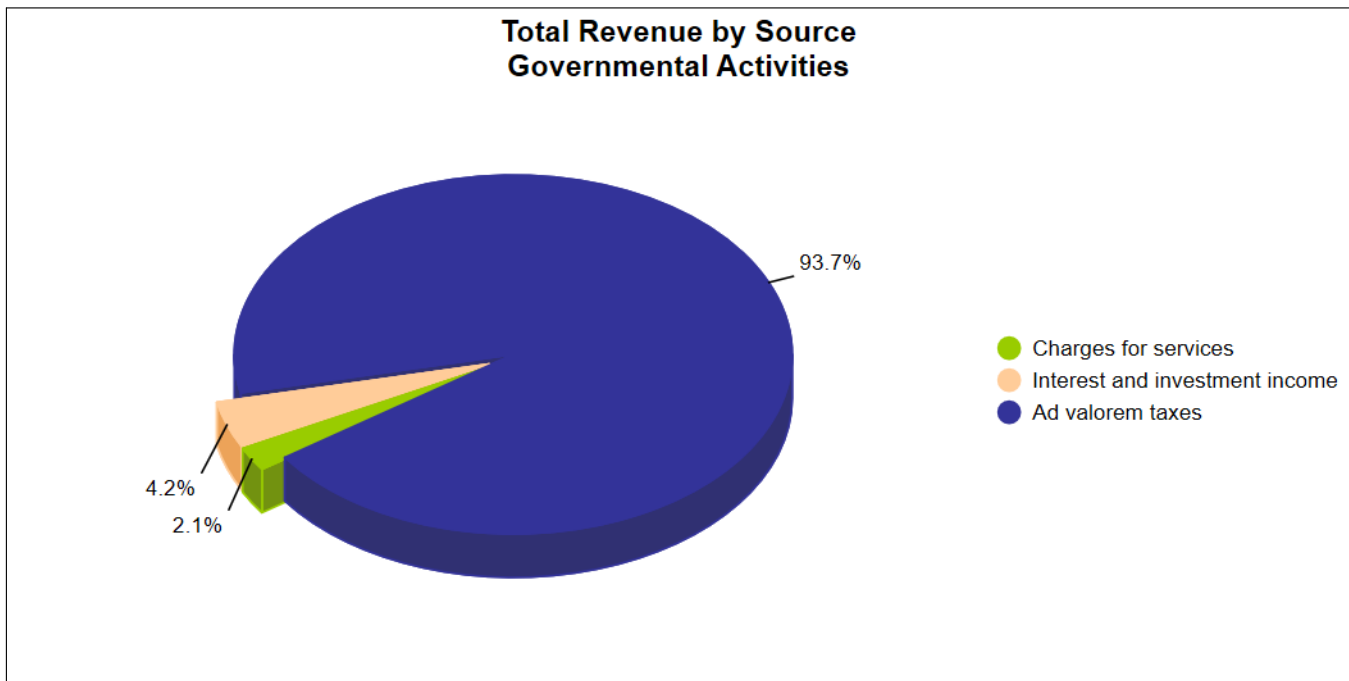
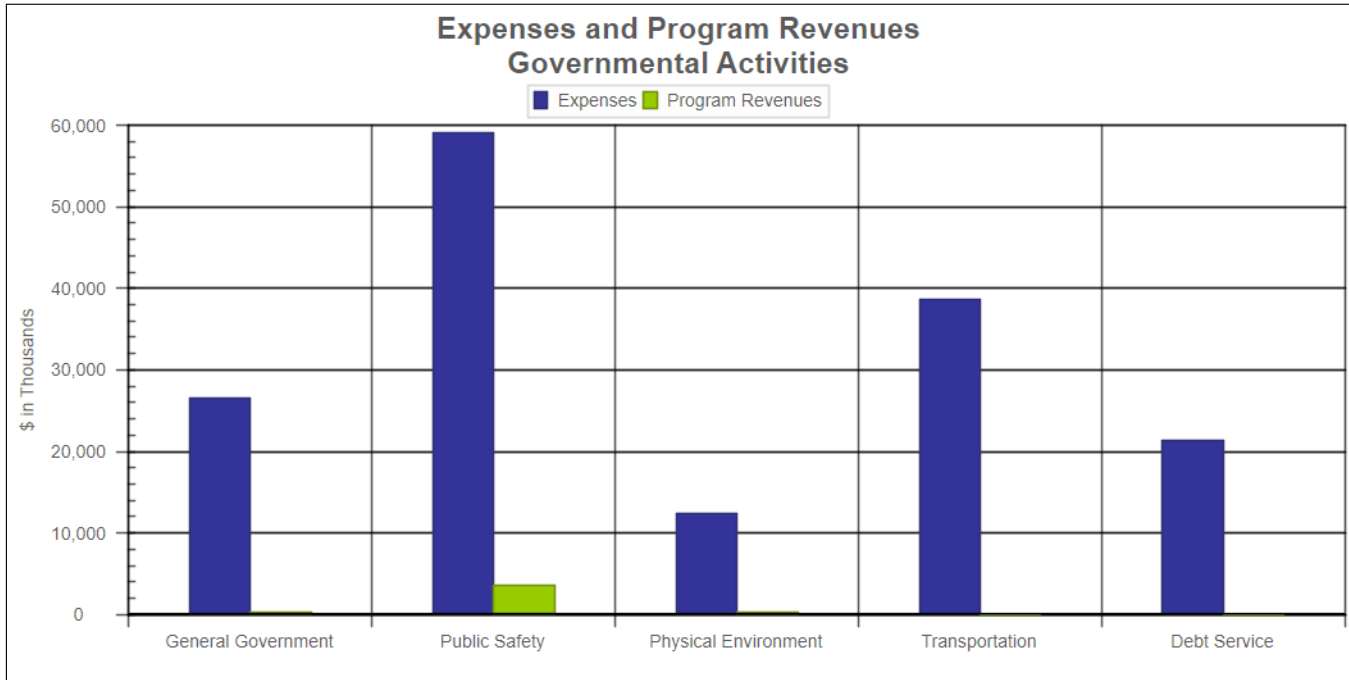
**District's Change in Net Position**

	Governmental activities		Business-type activities		Total	
	2023	2022	2023	2022	2023	2022
Revenues:						
Program revenues:						
Charges for services	\$ 4,094,426	\$ 3,734,230	\$ 189,116,897	\$ 170,128,384	\$ 193,211,323	\$ 173,862,614
Intergovernmental	-	446,263	-	-	-	446,263
Capital contributions	64,553	441,953	487,203	707,891	551,756	1,149,844
Total program revenues	4,158,979	4,622,446	189,604,100	170,836,275	193,763,079	175,458,721
General revenues:						
Ad valorem taxes - net	179,283,918	161,996,588	-	-	179,283,918	161,996,588
Interest and investment gain (loss)	7,952,993	(3,699,682)	5,685,300	(5,103,608)	13,638,293	(8,803,290)
Nonoperating revenue	-	565,055	-	438,896	-	1,003,951
Gain on disposal of capital assets	-	169,513	-	-	-	169,513
Total general revenues	187,236,911	159,031,474	5,685,300	(4,664,712)	192,922,211	154,366,762
Total revenues	191,395,890	163,653,920	195,289,400	166,171,563	386,685,290	329,825,483
Expenses:						
General government	26,461,034	18,518,558	-	-	26,461,034	18,518,558
Public safety	59,061,885	46,243,331	-	-	59,061,885	46,243,331
Physical environment	12,311,541	10,555,304	-	-	12,311,541	10,555,304
Transportation	38,600,761	33,909,035	-	-	38,600,761	33,909,035
Utility operations	-	-	158,413,109	149,446,775	158,413,109	149,446,775
Loss on disposal of capital assets	292,141	-	-	-	292,141	-
Interest on debt	21,333,451	22,614,007	3,674,034	4,145,738	25,007,485	26,759,745
Total expenses	158,060,813	131,840,235	162,087,143	153,592,513	320,344,575	285,432,748
Change in net position	33,335,077	31,813,685	33,202,257	12,579,050	66,537,334	44,392,735
Net position - beginning	253,578,767	221,765,082	310,020,272	297,441,222	563,599,039	519,206,304
Net position - ending	\$ 286,913,844	\$ 253,578,767	\$ 343,222,529	\$ 310,020,272	\$ 630,136,373	\$ 563,599,039

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Government-wide Financial Analysis (continued)

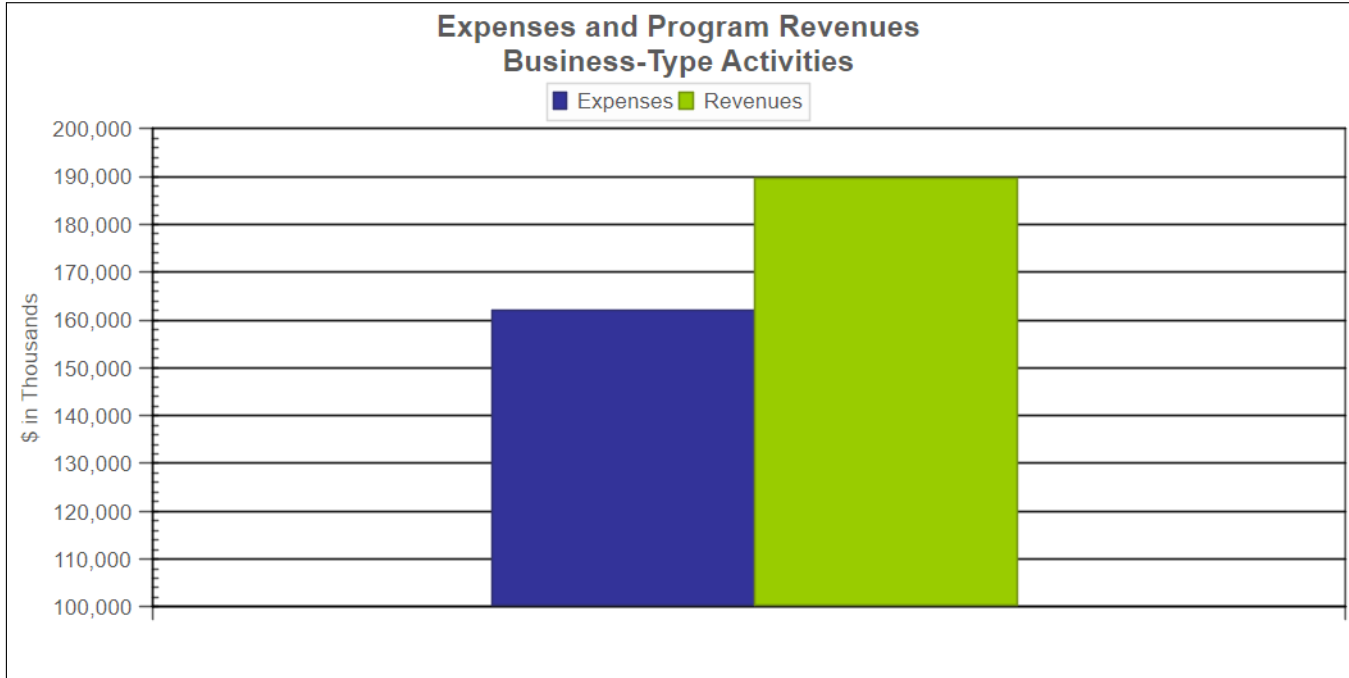


# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### Government-wide Financial Analysis (continued)

*Business-type activities.* Assets and liabilities decreased with the paydown of utility system debt. Charges for services were higher due to an increase in utility rates from the prior year. Interest and investment income was positive during the year after unrealized losses on investments in the prior year. Labor and operating expenses increased in fiscal year 2023 with normal inflationary impacts.



### Financial Analysis of the Government's Funds

As noted earlier, the District uses fund accounting to ensure and demonstrate compliance with finance-related legal requirements.

*Governmental funds.* The focus of the District's governmental funds is to provide information on near term inflows, outflows, and balances of spendable resources. Such information is useful in assessing the District's financing requirements. In particular, unreserved fund balance may serve as a useful measure of a government's net resources available for spending at the end of the fiscal year.

As of September 30, 2023, the District's governmental funds reported combined fund balances of \$128,122,682. Approximately 24% of this total amount constitutes unassigned fund balance, which is available for spending at the government's discretion. The remainder of fund balance is nonspendable, committed, restricted or assigned. Restricted amounts are not available for general spending as those amounts have been reserved to pay for capital projects from bond proceeds and debt service payments. Committed amounts are set-aside to pay for projects from drainage fees or property appraiser settlements as directed by the Board of Supervisors. Assigned amounts have also been designated by the Board of Supervisors for emergency reserves.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### **Financial Analysis of the Government's Funds (continued)**

The general fund is the chief operating fund of the District. At September 30, 2023, unassigned fund balance of the general fund was \$30,415,784, while total fund balance reached \$44,145,794. As a measure of the general fund's liquidity, it may be useful to compare both unassigned fund balance and total fund balance to total fund expenditures. Unassigned fund balance represents 24% of the total general fund expenditures (including transfers), while total fund balance represents 34% of that same amount. The fund balance of the District's general fund increased by \$1,436,673. While the District budgeted a drawdown of over \$8 million in the general fund in FY2023, the delay in certain roadway improvement projects that are anticipated to be completed in FY2024 resulted in the increase in fund balance.

The debt service fund has a total fund balance of \$2,930,018, an increase of \$1,909,069 from the prior year. The increase was due to an increase in assessed values and an increase in interest and investment income.

The capital projects fund has a total fund balance of \$81,046,870, a decrease of \$23,229,669 from the prior year. The decrease was due to expenditures related to transportation improvement projects, which were offset somewhat by the increase in interest and investment income.

*Proprietary fund.* At September 30, 2023, the unrestricted net position of the Utility Fund amounted to \$73,275,514, an increase of \$16,023,373 from the prior year. The increase is due to increases in utility revenues resulting from a utility rate increase in the current year, which more than offset inflationary increases in expenses. The restricted net position amounted to \$52,964,183, the bulk of which is restricted for debt service.

### **General Fund Budgetary Highlights**

There were no amendments to the budget in fiscal year 2023. Minor transfers between activity budgets had no effect on total revenues or total expense.

### **Capital Asset and Debt Administration**

*Capital Assets.* The District's investment in capital assets for its governmental and business type activities as of September 30, 2023 amounted to \$1,261,617,274, net of accumulated depreciation and amortization. This represents an increase of \$25,669,539. The primary driver for the increase was ongoing capital projects as described above.

Additional information on the District's capital assets can be found in Note 5 of the financial statements.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
MANAGEMENT'S DISCUSSION AND ANALYSIS

**Capital Asset and Debt Administration (continued)**

**District's Capital Assets**

(net of depreciation and amortization)

	Governmental activities		Business-type activities		Total	
	2023	2022	2023	2022	2023	2022
Land	\$ 2,992,490	\$ 2,992,490	\$ 6,896,164	\$ 6,896,164	\$ 9,888,654	\$ 9,888,654
Buildings	233,419,152	241,780,450	19,292,902	19,951,451	252,712,054	261,731,901
Improvements other than buildings	-	-	138,687,523	112,837,258	138,687,523	112,837,258
Machinery and equipment	7,279,289	6,176,223	117,306,684	103,015,005	124,585,973	109,191,228
Infrastructure	699,173,360	642,378,810	-	-	699,173,360	642,378,810
Right-to-use subscription assets	603,179	-	914,021	-	1,517,200	-
Construction in progress	14,259,310	42,198,803	20,793,200	57,721,081	35,052,510	99,919,884
<b>Total</b>	<b>\$ 957,726,780</b>	<b>\$ 935,526,776</b>	<b>\$ 303,890,494</b>	<b>\$ 300,420,959</b>	<b>\$ 1,261,617,274</b>	<b>\$ 1,235,947,735</b>

*Long-term debt.* At September 30, 2023, the District had total long-term bonded debt outstanding of \$854,889,993. Of this amount, \$689,204,959 was comprised of debt backed by the full faith and credit of the District and \$165,685,034 was secured by the revenues generated by the District's utilities. During fiscal 2023, the District's total long-term debt decreased by \$62,610,863 (7%) with the paydown of both ad valorem and utility revenue debt.

The District has received ratings of "AA-" from Standard and Poor's, "AA-" from Fitch and "Aa3" from Moody's for the Ad Valorem Tax general obligation bonds and ratings of "A-" from Standard and Poor's, "A" from Fitch and "A1" from Moody's for the Utility Revenue bonds. Additional information on the District's long-term debt can be found in Note 7 of the financial statements.

**District's Outstanding Long-term Debt**

General Obligation and Revenue Bonds

	Governmental activities		Business-type activities		Total	
	2023	2022	2023	2022	2023	2022
General obligation bonds	\$ 689,204,959	\$ 728,451,073	\$ -	\$ -	\$ 689,204,959	\$ 728,451,073
Revenue bonds and notes from direct borrowings	-	-	165,685,034	189,049,783	165,685,034	189,049,783
<b>Total</b>	<b>\$ 689,204,959</b>	<b>\$ 728,451,073</b>	<b>\$ 165,685,034</b>	<b>\$ 189,049,783</b>	<b>\$ 854,889,993</b>	<b>\$ 917,500,856</b>

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## MANAGEMENT'S DISCUSSION AND ANALYSIS

### **Capital Asset and Debt Administration (continued)**

*Infrastructure Assets.* As demonstrated in the Required Supplementary Information on pages 76-88 of this report, there have been no significant changes in the assessed condition of the bridges, roads and water control structures that use the modified approach for infrastructure reporting. There is an ongoing program to repair the remaining water control structures considered in good condition. The current conditions of the remaining assets are within the established levels maintained by the District.

### **Economic Factors and Next Year's Budget and Rates**

Assessed property values underlying the District's fiscal year 2024 budget and millage rate determination reflect the impact of any Orange County Property Appraiser revaluations of property value assessments as a result of Court of Appeals' recommendations.

- The unemployment rate of the Central Florida area is currently averaging 3.2%. This is slightly more than the state average of 3.1% and less than the national unemployment average of 3.7%.
- Fiscal year 2024 assessed values increased 14.1%. Millage rates decreased overall by 0.9500 mills as a result of increased assessed values, even though there is a budgeted increase in operating expenses.
- Inflationary trends in the region compare to national indices.

### **Requests for Information**

This financial report is designed to provide a general overview of the District's finances for all those with an interest in the District's finances. Questions concerning any of the information provided in this report or requests for additional financial information should be addressed to the Central Florida Tourism Oversight District, CFO, 1900 Hotel Plaza Blvd., P.O. Box 690519, Orlando, Florida 32869-0519.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF NET POSITION

September 30, 2023

	Primary Government		
	Governmental Activities	Business-Type Activities	Total
<b>ASSETS</b>			
Cash and cash equivalents	\$ 25,698,257	\$ 18,590,856	\$ 44,289,113
Cash and cash equivalents - restricted	44,859,295	64,369,820	109,229,115
Investments	26,450,838	30,813,363	57,264,201
Investments - restricted	48,709,097	71,775,603	120,484,700
Accounts receivable, net	435,266	25,585,841	26,021,107
Due from other governments	929,608	-	929,608
Internal balances	(1,035,332)	1,035,332	-
Inventories	-	12,287,132	12,287,132
Prepays	-	480,000	480,000
Deposits	236,741	-	236,741
Derivative fuel instruments	-	1,875,349	1,875,349
Other assets	2,292,474	23,000	2,315,474
Capital assets not being depreciated	716,425,160	27,689,364	744,114,524
Capital assets, net of accumulated depreciation	241,301,620	276,201,130	517,502,750
<b>Total assets</b>	1,106,303,024	530,726,790	1,637,029,814
<b>DEFERRED OUTFLOWS OF RESOURCES</b>			
Deferred fuel cost	-	982,520	982,520
Loss on defeased debt due to refundings	19,928,544	-	19,928,544
Deferred outflow of resources related to pensions	15,431,339	-	15,431,339
Deferred outflow of resources related to OPEB	14,891,050	-	14,891,050
<b>Total deferred outflows of resources</b>	50,250,933	982,520	51,233,453

(Continued)

The accompanying notes are an integral part of these financial statements.



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

STATEMENT OF NET POSITION

September 30, 2023

	Primary Government		
	Governmental Activities	Business-Type Activities	Total
<b>LIABILITIES</b>			
Accounts payable and accrued liabilities	11,280,838	15,640,368	26,921,206
Accounts payable from restricted assets	8,987,835	2,264,684	11,252,519
Compensated absences	1,791,550	-	1,791,550
Self insurance liability	1,318,356	-	1,318,356
Subscription liability	120,675	191,341	312,016
Bonds and notes payable	35,710,000	22,678,000	58,388,000
Accrued interest payable	7,611,230	2,161,589	9,772,819
Noncurrent liabilities:			
Compensated absences	1,499,919	-	1,499,919
Self insurance liability	4,627,564	-	4,627,564
Subscription liability	375,050	664,920	1,039,970
Net pension liability	65,121,315	-	65,121,315
Net OPEB liability	50,544,621	-	50,544,621
Bonds and notes payable	653,494,959	143,007,034	796,501,993
<b>Total</b>	<b>842,483,912</b>	<b>186,607,936</b>	<b>1,029,091,848</b>
<b>DEFERRED INFLOWS OF RESOURCES</b>			
Accumulated increase in fair value of derivative instruments	-	1,875,349	1,875,349
Gain on defeased debt due to refundings	-	3,496	3,496
Deferred inflow of resources related to pensions	7,022,016	-	7,022,016
Deferred inflow of resources related to OPEB	20,134,185	-	20,134,185
<b>Total deferred inflows of resources</b>	<b>27,156,201</b>	<b>1,878,845</b>	<b>29,035,046</b>
<b>NET POSITION</b>			
Net investment in capital assets	369,915,280	216,126,571	586,041,851
Restricted for:			
Debt service	2,930,018	48,706,119	51,636,137
Renewal and replacement	-	3,758,064	3,758,064
Emergency repairs	-	500,000	500,000
Unrestricted (deficit)	(85,931,454)	74,131,775	(11,799,679)
<b>Total net position</b>	<b>\$ 286,913,844</b>	<b>\$ 343,222,529</b>	<b>\$ 630,136,373</b>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF ACTIVITIES

For the Period Ended September 30, 2023

	<b>Total</b>	<b>Total Business-type Activities</b>	<b>Total Governmental Activities</b>
<b>Expenses:</b>			
Labor	\$ 99,555,114	\$ 32,094,453	\$ 67,460,661
Operating expenses	159,638,471	102,369,752	57,268,719
Depreciation and amortization	33,516,456	21,810,615	11,705,841
Nonoperating expenses	2,138,289	2,138,289	-
Loss on disposal of capital assets	292,141	-	292,141
Interest on debt	25,007,485	3,674,034	21,333,451
<b>Total expenses</b>	<b>320,147,956</b>	<b>162,087,143</b>	<b>158,060,813</b>
<b>Program revenues:</b>			
Charges for services	193,211,323	189,116,897	4,094,426
Capital contributions	551,756	487,203	64,553
<b>Total program revenues</b>	<b>193,763,079</b>	<b>189,604,100</b>	<b>4,158,979</b>
<b>Net program expense (revenue)</b>	<b>126,384,877</b>	<b>(27,516,957)</b>	<b>153,901,834</b>
<b>General revenues:</b>			
Ad valorem taxes	179,283,918	-	179,283,918
Interest and investment income	13,638,293	5,685,300	7,952,993
<b>Total general revenues</b>	<b>192,922,211</b>	<b>5,685,300</b>	<b>187,236,911</b>
<b>Change in net position</b>	<b>66,537,334</b>	<b>33,202,257</b>	<b>33,335,077</b>
<b>Total net position - beginning</b>	<b>563,599,039</b>	<b>310,020,272</b>	<b>253,578,767</b>
<b>Total net position - ending</b>	<b>\$ 630,136,373</b>	<b>\$ 343,222,529</b>	<b>\$ 286,913,844</b>

The accompanying notes are an integral part of these financial statements.

**Governmental Activities Expenses by Function**

<b>General Government</b>	<b>Public Safety</b>	<b>Physical Environment</b>	<b>Transportation</b>	<b>Debt Service</b>
\$ 8,974,379	\$ 49,968,254	\$ 7,358,271	\$ 1,159,757	\$ -
16,238,164	6,702,919	4,687,170	29,640,466	-
1,248,491	2,390,712	266,100	7,800,538	-
-	-	-	-	-
-	99,328	-	192,813	-
-	-	-	-	21,333,451
<b>26,461,034</b>	<b>59,161,213</b>	<b>12,311,541</b>	<b>38,793,574</b>	<b>21,333,451</b>
351,017	3,558,252	185,157	-	-
-	-	64,553	-	-
<b>351,017</b>	<b>3,558,252</b>	<b>249,710</b>	<b>-</b>	<b>-</b>
<b>\$ 26,110,017</b>	<b>\$ 55,602,961</b>	<b>\$ 12,061,831</b>	<b>\$ 38,793,574</b>	<b>\$ 21,333,451</b>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## BALANCE SHEET - GOVERNMENTAL FUNDS

September 30, 2023

	<u>General</u>	<u>Debt Service</u>	<u>Capital Projects</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>				
Cash and cash equivalents	\$ 25,698,257	\$ 1,269,762	\$ 43,589,533	\$ 70,557,552
Investments	26,450,838	1,350,155	47,358,942	75,159,935
Accounts receivable, net	435,266	-	-	435,266
Due from other funds	43,419	-	-	43,419
Due from other governments	619,312	310,296	-	929,608
Deposits	236,741	-	-	236,741
Other assets	2,118,923	-	-	2,118,923
Total assets	<u>\$ 55,602,756</u>	<u>\$ 2,930,213</u>	<u>\$ 90,948,475</u>	<u>\$ 149,481,444</u>
<b>LIABILITIES AND FUND BALANCES</b>				
Accounts payable and accrued liabilities	\$ 11,292,176	\$ 195	\$ 8,987,640	\$ 20,280,011
Due to other funds	164,786	-	913,965	1,078,751
Total liabilities	<u>11,456,962</u>	<u>195</u>	<u>9,901,605</u>	<u>21,358,762</u>
Fund balances:				
Nonspendable:				
Other assets	2,118,923	-	-	2,118,923
Committed				
Drainage system	4,611,087	-	-	4,611,087
Property appraiser disputes	5,000,000	-	-	5,000,000
Restricted:				
Capital projects	-	-	81,046,870	81,046,870
Debt service	-	2,930,018	-	2,930,018
Assigned:				
Emergency reserves	2,000,000	-	-	2,000,000
Unassigned	30,415,784	-	-	30,415,784
Total fund balances	<u>44,145,794</u>	<u>2,930,018</u>	<u>81,046,870</u>	<u>\$ 128,122,682</u>
Total liabilities and fund balances	<u>\$ 55,602,756</u>	<u>\$ 2,930,213</u>	<u>\$ 90,948,475</u>	

The accompanying notes are an integral part of these financial statements.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### RECONCILIATION OF THE GOVERNMENTAL FUNDS BALANCE SHEET TO THE STATEMENT OF NET POSITION

September 30, 2023

Fund Balances - Total Governmental Funds	\$ 128,122,682
Amounts reported for governmental activities in the Statement of Net Position are different because:	
Accrued interest payable on bonds not currently due is not reported in the funds.	(7,599,892)
Capital assets used in governmental activities are not financial resources and, therefore, are not reported in the funds.	957,726,780
Some liabilities, deferred outflows of resources and deferred inflows of resources, including those related to bonds payable, pensions, OPEB and other liabilities are not due and payable in the current period and therefore are not reported in the funds.	<u>(791,335,726)</u>
Net position of governmental activities	<u><u>\$ 286,913,844</u></u>

The accompanying notes are an integral part of these financial statements.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES - GOVERNMENTAL FUNDS

For the Period Ended September 30, 2023

	<u>General</u>	<u>Debt Service</u>	<u>Capital Projects</u>	<u>Total</u>
<b>REVENUES</b>				
Ad valorem taxes	\$ 119,436,439	\$ 59,847,479	\$ -	\$ 179,283,918
Emergency services	81,730	-	-	81,730
Building permits and fees	3,476,522	-	-	3,476,522
Drainage fees	64,553	-	-	64,553
Interest and investment income	3,179,088	902,264	3,871,641	7,952,993
Other	625,253	-	-	625,253
Total revenues	126,863,585	60,749,743	3,871,641	191,484,969
<b>EXPENDITURES</b>				
<b>CURRENT:</b>				
General government	24,270,721	-	-	24,270,721
Public safety	52,336,501	-	-	52,336,501
Physical environment	11,416,922	-	-	11,416,922
Transportation	30,701,157	-	-	30,701,157
Capital outlay	7,185,755	-	27,101,310	34,287,065
<b>DEBT SERVICE:</b>				
Principal	206,090	34,170,000	-	34,376,090
Interest	11,581	24,348,499	-	24,360,080
Fees and other charges	-	322,175	-	322,175
Total expenditures	126,128,727	58,840,674	27,101,310	212,070,711
Excess (deficiency) of revenues over (under) expenditures	734,858	1,909,069	(23,229,669)	(20,585,742)
<b>OTHER FINANCING SOURCES</b>				
Lease proceeds	701,815	-	-	701,815
Net change in fund balances	1,436,673	1,909,069	(23,229,669)	(19,883,927)
<b>Fund Balances, beginning of year</b>	42,709,121	1,020,949	104,276,539	148,006,609
<b>Fund Balances, end of year</b>	\$ 44,145,794	\$ 2,930,018	\$ 81,046,870	\$ 128,122,682

The accompanying notes are an integral part of these financial statements.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE STATEMENT OF ACTIVITIES

For the Period Ended September 30, 2023

Net Change in Fund Balances - Total Governmental Funds \$ (19,883,927)

Amounts reported for governmental activities in the Statement of Activities are different because:

Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation and amortization expense. This is the amount by which capital outlays exceeded depreciation and amortization in the current period.	22,581,224
The net effect of miscellaneous transactions involving capital assets resulted in a decrease in net position.	(381,218)
Governmental funds report the payment of bond principal and interest when the current financial resources are available and payments are due and they report the payment of issuance costs, premiums, discounts, and similar items when debt is first issued. However, on the statement of activities, interest is accrued.	37,185,048
Increases and decreases in other liabilities, deferred outflows of resources and deferred inflows of resources reported as expenses in the statement of activities not requiring the use of current financial resources in governmental funds.	<u>(6,166,050)</u>
Change in net position of governmental activities	<u>\$ 33,335,077</u>

The accompanying notes are an integral part of these financial statements.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN**  
**FUND BALANCE - BUDGET AND ACTUAL**

**GENERAL FUND**

For the Period Ended September 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Variance with Final Budget</u>
	<u>Original</u>	<u>Final</u>		
<b>REVENUES</b>				
Ad valorem taxes	\$ 119,323,256	\$ 119,323,256	\$ 119,436,439	\$ 113,183
Emergency services	-	-	81,730	81,730
Building permits and fees	3,250,000	3,250,000	3,476,522	226,522
Drainage fees	-	-	64,553	64,553
Interest and investment income	135,000	135,000	3,179,088	3,044,088
Other	460,000	460,000	625,253	165,253
<b>Total revenues</b>	<u>123,168,256</u>	<u>123,168,256</u>	<u>126,863,585</u>	<u>3,695,329</u>
<b>EXPENDITURES</b>				
<b>GENERAL GOVERNMENT</b>				
Administrative:				
Labor	3,838,435	3,838,435	4,071,328	(232,893)
Operating	7,063,410	7,723,410	11,856,547	(4,133,137)
	<u>10,901,845</u>	<u>11,561,845</u>	<u>15,927,875</u>	<u>(4,366,030)</u>
Human Resources:				
Labor	1,121,164	1,121,164	979,618	141,546
Operating	378,650	378,650	221,374	157,276
	<u>1,499,814</u>	<u>1,499,814</u>	<u>1,200,992</u>	<u>298,822</u>
Information Systems & Technology:				
Labor	1,968,616	1,968,616	1,912,002	56,614
Operating	3,687,875	3,687,875	3,031,423	656,452
Capital outlay	837,500	837,500	1,288,091	(450,591)
	<u>6,493,991</u>	<u>6,493,991</u>	<u>6,231,516</u>	<u>262,475</u>
Property Management:				
Labor	1,272,974	1,272,974	1,244,846	28,128
Operating	1,048,700	1,050,700	953,583	97,117
Capital outlay	75,000	75,000	68,356	6,644
	<u>2,396,674</u>	<u>2,398,674</u>	<u>2,266,785</u>	<u>131,889</u>
<b>TOTAL GENERAL GOVERNMENT</b>	<u>21,292,324</u>	<u>21,954,324</u>	<u>25,627,168</u>	<u>(3,672,844)</u>

The accompanying notes are an integral part of these financial statements.



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN**  
**FUND BALANCE - BUDGET AND ACTUAL**

**GENERAL FUND**

For the Period Ended September 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Variance with Final Budget</u>
	<u>Original</u>	<u>Final</u>		
<b>PUBLIC SAFETY</b>				
Building & Safety:				
Labor	5,210,203	5,210,203	4,902,682	307,521
Operating	<u>581,250</u>	<u>581,250</u>	<u>572,598</u>	<u>8,652</u>
	<u>5,791,453</u>	<u>5,791,453</u>	<u>5,475,280</u>	<u>316,173</u>
Emergency Services:				
Labor	34,902,501	34,902,501	40,285,325	(5,382,824)
Operating	4,313,017	4,313,017	3,766,687	546,330
Capital outlay	<u>904,500</u>	<u>904,500</u>	<u>1,068,582</u>	<u>(164,082)</u>
	<u>40,120,018</u>	<u>40,120,018</u>	<u>45,120,594</u>	<u>(5,000,576)</u>
Property Management:				
Labor	328,085	328,085	445,575	(117,490)
Operating	2,932,000	2,930,000	2,363,634	566,366
Capital outlay	<u>1,598,000</u>	<u>1,598,000</u>	<u>2,120,045</u>	<u>(522,045)</u>
	<u>4,858,085</u>	<u>4,856,085</u>	<u>4,929,254</u>	<u>(73,169)</u>
<b>TOTAL PUBLIC SAFETY</b>	<u>50,769,556</u>	<u>50,767,556</u>	<u>55,525,128</u>	<u>(4,757,572)</u>
<b>PHYSICAL ENVIRONMENT</b>				
Environmental Sciences:				
Labor	4,008,581	4,008,581	4,135,552	(126,971)
Operating	2,099,000	1,465,000	1,305,221	159,779
Capital outlay	<u>124,000</u>	<u>98,000</u>	<u>90,659</u>	<u>7,341</u>
	<u>6,231,581</u>	<u>5,571,581</u>	<u>5,531,432</u>	<u>40,149</u>
Planning & Engineering:				
Labor	2,512,053	2,512,053	2,594,181	(82,128)
Operating	1,361,746	1,511,746	974,264	537,482
Capital outlay	<u>30,000</u>	<u>30,000</u>	<u>-</u>	<u>30,000</u>
	<u>3,903,799</u>	<u>4,053,799</u>	<u>3,568,445</u>	<u>485,354</u>
Water Control:				
Operating	4,057,500	4,057,500	2,012,038	2,045,462

The accompanying notes are an integral part of these financial statements.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**STATEMENT OF REVENUES, EXPENDITURES, AND CHANGES IN**  
**FUND BALANCE - BUDGET AND ACTUAL**

GENERAL FUND

For the Period Ended September 30, 2023

	<u>Budgeted Amounts</u>		<u>Actual</u>	<u>Variance with Final Budget</u>
	<u>Original</u>	<u>Final</u>		
Property Management:				
Operating	268,900	268,900	395,666	(126,766)
Capital outlay	4,300,000	4,300,000	2,519,880	1,780,120
	<u>4,568,900</u>	<u>4,568,900</u>	<u>2,915,546</u>	<u>1,653,354</u>
TOTAL PHYSICAL ENVIRONMENT	<u>18,761,780</u>	<u>18,251,780</u>	<u>14,027,461</u>	<u>4,224,319</u>
 TRANSPORTATION				
Roadway Maintenance:				
Labor	395,463	395,463	256,997	138,466
Operating	29,493,370	29,343,370	20,855,716	8,487,654
	<u>29,888,833</u>	<u>29,738,833</u>	<u>21,112,713</u>	<u>8,626,120</u>
Parking Facilities:				
Labor	786,677	786,677	803,694	(17,017)
Operating	10,162,950	10,162,950	8,784,750	1,378,200
Capital outlay	60,000	60,000	30,142	29,858
	<u>11,009,627</u>	<u>11,009,627</u>	<u>9,618,586</u>	<u>1,391,041</u>
TOTAL TRANSPORTATION	<u>40,898,460</u>	<u>40,748,460</u>	<u>30,731,299</u>	<u>10,017,161</u>
 DEBT SERVICE				
Principal	-	-	206,090	(206,090)
Interest	-	-	11,581	(11,581)
TOTAL DEBT SERVICE	<u>-</u>	<u>-</u>	<u>217,671</u>	<u>(217,671)</u>
 <b>Total expenditures</b>	<u>131,722,120</u>	<u>131,722,120</u>	<u>126,128,727</u>	<u>5,593,393</u>
Excess (deficiency) of revenues over (under) expenditures	(8,553,864)	(8,553,864)	734,858	9,288,722
 <b>OTHER FINANCING SOURCES</b>				
Lease proceeds	-	-	701,815	701,815
Net change in fund balance	<u>\$ (8,553,864)</u>	<u>\$ (8,553,864)</u>	1,436,673	<u>\$ 9,990,537</u>
<b>Fund Balance, beginning of year</b>			42,709,121	
<b>Fund Balance, end of year</b>			<u>\$ 44,145,794</u>	

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF NET POSITION - UTILITY FUND

September 30, 2023

### **ASSETS**

#### Current assets:

Cash and cash equivalents	\$	18,590,856
Investments		14,121,460
Accounts receivable, net		25,585,841
Due from other funds		1,078,751
Inventories		12,287,132
Prepays		480,000
Derivative fuel instruments		1,875,349
Restricted assets:		
Cash and cash equivalents		64,369,820
Investments		38,900,120
Total current assets		<u>177,289,329</u>

#### Noncurrent assets:

Investments		16,691,903
Restricted investments		32,875,483
Capital assets:		
Land		6,896,164
Construction in progress		20,793,200
Buildings		67,345,692
Improvements other than buildings		315,583,029
Machinery and equipment		466,847,006
Right-to-use subscription assets		1,075,319
Less accumulated depreciation		<u>(574,649,916)</u>
Total capital assets		303,890,494
Other assets		<u>23,000</u>
Total noncurrent assets		<u>353,480,880</u>
<b>Total assets</b>		<u>530,770,209</u>

### **DEFERRED OUTFLOWS OF RESOURCES**

Deferred fuel cost		<u>982,520</u>
<b>Total deferred outflows of resources</b>		<u>982,520</u>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF NET POSITION - UTILITY FUND

September 30, 2023

### **LIABILITIES**

#### Current liabilities:

Accounts payable and accrued liabilities	15,666,269
Subscription liabilities	191,341
Due to other funds	43,419
Total current liabilities	<u>15,901,029</u>

#### Current liabilities payable from restricted assets:

Bonds and notes payable	22,678,000
Accrued interest payable	2,135,688
Contracts and retainage payable	2,264,684
Total current liabilities payable from restricted assets	<u>27,078,372</u>

#### Long-term liabilities:

Bonds and notes payable	143,007,034
Subscription liabilities	664,920
Total long-term liabilities	<u>143,671,954</u>

#### **Total liabilities**

186,651,355

### **DEFERRED INFLOWS OF RESOURCES**

Accumulated increase in the fair value of derivative instruments	1,875,349
Gain on defeased debt due to refundings	3,496

#### **Total deferred inflows of resources**

1,878,845

### **NET POSITION**

Net investment in capital assets	216,126,571
Restricted for debt service	48,706,119
Restricted for renewal and replacement	3,758,064
Restricted for emergency repairs	500,000
Unrestricted	74,131,775
<b>Total net position</b>	<u><u>\$ 343,222,529</u></u>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION

### UTILITY FUND

For the Period Ended September 30, 2023

#### **OPERATING REVENUES**

Utility sales	\$ 189,116,897
Total operating revenues	<u>189,116,897</u>

#### **OPERATING EXPENSES**

Purchased power and fuel	69,743,241
Labor support	32,094,453
Operating costs	16,762,182
Taxes	3,201,550
Repairs and maintenance	11,311,554
Insurance	1,351,225
Depreciation and amortization	<u>21,810,615</u>
Total operating expenses	<u>156,274,820</u>
Operating income	<u>32,842,077</u>

#### **NONOPERATING REVENUES (EXPENSES)**

Interest and investment income	5,685,300
Interest expense	(3,674,034)
Loss on retirement of plant assets	<u>(2,138,289)</u>
Total nonoperating expenses, net	<u>(127,023)</u>

Income before contributions 32,715,054

Capital contributions	<u>487,203</u>
Increase in net position	33,202,257

Total net position - beginning	<u>310,020,272</u>
Total net position - ending	<u>\$ 343,222,529</u>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF CASH FLOWS UTILITY FUND

For the Year Ended September 30, 2023

### **CASH FLOWS FROM OPERATING ACTIVITIES**

Receipts from customers	\$ 188,196,331
Payments to suppliers	(109,876,775)
Payments for labor contract and management service agreement	<u>(28,049,890)</u>
Net cash provided (used) by operating activities	<u>50,269,666</u>

### **CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES**

Purchases of capital assets	(23,789,770)
Proceeds from sale of capital assets	(2,043,387)
Principal paid on bonds	(22,707,000)
Interest paid on bonds	(4,619,886)
Capital contributions	<u>487,203</u>
Net cash provided (used) by capital and related financing activities	<u>(52,672,840)</u>

### **CASH FLOWS FROM INVESTING ACTIVITIES**

Purchase of investments	(126,050,243)
Proceeds from sales and maturities of investments	157,617,643
Interest and investment loss	<u>5,685,300</u>
Net cash provided (used) by investing activities	<u>37,252,700</u>
Net increase in cash and cash equivalents	34,849,526
Balances - beginning of the year	<u>48,111,150</u>
Balances - end of the year	<u>\$ 82,960,676</u>

Unrestricted	\$ 18,590,856
Restricted	<u>64,369,820</u>
	<u>\$ 82,960,676</u>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## STATEMENT OF CASH FLOWS UTILITY FUND

For the Year Ended September 30, 2023

### **Reconciliation of operating income to net cash provided by operating activities**

Operating income	\$ 32,842,077
Adjustments to reconcile operating income to net cash provided by operating activities:	
Depreciation and amortization expense	21,810,615
Change in assets, liabilities and deferred inflows and outflows of resources:	
Accounts receivable	(920,566)
Inventories	1,381,210
Accounts payable and accrued liabilities and subscription liabilities	(5,377,346)
Due to other funds	(167,735)
Deferred fuel	701,411
Net cash provided by operating activities	<u>\$ 50,269,666</u>

The accompanying notes are an integral part of these financial statements.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**STATEMENT OF FIDUCIARY NET POSITION**

**FIDUCIARY FUND**

September 30, 2023

	<b><u>Other Post- Employment Benefits Trust</u></b>
<b>ASSETS</b>	
Trust cash	\$ 1,483,134
Trust investments	<u>15,044,082</u>
<b>Total Assets</b>	<u>16,527,216</u>
 <b>FIDUCIARY NET POSITION</b>	
Restricted for other postemployment benefits	<u>\$ 16,527,216</u>

The accompanying notes are an integral part of these financial statements.



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
**STATEMENT OF CHANGES IN FIDUCIARY NET POSITION**  
**FIDUCIARY FUND**

For the Period Ended September 30, 2023

	<b><u>Other Post- Employment Benefit Trust</u></b>
<b>ADDITIONS:</b>	
Employer contributions	\$ 3,072,626
Net investment gain	
Investment gain	375,140
Investment expense	<u>(14,311)</u>
Total net investment gain	<u>360,829</u>
<b>Total Additions</b>	3,433,455
<b>DEDUCTIONS:</b>	
Benefits paid on behalf of participants	<u>2,058,314</u>
Net increase in fiduciary net position	1,375,141
Fiduciary net position - October 1, 2022	<u>15,152,075</u>
Fiduciary net position - September 30, 2023	<u><u>\$ 16,527,216</u></u>

The accompanying notes are an integral part of these financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

#### A. Reporting Entity

Reedy Creek Improvement District (RCID) was a public corporation of the State of Florida ("State"), Chapter 67-764 Laws of Florida, created on May 12, 1967 by a special act of the legislature. On February 27, 2023, Governor DeSantis signed into law House Bill 9-B, which was passed by the Florida Senate on February 10, 2023 during another special legislative session, and by vote of the Florida House on February 9, 2023. The bill, as written, ratified and confirmed the continued existence of RCID under a new name, the Central Florida Tourism Oversight District (the "District"). The bill provided legislative intent concerning the District's authority to generate revenue and pay outstanding indebtedness, without interruption, pursuant to transitional provisions of the Florida Constitution for pre-1968 special districts. The bill retained the District's necessary authority related to taxation and the issuance of bonds.

The bill authorized the District to continue to do business as RCID for up to two years following the effective date of the bill to provide time to make necessary changes to legal and financial documents, physical assets and other locations where the RCID name is used. The bill incorporated a number of changes to the District's charter, the most significant of which included the following:

- Replaced the landowner-elected Board with a five-member Board newly appointed by the Governor and confirmed by the Senate for four-year terms, for up to three consecutive terms, except that for the initial appointments made during 2023, two members were appointed to serve terms of two years.
- Removed the District's ability to amend its own boundaries without a special act.
- Removed the District's ability to own and operate airport facilities, certain types of recreational facilities (such as stadiums, civic center and convention halls) and "novel and experimental" facilities (such as a nuclear fission power plant).

The District includes approximately 25,000 acres of land in Orange and Osceola Counties. Walt Disney World Co. or other wholly-owned subsidiaries of the Walt Disney Company own substantially all the land within the District. As outlined in Chapter 67-764, the District was organized to provide for the reclamation, drainage, and irrigation of land, to establish water, flood, and erosion control, to provide water and sewer systems and waste collection and disposal facilities, to provide for mosquito and other pest controls, to provide for public utilities, to create and maintain conservation areas, to provide streets, roads, bridges and street lighting facilities, and to adopt zoning and building codes and regulations.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### A. Reporting Entity - Continued

The accompanying financial statements present the financial position and changes in financial position of the applicable fund types governed by the Board of Supervisors of the District in accordance with accounting principles generally accepted in the United States of America. Determination of the financial reporting entity of the District is founded upon the objective of accountability. Therefore, the financial statements include only the District (the primary government). There are no legally separate component units for which operational or financial responsibility rest with officials of the District or for which the nature and significance of their relationship to the District are such that exclusion would cause the financial statements to be misleading.

#### B. Government-Wide and Fund Financial Statements

The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all nonfiduciary activities of the primary government. Fiduciary activities are reported only in the fund financial statements. As required by generally accepted governmental accounting principles, the effect of interfund activity has been removed from these statements. Governmental activities, which normally are supported by taxes and intergovernmental revenues, are reported separately from business-type activities, which rely to a significant extent on fees and charges for support.

The statement of activities demonstrates the degree to which the direct expenses, of a given function or segment, are offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include 1) charges to customers or applicants who purchase, use, or directly benefit from goods, services, or privileges provided by a given function or segment and 2) contributions that are restricted to meeting the operational or capital requirements of a particular function or segment. Taxes and other items not properly included among program revenues are reported instead as general revenues.

Separate financial statements are provided for the governmental funds, the proprietary fund and the fiduciary fund. All governmental funds and the proprietary fund are considered to be major funds and are reported as separate columns in the fund financial statements. The OPEB trust fund is reported as a separate financial statement and is not included in the government-wide financial statements.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund and fiduciary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenue in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the government considers revenues to be available if they are collected within sixty days of the end of the current fiscal period. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, debt service expenditures, as well as expenditures related to compensated absences and claims and judgments, are recorded only when payment is due.

Property taxes, licenses, and interest associated with the current fiscal period are all considered to be susceptible to accrual and have been recognized as revenues of the current fiscal period. All other revenue items are generally not measurable and available until the District receives cash.

The District reports the following major governmental funds:

General Fund - The District's primary operating fund accounts for all financial resources of the general government, except those required to be accounted for in another fund.

Debt Service Fund - Accounts for resources accumulated and payments made for principal and interest on long-term general obligation debt of governmental funds.

Capital Projects Fund - Accounts for the financial resources to be used for the acquisition or construction of major general government capital projects.

The District reports the following major proprietary fund:

Utility Fund - Accounts for activities of the following District systems: wastewater collection and treatment; potable water production, treatment, storage, pumping and distribution; reclaimed water distribution; electric generation and distribution; chilled water; hot water; natural gas distribution; and solid waste and recyclables collection and transfer.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### C. Measurement Focus, Basis of Accounting, and Financial Statement Presentation - Continued

Additionally, the District reports the following fiduciary fund type:

Other Postemployment Benefits Trust Fund - Accounts for the receipt and disbursement of assets held in trust for eligible participants of other postemployment benefits of the District.

As a general rule, the effect of interfund activity has been eliminated from the government-wide financial statements. Exceptions to this general rule are payments-in-lieu of taxes and other charges between the government's water and sewer function and various other functions of the government. Elimination of these charges would distort the direct costs and program revenues reported for the various functions concerned.

Amounts reported as program revenues include 1) charges to customers or applicants for goods, services, or privileges provided and 2) capital contributions, including special assessments. Internally dedicated resources are reported as general revenues rather than program revenues. Likewise, general revenues include all taxes. Bad debt expense, if any, reduces revenues.

Proprietary funds distinguish operating revenues and expenses from nonoperating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the District's proprietary fund are charges to customers for sales and services. The District also recognizes as operating revenue connection fees which are to recover the expense of connecting new customers to the system. Operating expenses for the proprietary fund includes the cost of sales and services, administrative expenses, and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses. When both restricted and unrestricted resources are available for use, it is the government's policy to use restricted resources first, then unrestricted resources as they are needed.

#### D. Property Taxes

Property taxes are billed and collected within the same fiscal period, and are reflected on the modified accrual basis. Ad Valorem taxes on property values have a lien and assessment date of January 1, with millage established during the preceding September. The fiscal year for which taxes are levied begins October 1. Taxes, which are billed in November, carry a maximum discount available through November 30, and become delinquent April 1. State Statutes permit the District to levy property taxes at a rate up to 30 mills. The millage rates assessed by the District for the fiscal year ended September 30, 2023 were 9.2600 for General Operating and 4.6400 for Debt Service.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### E. Cash, Cash Equivalents and Investments

Cash balances from the majority of funds are pooled for investment purposes. Earnings from such investments are allocated to the respective funds based on applicable balances maintained in the pool by each fund. Holdings in the pool, for purposes of these statements, are allocated to the participating funds based on their equity.

Cash and cash equivalents consist of non-interest bearing demand deposits and money market funds and investments with an original maturity of three months or less when purchased. Cash and cash equivalents are carried at cost, which approximates fair value.

Investments are stated at fair value based upon quoted market prices or matrix pricing for certain fixed income securities. Investments are further explained in Notes 3, 10 and 13, Deposits and Investments, Other Postemployment Benefits and Fair Value Measurements, respectively.

#### F. Inventories

Utility Fund inventories consist of materials, supplies and fuel. All items are held for use only and are valued at cost.

#### G. Restricted Assets

Certain assets in the debt service fund, capital projects fund and utility fund are restricted as to use by specific provisions of bond resolutions. These assets are classified as restricted assets on the statement of net position.

#### H. Capital Assets

Infrastructure improvements such as roads, bridges, canals, curbs, gutters, sidewalks, drainage systems and lighting systems are recorded as capital expenditures in the various governmental funds at the time of purchase. These assets are presented as capital assets in the government-wide statement of net position for governmental activities. Infrastructure assets are not depreciated and are accounted for using the modified approach, as further explained in the Required Supplementary Information. Condition assessments are periodically performed and preservation and maintenance costs are reflected as expenses in the government-wide statement of activities under transportation expenses.

Land, buildings, plant, machinery and equipment are carried on the statement of net position for governmental activities and business-type activities at cost, except for contributed assets, which are recorded at acquisition value at the date of contribution. The District's capitalization threshold is \$5,000. Depreciation is provided on a straight-line basis over the estimated useful lives of the assets.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### H. Capital Assets - Continued

Subscription-based information technology arrangements ("SBITAs") are initially measured at an amount equal to the initial measurement of the related SBITA liability plus any SBITA payments made prior to the subscription term, less SBITA incentives, plus any ancillary charges necessary to place the SBITA into services. SBITAs assets are amortized on a straight-line basis over the life of the related contract. Assets are depreciated or amortized as follows:

Buildings and land improvements	30-50 years
Improvements, including utility distribution and collection systems	30-50 years
Machinery and equipment	3-30 years
Right-to-use subscription assets	1-5 years

Repairs and maintenance are expensed when incurred. Additions, major renewals and replacements, which increase the useful lives of the assets, are capitalized.

#### I. Deferred Amount on Refunding

For current and advance refundings resulting in defeasance of debt, the difference between the reacquisition price and the net carrying amount of the old debt is deferred and amortized using the effective interest method over the remaining life of the old debt or the life of the new debt, whichever is shorter. Deferred amounts are presented as a deferred outflow of resources or deferred inflow of resources in the Statement of Net Position.

#### J. Compensated Absences

In the Government-wide financial statements, compensated absences are recorded as a liability when the benefits are earned. The current portion is the amount accrued during the year that would normally be liquidated with available, expendable resources in the next fiscal year. In the fund statements, expenditures are recognized when payments are due to the employee.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### K. Fund Balances

In the Governmental Fund financial statements, fund balances are classified as follows:

Nonspendable -The portion of fund balance that includes amounts that cannot be spent because they are either not in a spendable form or legally or contractually required to be maintained intact.

Restricted - Amounts that can only be used for specific purposes due to constraints that have been placed on them by external parties, constitutional provisions or enabling legislation.

Committed - Amounts that are constrained for specific purposes that are internally imposed through formal action of the Board of Supervisors and does not lapse at year end.

Assigned - Amounts constrained by the Board of Supervisors to be used for a specific purpose.

Unassigned - All amounts not included in other spendable classifications.

The District spends restricted amounts first when both restricted and unrestricted fund balance is available unless legally prohibited from doing so. When expenditures are incurred for payment from the unrestricted fund balances, assigned is used first, followed by unassigned fund balance.

The District's fund balance policy requires that unassigned fund balance be budgeted at a level at least equal to two months of general fund budgeted operating expenditures. The policy also requires the District assign a minimum \$2,000,000 reserve for emergencies, and commit balances as needed for pay-go capital projects, drainage system repairs and maintenance, and allowances for potential ad valorem tax disputes.

#### L. Budgets and Budgetary Accounting

The following procedures are used to establish the budgetary data reflected in the financial statements:

- (1) The District Administrator submits to the Board of Supervisors a proposed operating budget for the fiscal year commencing on October 1.
- (2) Public hearings are conducted to obtain taxpayer comments.
- (3) Prior to October 1, the budget is legally enacted through passage of an ordinance.
- (4) Budgets are legally adopted for the General Fund, Debt Service Fund and the Utility Fund.
- (5) Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America ("U.S. GAAP").



# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### L. Budgets and Budgetary Accounting - Continued

- (6) The District's charter does not require formal authorization for actual expenditures to exceed budgeted expenditures; however, the Board of Supervisors monitors the budget periodically during the year. The budgetary control is legally maintained at the fund level. The Statement of Revenues, Expenditures and Changes in Fund Balance - Budget to Actual is presented in the same format as the District's operating budget.
- (7) All appropriations and encumbrances, except those specifically approved by the Board of Supervisors, lapse at the close of the fiscal year to the extent not expended.

#### M. Forward Contracts

The District enters into forward contracts as part of its normal purchases of power and fuel and accounts for such contracts as settled, as a component of the cost of its operations.

#### N. Derivative Instruments

Fuel-related derivative transactions are executed in accordance with the District's established Energy Risk Management Policy ("Policy") which is controlling the level of price risk exposure involved in the normal course of the District's natural gas purchasing activities. The Policy establishes the Energy Risk Management Oversight Committee to enter into financial hedging agreements and contracts with third parties pursuant to enabling agreements approved by the Board of Supervisors. The Policy establishes the organizational structure of the committee and various volume and pricing limits. The fair value of these derivative fuel instruments is included in the Statement of Net Position, with the accumulated changes in fair value reported as deferred outflows or deferred inflows of resources as they have been determined to qualify for hedge accounting. Related gains or losses are deferred and recognized in the specific period in which the derivative is settled and included as part of fuel costs.

#### O. Pensions

The Florida Retirement System ("FRS") is responsible for providing participating employers with total pension liabilities, pension assets, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, as well as the District's proportionate share of the net pension liability, deferred outflows of resources, deferred inflows of resources and pension expense.

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the FRS and additions to/deductions from the FRS's fiduciary net position have been determined on the same basis as they are reported by the FRS. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES - CONTINUED

#### **P. Postemployment Benefits Other Than Pensions ("OPEB")**

For purposes of measuring the net OPEB liability, deferred outflows of resources and deferred inflows of resources related to OPEB, and OPEB expense, information about the fiduciary net position of the District's OPEB Plan and additions to/deductions from the OPEB Plan fiduciary net position have been determined on the same basis as they are reported by the OPEB Plan. For this purpose, the OPEB Plan recognizes benefit payments when due and payable in accordance with the benefit terms. Investments are reported at fair value, except for money market investments that have a maturity at the time of purchase of one year or less, which are reported at cost.

#### **Q. Rates and Regulations**

The District follows the accounting practices set forth in Governmental Accounting Standards Board ("GASB") No. 62, paragraphs 476-500, Regulated Operations for its utility operations. This standard allows utilities to capitalize or defer certain costs or revenues based on management's ongoing assessment that it is probable these items will be recovered through the rate-making process. Regulatory assets consist of deferred fuel cost and are presented as deferred outflows of resources on the statement of net position.

#### **R. Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates and differences could be material.

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS - CONTINUED**

Year Ended September 30, 2023

**2. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS**

**A. Explanation of certain differences between the balance sheet – governmental funds and the government-wide statement of net position**

The governmental fund balance sheet includes a reconciliation between fund balance - total governmental funds and net position - governmental activities as reported in the government-wide statement of net position. Further details of certain elements of that reconciliation are as follows:

- (1) Capital assets used in governmental activities are not financial resources and therefore are not reported in the funds. This amount represents the total capital assets of governmental activities of \$1,065,952,373, net of accumulated depreciation and amortization of \$108,225,593, or \$957,726,780.
  
- (2) Some liabilities, including bonds payable, other long-term liabilities, and deferred outflows of resources and deferred inflows of resources, are not due and payable in the current period and therefore are not reported in the funds. The details of this difference are shown below:

Compensated absences payable	\$ 3,291,469
Self insurance liability	5,772,369
Subscription liabilities	495,725
Bonds payable	689,204,959
Deferred outflows - losses on defeased debt	(19,928,544)
Net pension liability	65,121,315
Deferred outflows - pensions	(15,431,339)
Deferred inflows - pensions	7,022,016
Net OPEB liability	50,544,621
Deferred outflows - OPEB	(14,891,050)
Deferred inflows - OPEB	<u>20,134,185</u>
Net adjustment to reduce total fund balances - total governmental funds to arrive at net position of governmental activities	<u>\$ 791,335,726</u>

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 2. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS - CONTINUED

#### B. Explanation of certain differences between the statement of revenues, expenditures and changes in fund balances – governmental funds and the government-wide statement of activities

The statement of revenues, expenditures and changes in fund balances - governmental funds includes a reconciliation of the "net changes in fund balances - total governmental funds" and "change in net position of governmental activities" as reported in the government-wide statement of activities. Further details of certain elements of that reconciliation are as follows:

- (1) Governmental funds report capital outlays as expenditures. However, in the statement of activities the cost of those assets is allocated over their estimated useful lives and reported as depreciation and amortization expense. The amount by which capital outlays exceeded depreciation and amortization in the current period is as follows:

Capital outlay expenditures:	
General fund	
General government	\$ 1,356,447
Public safety	3,188,627
Physical environment	2,610,539
Transportation	30,142
Capital projects	27,101,310
Depreciation and amortization expense	<u>(11,705,841)</u>
Net adjustment to increase net changes in fund balances - total governmental funds to arrive at changes in net position of governmental activities	<u>\$ 22,581,224</u>

- (2) Governmental funds report the payment of bond principal and interest when the current financial resources are available and payments are due, and they report the payment of issuance costs, premiums, discounts, and similar items when debt is first issued. However, on the statement of activities interest is accrued and certain bond related costs are deferred and amortized. The details of the difference are as follows:

Net changes of deferred loss, bond costs, discount and premium	\$ 2,500,189
Principal payments on bonds outstanding	34,170,000
Accrued interest payable	<u>514,859</u>
Net adjustment to increase net changes in fund balances - total governmental funds to arrive at changes in net position of governmental activities	<u>\$ 37,185,048</u>

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 2. RECONCILIATION OF GOVERNMENT-WIDE AND FUND FINANCIAL STATEMENTS - CONTINUED

#### B. Explanation of certain differences between the statement of revenues, expenditures and changes in fund balances – governmental funds and the government-wide statement of activities - Continued

(3) Increases in other liabilities reported as expenses in the statement of activities not requiring the use of current financial resources in governmental funds. The details of the difference are as follows:

Compensated absences	\$ (241,164)
Self insurance	85,914
Subscription liabilities	(495,725)
Net OPEB liability	2,228,690
Pensions	<u>(7,743,765)</u>
Net adjustment to decrease net changes in fund balances - total governmental funds to arrive at changes in net position of governmental activities	<u>\$ (6,166,050)</u>

### 3. DEPOSITS AND INVESTMENTS

The District is authorized to invest in securities as described in its investment policy and in its bond resolutions. As of September 30, 2023, the District held the following deposits and investments as categorized below:

	Fair Value	Investment maturities (in years)	
		Less than 1	1 - 5
Demand deposits	\$ 23,884,824	\$ 23,884,824	\$ -
U.S. Treasury securities	132,577,336	87,410,040	45,167,296
U.S. Government agency securities	37,213,602	26,561,518	10,652,084
Supranationals	11,781,995	9,941,343	1,840,652
Money market mutual funds	125,809,372	125,809,372	-
Totals	<u>\$ 331,267,129</u>	<u>\$ 273,607,097</u>	<u>\$ 57,660,032</u>

*Interest Rate Risk* - As a means of limiting its exposure to fair value losses arising from rising interest rates, the District's investment policy for operating funds is structured to provide sufficient liquidity to pay obligations as they come due and (1) limits investments to not more than 7-year maturities (with the exception of bond proceeds, described below); and (2) requires the portfolio have no more than 15% in securities maturing in or having an average life of more than 5 years. Bond proceeds and reserve funds are managed in accordance with bond covenants and funding needs which could result in maturities longer than 7 years.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 3. DEPOSITS AND INVESTMENTS - CONTINUED

*Credit Risk* - The District's investment policy limits credit risk by restricting authorized investments to the following: direct obligations of, or obligations guaranteed by, the U.S. Government; bonds and notes issued by various federal agencies; state and local government securities; Canadian public obligations; public improvement bonds; public utility obligations; public housing obligations; State Board of Education obligations; international development banks; certain government security money market mutual funds; repurchase agreements and reverse repurchase agreements. Securities that derive their value from underlying securities ("derivatives") are specifically prohibited except when separately approved by the District's Board of Supervisors.

*Custodial Credit Risk* - All demand deposits are entirely insured by federal depository insurance or by the multiple financial institution collateral pool pursuant to the Public Depository Security Act of the State of Florida.

The District's investment policy requires that all investments be held by a third party custodian and held in the District's name. As of September 30, 2023, all District investments are held in a bank's trust department in the District's name.

*Concentration of Credit Risk* - At September 30, 2023, there was one issuer with which the District held investments exceeding 5% of the total investment portfolio. The issuer was Federal Home Loan Mortgage Corporation (5.07%).

Restricted Cash and Cash Equivalents and Investments - The table below summarizes the District's balances of cash and cash equivalents and investments restricted as to use. Restricted amounts are primarily unspent bond proceeds and reserves for debt service:

Statement of Net Position Classifications:	
Restricted cash and cash equivalents	\$ 109,229,115
Restricted investments	<u>120,484,700</u>
	<u>\$ 229,713,815</u>

### 4. VALUATION ALLOWANCES

The District recognizes allowances for losses on accounts receivable based on an aging of receivables and includes accounts over 120 days. The Utility Fund recognized an allowance at September 30, 2023 in the amount of \$27,174. The expense associated with this allowance is recognized as an offset to utility revenues.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**5. CAPITAL ASSETS**

Capital asset activity for the year ended September 30, 2023 was as follows:

	Beginning Balance October 1, 2022	Increases	Decreases	Ending Balance September 30, 2023
<b>Governmental Activities:</b>				
Capital assets not being depreciated				
Land	\$ 2,992,490	\$ -	\$ -	\$ 2,992,490
Construction in progress	42,198,803	29,545,247	(57,484,740)	14,259,310
Infrastructure	642,378,810	56,794,550	-	699,173,360
<b>Total capital assets not being depreciated</b>	<b>687,570,103</b>	<b>86,339,797</b>	<b>(57,484,740)</b>	<b>716,425,160</b>
Capital assets being depreciated/amortized				
Buildings	303,558,102	329,073	-	303,887,175
Machinery and equipment	41,523,244	3,987,764	(625,023)	44,885,985
Right-to-use subscription assets	-	754,053	-	754,053
<b>Total capital assets being depreciated/amortized</b>	<b>345,081,346</b>	<b>5,070,890</b>	<b>(625,023)</b>	<b>349,527,213</b>
Less accumulated depreciation/amortization for:				
Buildings	61,777,652	8,690,371	-	70,468,023
Machinery and equipment	35,347,021	2,864,596	(604,921)	37,606,696
Right-to-use subscription assets	-	150,874	-	150,874
<b>Total accumulated depreciation/amortization</b>	<b>97,124,673</b>	<b>11,705,841</b>	<b>(604,921)</b>	<b>108,225,593</b>
<b>Total capital assets being depreciated/amortized, net</b>	<b>247,956,673</b>	<b>(6,634,951)</b>	<b>(20,102)</b>	<b>241,301,620</b>
<b>Governmental activities capital assets, net</b>	<b>\$ 935,526,776</b>	<b>\$ 79,704,846</b>	<b>\$ (57,504,842)</b>	<b>\$ 957,726,780</b>

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**5. CAPITAL ASSETS - CONTINUED**

	Beginning Balance October 1, 2022	Increases	Decreases	Ending Balance September 30, 2023
<b>Business-type Activities:</b>				
Capital assets not being depreciated				
Land	\$ 6,896,164	\$ -	\$ -	\$ 6,896,164
Construction in progress	57,721,081	24,416,468	(61,344,349)	20,793,200
<b>Total capital assets not being depreciated</b>	<b>64,617,245</b>	<b>24,416,468</b>	<b>(61,344,349)</b>	<b>27,689,364</b>
Capital assets being depreciated/amortized				
Buildings	66,564,022	781,670	-	67,345,692
Improvements other than buildings	283,120,074	32,462,955	-	315,583,029
Machinery and equipment	446,851,357	27,982,988	(7,987,339)	466,847,006
Right-to-use subscription assets	-	1,075,319	-	1,075,319
<b>Total capital assets being depreciated/amortized</b>	<b>796,535,453</b>	<b>62,302,932</b>	<b>(7,987,339)</b>	<b>850,851,046</b>
Less accumulated depreciation/amortization for:				
Buildings	46,612,571	1,440,219	-	48,052,790
Improvements other than buildings	170,282,816	6,612,690	-	176,895,506
Machinery and equipment	343,836,352	13,596,408	(7,892,438)	349,540,322
Accumulated amortization	-	161,298	-	161,298
<b>Total accumulated depreciation/amortization</b>	<b>560,731,739</b>	<b>21,810,615</b>	<b>(7,892,438)</b>	<b>574,649,916</b>
<b>Total capital assets being depreciated/amortized, net</b>	<b>235,803,714</b>	<b>40,492,317</b>	<b>(94,901)</b>	<b>276,201,130</b>
<b>Business-type activities capital assets, net</b>	<b>\$ 300,420,959</b>	<b>\$ 64,908,785</b>	<b>\$ (61,439,250)</b>	<b>\$ 303,890,494</b>

The District regularly reviews the feasibility of ongoing capital projects. During the year, the District wrote off \$1,475,555 in Utility Fund projects and \$361,117 in Governmental Fund projects.

**6. INTERFUND RECEIVABLE AND PAYABLE BALANCES AND TRANSFERS**

Interfund balances between funds results mainly from the time lag between the dates that the goods and services were provided or the expenditure occurs, the recording of the transaction and the date the payment between the funds are made. Interfund receivable and payable balances as of September 30, 2023 are as follows:

	Interfund Receivables (Due from)	Interfund Payables (Due to)
General Fund	\$ 43,419	\$ 164,786
Capital Projects Fund	-	913,965
Utility Fund	1,078,751	43,419
	<b>\$ 1,122,170</b>	<b>\$ 1,122,170</b>



# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT

#### A. Changes in long-term liabilities

	Beginning Balance October 1, 2022	Additions	Reductions	Ending Balance September 30, 2023	Due within one year
<b>Governmental activities:</b>					
General Obligation Bonds:					
2013A Ad Valorem	\$ 13,030,000	\$ -	\$ (13,030,000)	\$ -	\$ -
2013B Ad Valorem Refunding	4,590,000	-	(4,590,000)	-	-
2015A Ad Valorem Refunding	10,520,000	-	(1,610,000)	8,910,000	1,685,000
2016A Ad Valorem	156,110,000	-	(2,850,000)	153,260,000	2,990,000
2017A Ad Valorem	173,355,000	-	(7,340,000)	166,015,000	7,705,000
2020A Ad Valorem Refunding	328,735,000	-	(4,750,000)	323,985,000	23,330,000
Deferred amounts:					
Discount/Premium	42,111,073	-	(5,076,114)	37,034,959	-
Total long-term general obligations	728,451,073	-	(39,246,114)	689,204,959	35,710,000
Compensated absences	3,050,305	2,499,112	(2,257,948)	3,291,469	1,791,550
Self insurance liability	6,068,385	36,074	(158,539)	5,945,920	1,318,356
Subscription liabilities	-	701,815	(206,090)	495,725	120,675
Net pension liability	58,647,088	32,885,796	(26,411,569)	65,121,315	-
Net OPEB liability	51,152,329	-	(607,708)	50,544,621	-
Long-term liabilities	<u>\$ 847,369,180</u>	<u>\$ 36,122,797</u>	<u>\$ (68,887,968)</u>	<u>\$ 814,604,009</u>	<u>\$ 38,940,581</u>
<b>Business-type activities:</b>					
Revenue Bonds:					
2013-1 Utility Refunding	\$ 27,340,000	\$ -	\$ (6,050,000)	\$ 21,290,000	\$ 6,355,000
2018-1 Utility	26,230,000	-	-	26,230,000	-
2018-2 Utility	19,750,000	-	(4,700,000)	15,050,000	4,850,000
Deferred amounts:					
Discount/Premium	4,528,783	-	(657,749)	3,871,034	-
Total long-term bonds payable	77,848,783	-	(11,407,749)	66,441,034	11,205,000
Notes from Direct Borrowings:					
2021-1 Utility	35,095,000	-	(150,000)	34,945,000	350,000
2021-2 Utility	55,130,000	-	(6,625,000)	48,505,000	5,900,000
2021-4 Utility	20,976,000	-	(5,182,000)	15,794,000	5,223,000
Total direct borrowings	111,201,000	-	(11,957,000)	99,244,000	11,473,000
Subscription liability	-	1,075,319	(219,058)	856,261	191,341
Long-term liabilities	<u>\$ 189,049,783</u>	<u>\$ 1,075,319</u>	<u>\$ (23,583,807)</u>	<u>\$ 166,541,295</u>	<u>\$ 22,869,341</u>

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT - CONTINUED

#### General Obligation Bonds Payable

2015A Ad Valorem Tax Refunding Bonds - In April 2015, the District issued \$50,925,000 Ad Valorem Refunding Bonds at interest rates of 2.0% to 5.0%. The proceeds were used for the current refunding of the 2005A and 2005B Ad Valorem Tax Bonds maturing on and after June 1, 2015.

2016A Ad Valorem Tax Bonds - In July 2016, the District issued \$165,500,000 Ad Valorem Tax Bonds at interest rates of 4.0% and 5.0%, interest only until June 2019. The proceeds were used to finance the costs to design, construct, equip and improve roadways and other facilities within and outside the District.

2017A Ad Valorem Tax Bonds - In October 2017, the District issued \$199,375,000 Ad Valorem Tax Bonds at interest rates of 3.0% to 5.0%, interest only until June 2019. The proceeds were used to finance additional transportation projects and were also used to retire the District's 2017 Bond Anticipation Note.

2020A Ad Valorem Tax Refunding Bonds - In February 2020, the District issued \$338,025,000 Taxable Ad Valorem Refunding Bonds at interest rates of 1.463% to 2.731%. The proceeds were used for the current refunding of the 2013A and 2013B Ad Valorem Tax Bonds maturing on and after June 2, 2024.

The major provisions of the District's Ad Valorem Tax Bond Resolutions authorizing its debt are as follows:

- (1) The Ad Valorem tax bond issues and related interest are collateralized by an irrevocable lien on the proceeds from Ad Valorem taxes levied by the District.
- (2) Additional bonds may be issued by the District provided (a) the maximum bond debt service requirement of the proposed and then outstanding bonds does not exceed 85% of the maximum annual collection from Ad Valorem Taxes calculated for the current year and (b) the principal amount of all bonds proposed and then outstanding not exceed 50% of the assessed value of the taxable property within the District.

#### Revenue Bonds Payable

2013-1 Utilities Revenue Refunding Bonds - In July 2013, the District issued \$54,915,000 Utilities Revenue Refunding Bonds at interest rates of 2.5% to 5.0%. The proceeds were used to refund the 2003-1 and 2005-1 Utilities Revenue Bonds.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT - CONTINUED

2018-1 Utilities Revenue Bonds - In July 2018, the District issued \$26,230,000 Utilities Revenue Bonds at an interest rate of 5.0%. The proceeds are being used to pay for construction and acquisition of improvements to the utility systems.

2018-2 Taxable Utilities Revenue Bonds - In July 2018, the District issued \$19,750,000 Taxable Utilities Revenue Bonds at an average interest rate of 3.44%. The proceeds are being used to pay for improvements to certain existing utility systems.

#### Notes from Direct Borrowings

2021-1 Utilities Revenue Bonds - In February 2021, the District issued \$35,095,000 Utilities Revenue Bonds at an interest rate of 1.72%. The proceeds are being used to pay for construction and acquisition of improvements to the utility systems. The direct borrowing is a non bank-qualified bond, secured by a pledge of net revenues derived from operation of the District's utility system on a parity with all other previously outstanding Utility Revenue Bonds. The loan is subject to acceleration in accordance with the District's existing Trust Indenture at a default rate equal to prime +4%.

2021-2 Taxable Utilities Revenue Bonds - In February 2021, the District issued \$55,130,000 Taxable Utilities Revenue Bonds at interest rates of 1.03%-1.58%, interest only due until October 2022. The proceeds are being used to pay for improvements to certain existing utility systems. The direct borrowing is a taxable loan, secured by a pledge of net revenues derived from operation of the District's utility system on a parity with all other previously outstanding Utility Revenue Bonds. The loan is subject to acceleration in accordance with the District's existing Trust Indenture at a default rate equal to prime +4%.

2021-4 Utilities Revenue Refunding Bonds - In July 2021, the District issued \$20,976,000 Utilities Revenue Refunding Bonds at an interest rate of 0.79%, interest only due until October 2022. The proceeds were used to currently refund the 2021-3 Taxable Utility Revenue Refunding Bonds. The loan is subject to acceleration in accordance with the District's existing Trust Indenture at a default rate equal to prime +4%.

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT - CONTINUED

The major provisions of the Utility Fund's trust indentures securing its debt are as follows:

- (1) The debt obligation and related interest are collateralized by a pledge of the net revenues of the combined utility systems.
- (2) The District will establish rates that will provide sufficient net revenues (revenues less operating expenses (excluding depreciation and lease payments to WDWC)), to pay 110% of the annual debt service requirements due each year. Revenues are defined to mean all rates, fees, charges or other income (including certain investment earnings, impact fees and special assessments) generated by the Utility Fund.
- (3) The District will pay all current operating expenses.
- (4) The District will deposit into the Sinking Fund on a monthly basis an amount equal to one-sixth of the next semi-annual interest payment and one-twelfth of the next annual principal payment.
- (5) The District will maintain a renewal and replacement fund equal to 5% of the gross revenues (less expenses for purchased power and fuel) received in the prior year. Such amount may be and was reduced to 4% by certification from the District's consulting engineer.
- (6) The District will maintain on deposit in the emergency repair fund at least \$500,000.
- (7) The debt service reserve requirements are being provided by Debt Service Reserve accounts with the bond trustee.
- (8) Additional bonds may be issued if the net revenues (revenues of the system less operating expenses (excluding depreciation and lease payments to WDWC)) for twelve consecutive prior months are at least equal to 125% of the maximum annual debt service of the proposed and then outstanding bonds.

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT - CONTINUED

#### B. Annual Debt Service Requirements

The annual requirements to amortize the principal balance and interest of all bonds outstanding are as follows:

		General Obligation Bonds			
Year Ended September 30,	Principal		Interest		
2024	\$	35,710,000	\$	22,799,674	
2025		36,725,000		21,791,296	
2026		37,955,000		20,557,790	
2027		39,260,000		19,254,460	
2028		40,635,000		17,877,655	
2029-2033		225,690,000		66,893,314	
2034-2038		236,195,000		23,588,791	
Total	\$	652,170,000	\$	192,762,980	
Current portion		(35,710,000)			
Deferred amounts:					
Discount/Premium		37,034,959			
Long-term bonds payable	\$	653,494,959			

		Revenue Bonds		Direct Borrowings	
Year Ended September 30,	Principal		Interest		
2024	\$	11,205,000	\$	2,656,468	\$ 11,473,000 \$ 1,320,590
2025		12,300,000		2,147,855	10,315,000 1,218,212
2026		12,835,000		1,595,173	10,406,000 1,119,187
2027		1,480,000		1,274,500	19,005,000 934,150
2028		1,555,000		1,198,625	16,320,000 666,646
2029-2033		9,025,000		4,714,375	20,855,000 1,483,911
2034-2038		11,510,000		2,159,250	10,870,000 418,304
2039		2,660,000		66,500	- -
Total	\$	62,570,000	\$	15,812,746	\$ 99,244,000 \$ 7,161,000
Current portion		(11,205,000)			(11,473,000)
Deferred amounts:					
Discount/Premium		3,871,034			-
Long-term bonds payable	\$	55,236,034			\$ 87,771,000

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 7. LONG-TERM DEBT - CONTINUED

#### C. Subscription Based Information Technology Arrangements

The District has entered into subscription-based information technology arrangements (SBITAs) for asset, energy, emergency and practice management, and procurement software for a period of one to five years and an incremental borrowing rate of 3.98% to 4.41%. The SBITAs have been recorded at the present value of the future contract payments as of the date of their inception or, for SBITAs existing prior to the implementation year at the remaining terms of the agreement, using the facts and circumstances available at October 1, 2022.

Future payments under the SBITA agreements are as follows:

Year Ended September 30,	Governmental Activities		Business-Type Activities		Total
	Principal	Interest	Principal	Interest	
2024	\$ 120,675	\$ 22,642	\$ 191,341	\$ 34,708	\$ 369,366
2025	131,663	15,253	206,088	26,952	379,956
2026	117,405	9,865	221,433	18,598	367,301
2027	125,982	5,107	237,399	9,623	378,111
Total	<u>\$ 495,725</u>	<u>\$ 52,867</u>	<u>\$ 856,261</u>	<u>\$ 89,881</u>	<u>\$ 1,494,734</u>

For the year ended September 30, 2023, the District had \$30,126 of SBITAs with variable payments that were based on user seats. The District had no other payments, such as termination penalties, not previously included in the measurement of the subscription liability. The District had no commitments under SBITAs before the commencement of the subscription term or any losses associated with an impairment.

### 8. TRANSACTIONS WITH PRINCIPAL LANDOWNERS

During fiscal year 2023, Walt Disney World Co. and other wholly owned subsidiaries of The Walt Disney Company provided certain services to the District as follows:

#### Governmental Funds

- (1) Financial and other administrative services amounted to \$2,542,264, which included passes and other benefits, and service awards and celebrations for years of service.
- (2) Maintenance of various District water control facilities amounted to \$364,745, which included aquatic weed control.
- (3) Maintenance of certain roadways and District property within the District amounted to \$64,692, which included signage labor, street sweeping and mosquito control.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 8. TRANSACTIONS WITH PRINCIPAL LANDOWNERS - CONTINUED

#### Governmental Funds - Continued

- (4) Maintenance of certain building functions within the District amounted to \$57,684, including generators and fire alarm panels.

At September 30, 2023, the General Fund included accounts payable of \$40,622 and accounts receivable of \$74,637 to Walt Disney World Co. and other wholly-owned subsidiaries of the Walt Disney Company.

The District's primary source of revenue is ad valorem taxes. Walt Disney Co. comprised 86% of the total taxable assessed value within the District for the year ended September 30, 2023.

#### Utility Fund

- (1) Construction project management labor associated with various capital improvements amounted to \$1,219,737.
- (2) In fiscal year 2023, the Operational Services Fee Cap within the District's labor services agreement with Reedy Creek Energy Services (see Note 15 for additional details) was \$33,724,250. Total payments under this contract included operation and maintenance of the utility system of \$31,687,759, planned work projects of \$418,495 and planned work capital of \$1,136,495.

At September 30, 2023, the Utility Fund had accounts receivable of \$20,004,364 and accounts payable of \$3,703,862 with Walt Disney World Co. and other wholly-owned subsidiaries of The Walt Disney Company.

The District provides utility services to Walt Disney World Co. and other associated companies within its service area. Revenues from services provided to these companies were 84% of total utility revenues for the year ended September 30, 2023.

The District entered into an agreement February 2, 2023 with Walt Disney Parks and Resorts U.S., Inc. (WDPR) and Palm Hospitality Company, for the District to purchase land from each party in order to construct a 4-lane divided rural roadway and other improvements connecting the portions of the public roadway of World Drive described as the Northern portion and Southern portion. The agreement states the District will pay Palm Hospitality \$600,000 and WDPR \$12,272,000. No payments have been made and no land titles have been transferred as of September 30, 2023.

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**9. RETIREMENT SYSTEM**

General Information - All full-time employees of the District participate in the FRS, administered by the State. As provided by Chapters 121 and 112, Florida Statutes, the FRS provides two cost sharing, multiple employer defined benefit plans administered by the Florida Department of Management Services, Division of Retirement, including the FRS Pension Plan ("Pension Plan") and the Retiree Health Insurance Subsidy ("HIS Plan"). Employees elect participation in either the Pension Plan or the defined contribution plan ("Investment Plan"), which is administered by the State Board of Administration ("SBA"). The FRS provides retirement and disability benefits, annual cost-of-living adjustments and death benefits to plan members and beneficiaries. Benefits are established by Chapter 121, Florida Statutes and Chapter 60S, Florida Administrative Code. Amendments to the law can be made only by an act of the Florida State Legislature.

The State of Florida annually issues a publicly available financial report that includes financial statements and required supplementary information for FRS. The latest available report may be obtained by writing to the State, Division of Retirement, Department of Management Services, P.O. Box 9000, Tallahassee, Florida, 32315-9000, or from the website: [www.dms.myflorida.com/workforce\\_operations/retirement/publications](http://www.dms.myflorida.com/workforce_operations/retirement/publications).

**Pension Plan**

Benefits provided - Benefits under the Pension Plan are computed on the basis of age, average final compensation and service credit. Pension plan members are eligible for retirement as follows:

		Class			
		Regular	Senior Management	Special Risk	Special Risk Administrative Support
Enrolled prior to July 1, 2011	Vested	6 years	6 years	6 years	6 years
	Normal retirement age	earlier of 30 years of credited service or attainment of age 62	earlier of 30 years of credited service or attainment of age 62	earlier of 25 years of credited service or attainment of age 55	earlier of 25 years of credited service or attainment of age 55
	Retirement benefit	1.6% of average final compensation for each year of credited service	2% of average final compensation for each year of credited service	3% of average final compensation for each year of credited service	1.6% of average final compensation for each year of credited service
Enrolled on or after July 1, 2011	Vested	8 years	8 years	8 years	8 years
	Normal retirement age	earlier of 33 years of credited service or attainment of age 65	earlier of 33 years of credited service or attainment of age 65	earlier of 30 years of credited service or attainment of age 60	earlier of 30 years of credited service or attainment of age 60
	Retirement benefit	1.6% of average final compensation for each year of credited service	2% of average final compensation for each year of credited service	3% of average final compensation for each year of credited service	1.6% of average final compensation for each year of credited service



# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### Pension Plan - Continued

If the member is initially enrolled in the Pension Plan before July 1, 2011, and all service credit was accrued before July 1, 2011, the annual cost-of-living adjustment is 3% per year. If the member is initially enrolled before July 1, 2011, and has service credit on or after July 1, 2011, there is an individually calculated cost-of-living adjustment, which is determined by dividing the sum of the pre-July 2011 service credit by the total service credit at retirement, multiplied by 3%. Plan members initially enrolled on or after July 1, 2011 will not have a cost-of-living adjustment after retirement.

Early retirement may be taken anytime; however, there is a 5% benefit reduction for each year prior to normal retirement age. Members are also eligible for in-line-of-duty or regular disability benefits if permanently disabled and unable to work. Pension Plan Members eligible for retirement are given the option to enter the Deferred Retirement Option Program ("DROP"), which effectively allows them to work with a FRS employer for up to 96 months after electing to participate. Deferred monthly benefits are held in the FRS Trust Fund and accrue interest. There are no required contributions by DROP participants.

Contributions - The contribution requirements of the District are established and may be amended by FRS. Effective July 1, 2011 Florida Legislature required employees contribute 3% of their annual earnings on a pretax basis, with remaining contributions being the obligation of the District. The District contributed 19.79% of covered employee payroll during the year. The District's contributions to FRS for the year ended September 30, 2023 were \$7,164,161. Employee contributions to FRS for the year ended September 30, 2023 were \$996,492. Contributions made and accrued were equal to the required contributions for each year.

The FRS has numerous classes of membership (of which District employees qualify in five classes) with descriptions and employer contribution rates in effect during the year ended September 30, 2023 as follows:

Regular Class - Members not qualifying for other classes (11.91% from 10/1/2022 through 6/30/2023 and 13.57% from 7/1/2023 through 9/30/2023).

Special Risk Class - Members employed as law enforcement officers, firefighters, correctional officers or community-based correctional probation officers, and paramedics and EMTs who meet the criteria set to qualify for this class (27.83% from 10/1/2022 through 6/30/2023 and 32.67% from 7/1/2023 through 9/30/2023).

Special Risk Administrative Support Class - Special risk employees who are transferred or reassigned to a non-special risk position (38.65% from 10/1/2022 through 6/30/2023 and 39.82% from 7/1/2023 through 9/30/2023).

Senior Management Service Class - Qualifying member of senior management (31.57% from 10/1/2022 through 6/30/2023 and 34.52% from 7/1/2023 through 9/30/2023).

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### Pension Plan - Continued

Deferred Retirement Option Program (DROP) - Participating members of the program, not to exceed 96 months (18.60% from 10/1/2022 through 6/30/2023 and 21.13% from 7/1/2023 through 9/30/2023).

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions - At September 30, 2023, the District reported a liability of \$51,043,615 for its proportionate share of the net pension liability. The net pension liability was measured as of June 30, 2023, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2023. The District's proportion of the net pension liability was based on historical employer contributions. At June 30, 2023, the District's proportionate share was 0.12810%, which was a decrease of 0.00278% from its proportionate share measured as of June 30, 2022.

For the year ended September 30, 2023, the District recognized an increase in the pension liability primarily due to investment losses and resulting pension fund asset depreciation experienced by FRS. The District recognized pension expense in the amount of \$9,635,699. In addition, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 4,792,554	\$ -
Change of assumptions	3,327,446	-
Net difference between projected and actual earnings on Pension Plan investments	2,131,720	-
Changes in proportion and differences between District Pension Plan contributions and proportionate share of contributions	1,820,369	4,753,418
District Pension Plan contributions subsequent to the measurement date	1,951,955	-
<b>Total</b>	<b>\$ 14,024,044</b>	<b>\$ 4,753,418</b>

The deferred outflows of resources related to the Pension Plan, totaling \$1,951,955 resulting from District contributions to the Plan subsequent to the measurement date, will be recognized as a reduction of the net pension liability in fiscal year 2024. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to the Pension Plan will be recognized in pension expense as follows:

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### Pension Plan - Continued

Fiscal Year Ending September 30,	Amount
2024	\$ 997,440
2025	(395,179)
2026	5,985,099
2027	568,536
2028	162,775

Actuarial Assumptions - The total pension liability in the June 30, 2023 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

- Inflation: 2.40%
- Salary increases: 3.25% average, including inflation
- Investment rate of return: 6.70% net of pension plan investment expense and inflation

The actuarial assumptions used in the July 1, 2023 valuation were based on the results of an actuarial experience study for the period July 1, 2013 through June 30, 2018. Mortality rates were based on the PUB-2010 base table, projected generationally with Scale MP-2018.

The long-term expected rate of return on Pension Plan investments was not based on historical returns, but instead is based on a forward-looking capital market economic model. The long-term expected rate of return assumption of 6.70% consists of two building block components: 1) an inferred real (in excess of inflation) return of 4.20%, which is consistent with the 4.48% real return from the capital market outlook model developed by the FRS consulting actuary; and 2) a long-term average annual inflation assumption of 2.40% as adopted in October 2023 by the FRS Actuarial Assumption Conference. The target allocation and best estimates of arithmetic and geometric real rates of return for each major asset class are summarized in the following table:

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# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### Pension Plan - Continued

Asset Class	Target Allocation <sup>(1)</sup>	Annual Arithmetic Return	Compound Annual (Geometric) Return	Standard Deviation
Cash	1.0 %	2.9 %	2.9 %	1.1 %
Fixed Income	19.8	4.5	4.4	3.4
Global Equity	54.0	8.7	7.1	18.1
Real Estate	10.3	7.6	6.6	14.8
Private Equity	11.1	11.9	8.8	26.3
Strategic Investments	3.8	6.3	6.1	7.7
Total	<u>100.0 %</u>			
Assumed Inflation - Mean			2.4 %	1.4 %

<sup>(1)</sup> As outlined in the Pension Plan's investment policy available from Funds We Manage on the SBA's website at [www.sbafla.com](http://www.sbafla.com).

**Discount Rate** - The discount rate used to measure the total pension liability was 6.70%. The Pension Plan's fiduciary net position was projected to be available to make all projected future benefit payments of current active and inactive employees. Therefore, the discount rate for calculating the total pension liability is equal to the long-term expected rate of return.

**Sensitivity of the District's Proportionate Share of the Net Position Liability to Changes in the Discount Rate** - The following represents the District's proportionate share of the net pension liability calculated using the discount rate of 6.70%, as well as what the District's proportionate share of the net pension liability (asset) would be if it were calculated using a discount rate that is one percentage point lower (5.70%) or one percentage point higher (7.70%) than the current rate:

	1% Decrease (5.70%)	Discount Rate (6.70%)	1% Increase (7.70%)
District's proportionate share of the net pension liability (asset)	\$ 87,192,888	\$ 51,043,615	\$ 20,800,423

**Pension Plan Fiduciary Net Position** - Detailed information regarding the Pension Plan's fiduciary net position is available in the separately issued FRS Pension Plan and Other State-Administered Systems Annual Comprehensive Financial Report.

**Payables to the Pension Plan** - At September 30, 2023, the District reported a payable in the amount of \$977,298 for outstanding contributions to the Pension Plan required for the fiscal year ended September 30, 2023.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### HIS Plan

Plan Description - The HIS Plan is a cost-sharing multiple-employer defined benefit pension plan established under Section 112.363, Florida Statutes, and may be amended by the Florida legislature at any time. The benefit is a monthly payment to assist retirees of State-administered retirement systems in paying their health insurance costs and is administered by the Florida Department of Management Services, Division of Retirement.

Benefits Provided - For the fiscal year ended September 30, 2023, eligible retirees and beneficiaries received a monthly HIS payment of \$7.50 for each year of creditable service completed at the time of retirement, with a minimum HIS payment of \$45 and a maximum HIS payment of \$225 per month. To be eligible to receive these benefits, a retiree under a State-administered retirement system must provide proof of health insurance coverage, which may include Medicare.

Contributions - The HIS Plan is funded by required contributions from FRS participating employers as set by the Florida Legislature. Employer contributions are a percentage of gross compensation for all active FRS members. At September 30, 2023, the HIS contribution was 2.0%. The District contributed 100% of its statutorily required contributions for the current and preceding four years. HIS Plan contributions are deposited in a separate trust fund from which payments are authorized. HIS Plan benefits are not guaranteed and are subject to annual legislative appropriation. In the event legislative appropriation or available funds fail to provide full subsidy benefits to all participants, benefits may be reduced or cancelled.

The District's contributions to the HIS Plan totaled \$633,993 for the fiscal year ended September 30, 2023.

Pension Liabilities, Pension Expense, and Deferred Outflows of Resources and Deferred Inflows of Resources Related to Pensions - At September 30, 2023, the District reported a liability of \$14,077,700 for its proportionate share of the HIS Plan's net pension liability. The net pension liability was measured as of June 30, 2023, and the total pension liability used to calculate the net pension liability was determined by an actuarial valuation as of June 30, 2023, with the liabilities developed in that valuation rolled forward to the Measurement Date using standard actuarial roll-forward techniques. The District's proportionate share of the net pension liability was based on the District's 2022-2023 fiscal year contributions relative to the 2022-2023 fiscal year contributions of all participating members. At June 30, 2023, the District's proportionate share was 0.08864%, which was a decrease of 0.00530% from its proportionate share measured as of June 30, 2022.

For the fiscal year ended September 30, 2023, the District recognized pension expense of \$5,298,915. In addition, the District reported deferred outflows of resources and deferred inflows of resources related to pensions from the following sources:

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**9. RETIREMENT SYSTEM - CONTINUED**

**HIS Plan - Continued**

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ 206,088	\$ 33,043
Change of assumptions	370,098	1,219,880
Net difference between projected and actual earnings on HIS Plan investments	7,270	-
Changes in proportion and differences between District HIS Plan contributions and proportionate share of contributions	632,345	1,015,675
District HIS contributions subsequent to the measurement date	191,494	-
<b>Total</b>	<b>\$ 1,407,295</b>	<b>\$ 2,268,598</b>

The deferred outflows of resources related to the HIS Plan, totaling \$191,494 and resulting from District contributions to the HIS Plan subsequent to the measurement date, will be recognized as an increase to the net pension liability in fiscal year 2024. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to the HIS Plan will be recognized in pension expense as follows:

Fiscal Year Ending September 30,	Amount
2024	\$ (183,952)
2025	(111,530)
2026	(185,563)
2027	(363,969)
2028	(192,798)
Thereafter	(14,985)

Actuarial Assumptions - The total pension liability in the June 30, 2023, actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

- Inflation: 2.40%
- Salary increases: 3.25% average, including inflation
- Municipal bond rate: 3.65%

Mortality rates were based on the Generational PUB-2010 with Projection Scale MP-2018.

The actuarial assumptions used in the July 1, 2023 valuation were based on the results of an actuarial experience study for the period July 1, 2013 through June 30, 2018.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**9. RETIREMENT SYSTEM - CONTINUED**

**HIS Plan - Continued**

Discount Rate - The discount rate used to measure the total pension liability was 3.65%. In general, the discount rate for calculating the total pension liability is equal to the single rate equivalent to discounting at the long-term expected rate of return for benefit payments prior to the projected depletion date. Because the HIS benefit is essentially funded on a pay-as-you-go basis, the depletion date is considered to be immediate, and the single equivalent discount rate is equal to the municipal bond rate selected by the FRS Actuarial Assumption Conference. The Bond Buyer General Obligation 20-Bond Municipal Bond Index was adopted as the applicable municipal bond index.

Sensitivity of the District's Proportionate Share of the Net Position Liability to Changes in the Discount Rate - The following represents the District's proportionate share of the net pension liability calculated using the discount rate of 3.65%, as well as what the District's proportionate share of the net pension liability would be if it were calculated using a discount rate that is one percentage point lower (2.65%) or one percentage point higher (4.65%) than the current rate:

	1% Decrease (2.65%)	Discount Rate (3.65%)	1% Increase (4.65%)
District's proportionate share of the HIS pension liability	\$ 16,060,458	\$ 14,077,700	\$ 12,434,126

HIS Plan Fiduciary Net Position - Detailed information regarding the HIS Plan's fiduciary net position is available in the separately issued FRS Pension Plan and Other State-Administered Systems Annual Comprehensive Financial Report.

Payables to the HIS Plan - At September 30, 2023, the District reported a payable in the amount of \$78,290 for outstanding contributions to the HIS Plan required for the fiscal year ended September 30, 2023.

**Investment Plan**

The SBA administers the defined contribution plan officially titled the FRS Investment Plan. The Investment Plan is reported in the SBA's annual financial statements and in the State of Florida Annual Comprehensive Financial Report.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 9. RETIREMENT SYSTEM - CONTINUED

#### Investment Plan - Continued

As provided in Section 121.4501, Florida Statutes, eligible FRS members may elect to participate in the Investment Plan in lieu of the FRS defined benefit plan. District employees participating in DROP are not eligible to participate in the Investment Plan. Employer and employee contributions, including amounts contributed to individual member's accounts, are defined by law, but the ultimate benefit depends in part on the performance of investment funds. Benefit terms, including contribution requirements, for the Investment Plan are established and may be amended by the Florida Legislature. The Investment Plan is funded with the same employer and employee contribution rates that are based on salary and membership class (Regular Class, Senior Management, etc.), as the Pension Plan. Contributions are directed to individual member accounts, and the individual members allocate contributions and account balances among various approved investment choices.

Costs to administer the Investment Plan, including the FRS Financial Guidance Program, are funded through employer contributions of 0.06% of payroll and by forfeited benefits of plan members. Allocations to investment member's accounts during the 2022-2023 fiscal year, as established by Section 121.72, Florida Statutes, are based on a percentage of gross compensation, by class, as follows: Regular 11.30%, Special Risk 19.00%, Special Risk Administrative Support 12.95%, and Senior Management Service 12.67%.

For all membership classes, employees are immediately vested in their own contributions and are vested after one year of service for employer contributions and investment earnings. If an accumulated benefit obligation for service credit originally earned under the Pension Plan is transferred to the Investment Plan, the member must have the years of service required for Pension Plan vesting (including service credit represented by the transferred funds) to be vested for these funds and the earnings on the funds. Non-vested employer contributions are placed in a suspense account for up to 5 years. If the employee returns to FRS-covered employment within the 5-year period, the employee regains control over their account. If the employee does not return within the 5-year period, the employee forfeits the accumulated account balance. For fiscal year ended September 30, 2023, the information for the amount of forfeitures was unavailable from the SBA; however, management believes these amounts, if any, would be immaterial to the District.

After termination and applying to receive benefits, members may rollover vested funds to another qualified plan, structure a periodic payment under the Investment Plan, receive a lump-sum distribution, leave the funds invested for future distribution, or any combination of these options. Disability coverage is provided; the member may either transfer the account balance to the Pension Plan when approved for disability retirement to receive guaranteed lifetime monthly benefits under the Pension Plan, or remain in the Investment Plan and rely upon that account balance for retirement income.



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**10. OTHER POSTEMPLOYMENT BENEFITS (OPEB)**

**General Information about the OPEB Plan**

Plan description - The District provides OPEB through the Voluntary Employees' Beneficiary Association ("VEBA") Plan, a single-employer plan administered by the District. The Plan is administered by the VEBA Board, whose members are the same as the District's Board of Supervisors. The authority to establish and amend benefits, as well as the funding policy, rests with the District's Board. The Plan does not issue a separate publicly available financial report. The Plan trustee is US Bank.

State Statute requires the District to continue offering healthcare coverage to retirees at the District's cost; however, for employees hired prior to March 1, 2013, the District elected by policy to provide this coverage at no cost to retirees that have met certain requirements during employment with the District. Certain executive positions qualify for the health benefits regardless of hire date. The District also has a Survivor Income Plan for retirees that have met certain requirements during employment with the District.

Benefits provided - The VEBA Plan provides healthcare benefits for eligible retirees and their dependents enrolled in District-sponsored plans. Benefits are provided through a third party insurer. To qualify for this benefit non-union employees must have 20 years of service with the District and be age 62 to obtain paid coverage for themselves and their eligible dependent, certain executive positions must have 7 years of service and be age 62, and union employees must have 20 years of service with the District and be age 55 to obtain paid coverage for themselves. For employees hired after March 1, 2013, retirees may elect to continue coverage for themselves and their eligible dependents at the full, unsubsidized cost to the District for the elected coverage. The VEBA Plan also provides death benefits for certain retirees, equivalent of two times the participant's final annual base salary at retirement to their designated beneficiary. To qualify for this benefit, they must be designated or key employees as outlined by the plan and be age 62 with 10 years (7 years for executive positions) of service, or 25 years with no age requirement. The District currently has 9 retirees that meet the eligibility requirements.

Employees covered by benefit terms - At September 30, 2023, the following employees were covered by the benefit terms:

Inactive employees or beneficiaries currently receiving benefit payments	145
Inactive employees entitled to but not yet receiving benefit payments	8
Active employees	365

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 10. OTHER POSTEMPLOYMENT BENEFITS (OPEB) - CONTINUED

#### General Information about the OPEB Plan - Continued

Contributions - Contributions to the VEBA Trust are not codified or mandated but the District's funding strategy is to contribute a minimum of \$1 million to the VEBA Trust per year. The District is paying current benefits as they come due from operations. For the year ended September 30, 2023, the District's contribution rate was 10.4% of covered-employee payroll. Employees are not required to contribute to the Plan. However, retirees reimburse the District for their elected health coverage at the District's cost in instances where they are not entitled to all or a portion of the subsidy.

#### Investments

*Rate of Return* - For the year ended September 30, 2023, the annual money-weighted rate of return on investments, net of investment expense, was 2.4%. The money-weighted rate of return expresses investment performance, net of investment expense, adjusted for the changing amounts actually invested.

*Interest Rate Risk* - As a means of limiting its exposure to fair value losses arising from rising interest rates, the District's investment guidelines related to the VEBA Trust are structured to provide sufficient liquidity to pay obligations as they come due. Guidelines for the VEBA Trust are consistent with the policy on other District investments as to the restrictions on the type of investments.

*Custodial Credit Risk* - VEBA Plan investments are held by the Trustee in the Plan's name.

*Credit Risk* - The investment policy limits credit risk by restricting authorized investments to the following: direct obligations of, or obligations guaranteed by, the U.S. Government; bonds and notes issued by various federal agencies; state and local government securities; Canadian public obligations; public improvement bonds; public utility obligations; public housing obligations; State Board of Education obligations; international development banks; certain government security money market mutual funds; repurchase agreements and reverse repurchase agreements.

*Concentration of Credit Risk* - At September 30, 2023, there were two issuers with which the District held investments exceeding 5% of the total investment portfolio. They were Federal Home Loan Bank (18.02%) and Federal National Mortgage Association (8.58%).

The VEBA Plan categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. VEBA plan investments are summarized in the table below. Level 1 investments are valued using prices quoted in active markets for those securities. Level 2 investments are valued using observable inputs other than quoted prices. The VEBA Plan's cash and cash equivalents are invested in First American Money Market Fund, which has a credit rating of AAAM as rated by Standard & Poor's. There are no redemption or deposit restrictions related to these money market funds and the fund aims to maintain NAV of \$1 per share.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**10. OTHER POSTEMPLOYMENT BENEFITS (OPEB) - CONTINUED**

**Investments - Continued**

	2023			
	Total Fair Value	Level 1	Level 2	Level 3
	2023			
	Total Fair Value	Level 1	Level 2	Level 3
<b>Investments Measured at Fair Value</b>				
U.S. Treasury and Government Agency Securities	\$ 13,117,167	\$ -	\$ 13,117,167	\$ -
Supranational	1,900,821	-	1,900,821	-
Total Investments at Fair Value	\$ 15,017,988	\$ -	\$ 15,017,988	\$ -
<b>Investments Measured at Amortized Cost</b>				
Money Market Funds	\$ 26,094			
Total Investments	\$ 15,044,082			

**Long-Term Expected Rate of Return**

The long-term expected rate of return on trust investments can be determined using a building block method in which best estimate ranges of expected future real rates of return (expected returns, net of investment expenses and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation.

Best estimates of geometric real rates of return for each major asset class included in the plan's target asset allocation as of September 30, 2023 are summarized in the following table:

	Target Allocation	Long-Term Expected Rate of Return
Fixed Income	100.00 %	4.09 %
Total	100.00 %	

**Net OPEB Liability**

The District's net OPEB liability was measured as of September 30, 2023 and the total OPEB liability used to calculate the net OPEB liability was determined by an actuarial valuation as of that date.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**NOTES TO THE FINANCIAL STATEMENTS - CONTINUED**

Year Ended September 30, 2023

**10. OTHER POSTEMPLOYMENT BENEFITS (OPEB) - CONTINUED**

**Net OPEB Liability - Continued**

Actuarial Assumptions - The total OPEB liability in the September 30, 2023 valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement, unless otherwise specified:

- Inflation 2.50%
- Salary increases 3.50%, including inflation
- Investment rate of return 4.09%, including inflation
- Healthcare cost trend rates The table below are annual trends based on the current trend study and are applied on a select and ultimate basis. Select trends are reduced .25% per year until reaching the ultimate trend rate.

Expense Type	Fiscal Years		
	2024	2025	2026+
Pre-65 Medical	6.3 %	6.0 %	5.2 %
Post-65 Medical	4.5	4.5	4.5
Dental	4.0	4.0	4.0
Vision	3.0	3.0	3.0

Mortality assumptions were based on table PUB-2010 with projections scale MP-2021. Retirement and turnover assumptions are consistent with the assumptions used in the actuarial valuation of the Florida Retirement System as of July 1, 2021.

The discount rate (long-term expected rate of return) is based on the Bond Buyer "20-Bond GO Index" and assuming that the expected return on plan assets is equal to the 20-Bond GO Index, believed to be reasonable given the assets are 100% invested in corporate and government fixed income securities of various maturities.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**10. OTHER POSTEMPLOYMENT BENEFITS (OPEB) - CONTINUED**

**Changes in Net OPEB Liability**

	Increase (Decrease)		
	Total OPEB Liability (a)	Plan Fiduciary Net Position (b)	Net OPEB Liability (a) - (b)
<b>Balances at October 1, 2022</b>	\$ 66,304,404	\$ 15,152,075	\$ 51,152,329
<b>Changes for the year:</b>			
Service cost	1,124,357	-	1,124,357
Interest	2,655,985	-	2,655,985
Changes in assumptions	(954,595)	-	(954,595)
Contributions - employer	-	3,072,626	(3,072,626)
Net investment gain	-	360,829	(360,829)
Benefit payments	(2,058,314)	(2,058,314)	-
<b>Net changes</b>	<b>767,433</b>	<b>1,375,141</b>	<b>(607,708)</b>
<b>Balances at September 30, 2023</b>	<b>\$ 67,071,837</b>	<b>\$ 16,527,216</b>	<b>\$ 50,544,621</b>
Plan fiduciary net position as a percentage of total OPEB liability			24.6%

Sensitivity of the net OPEB liability to changes in the discount rate. The following presents the net OPEB liability of the District, as well as what the District's net OPEB liability would be if it were calculated using a discount rate that is one percentage point lower (3.09%) or one percentage point higher (5.09%) than the current discount rate (rounded to the nearest thousand):

	1% Decrease (3.09%)	Discount Rate (4.09%)	1% Increase (5.09%)
Net OPEB liability	\$ 61,903,175	\$ 50,544,621	\$ 41,383,246

Sensitivity of the net OPEB liability to changes in the healthcare cost trend rates. The following presents the net OPEB liability of the District, as well as what the District's net OPEB liability would be if it were calculated using healthcare cost trend rates that are one percentage point lower (5.3% decreasing to 3.5%) or one percentage point higher (7.3% decreasing to 5.5%) than the current healthcare cost trend rates (rounded to the nearest thousand):

	1% Decrease (5.3% decreasing to 3.5%)	Healthcare Cost Trend Rates (6.3% decreasing to 4.5%)	1% Increase (7.3% decreasing to 5.5%)
Net OPEB liability	\$ 41,562,802	\$ 50,544,621	\$ 62,312,564

Changes of assumptions or other inputs. Beginning of year total OPEB liability was calculated using an assumed discount rate of 4.00%. The discount rate used at September 30, 2023 was 4.09%.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

**10. OTHER POSTEMPLOYMENT BENEFITS (OPEB) - CONTINUED**

**OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources Related to OPEB**

For the year ended September 30, 2023, the District recognized OPEB expense of \$843,936. At September 30, 2023, the District reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual demographic experience	\$ 1,814,630	\$ 1,000,888
Change of assumptions	11,962,037	19,133,297
Net difference between projected and actual investment performance	1,114,383	-
<b>Total</b>	<b>\$ 14,891,050</b>	<b>\$ 20,134,185</b>

Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Fiscal Year Ending September 30,	Amount
2024	\$ (2,278,993)
2025	(2,295,415)
2026	(2,345,747)
2027	(1,815,796)
2028	1,043,012
Thereafter	2,449,804

**11. RISK MANAGEMENT**

The District is self-insured and carries excess commercial insurance due to exposure to certain risks of loss related to theft, damage to and destruction of assets, torts, injuries to employees and natural disasters. The District retains risk up to a maximum of \$1,000,000 for each worker's compensation and employer's liability claim, \$250,000 for each liability claim, \$100,000 for most property damage claims, \$50,000 for crime/theft losses and \$125,000 for cyber liabilities. The District purchases commercial insurance for certain exposures in excess of risk retained with commercially reasonable limits, sublimits, terms and conditions. There have been no material claim settlements in excess of insurance coverage during the three fiscal years ended September 30, 2021, 2022 and 2023.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 11. RISK MANAGEMENT - CONTINUED

Liabilities are reported when it is probable that a material loss has occurred and the amount of the loss can be reasonably estimated. Liabilities include an estimate for claims that have been incurred but not reported. The self-insurance liability of \$5,945,920 at September 30, 2023 is based on an actuarial review of claims pending and past experience. Changes in the claims liability amount during fiscal years 2023 and 2022 are as follows:

	Year Ended September 30,	
	2023	2022
Self insurance liability beginning balance	\$ 6,068,385	\$ 5,989,533
Claims and changes in estimates	991,033	1,326,935
Claims payments	(1,113,498)	(1,248,083)
Self insurance liability ending balance	\$ 5,945,920	\$ 6,068,385

### 12. DERIVATIVE FUEL INSTRUMENTS

The District entered into derivative fuel instruments - cash flow hedges (commodity swaps, caps and collars) to financially hedge the cost of natural gas. The District's fuel-related derivative transactions are recorded at fair value on the Statement of Net Position as either an asset or liability depending on their fair value, and the related unrealized gains and/or losses for effective hedges are deferred and reported as either deferred inflows or outflows of resources. Realized gains and losses on these transactions are recognized as fuel expense in the specific period in which the instrument is settled. During the year, a total of \$2,321,135 in settlement gains was recognized in fuel expense.

The following is a summary of the derivative fuel instruments of the Utility Fund as of September 30, 2023 which have been deemed effective and are recorded as deferred inflows.

Classification	Fair Value at September 30,				Notional	Maturity
	2022	Change in fair value	2023			
Deferred outflows/(inflows)	\$ (25,601,855)	\$ 23,726,506	\$ (1,875,349)		10,799,883 MMBTUs	FY2024 - 2026

**Credit Risk** - The District's counterparties must have a minimum credit rating of BBB- issued by Standard and Poor's or Fitch's rating service or Baa3 issued by Moody's Investor Services.

**Basis Risk** - All of the District's transactions are based on the same reference rates, thus there is no basis risk.

**Termination Risk** - The District's Energy Risk Management Oversight Committee oversees the derivative instrument activity and of the counterparties who are required to maintain a minimum credit rating and present collateral at certain levels which mitigates the chance of a termination event. To date, no termination events have occurred.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 13. FAIR VALUE MEASUREMENTS

GASB No. 72 addresses accounting and financial reporting issues related to fair value measurements. It provides guidance for applying fair value to certain investments and disclosures related to all fair value measurements. For the District, this statement applies to certain investments and natural gas hedges.

The District categorizes its fair value measurements within the fair value hierarchy established by generally accepted accounting principles. The hierarchy is based on the valuation inputs used to measure the fair value of the asset or liability.

Level 1 - quoted prices (unadjusted) for identical assets or liabilities in active markets that a government can access at the measurement date

Level 2 - inputs other than quoted prices included within Level 1 - that are observable for an asset or liability, either directly or indirectly

Level 3 - unobservable inputs for an asset or liability

Investments - The District's investments are summarized in the table below. Level 1 investments are valued using prices quoted in active markets for those securities. Level 2 investments are valued using observable inputs other than quoted prices. The District's cash and cash equivalents are invested in First American Money Market Fund and Federated Hermes Treasury Obligations Fund, both of which have a credit rating of AAAM as rated by Standard & Poor's. There are no redemption or deposit restrictions related to these money market funds and the funds aim to maintain NAV of \$1 per share.

	2023			
	Total	Level 1	Level 2	Level 3
<b>Investments Measured at Fair Value</b>				
U.S. Treasury and Government Agency Securities	\$ 169,790,938	\$ -	\$ 169,790,938	\$ -
Supranational	11,781,995	-	11,781,995	-
Total Investments at Fair Value	\$ 181,572,933	\$ -	\$ 181,572,933	\$ -
<b>Cash Equivalents Measured at Amortized Cost</b>				
Money Market Funds	\$ 125,809,372			
Total	\$ 307,382,305			

Natural Gas Hedges - The District utilizes a derivative advisory and valuation service to value its portfolio of natural gas hedges, which are valued based on a discounted cash flows ("DCF") proprietary model. Commodity cap valuations were produced by a similar DCF model that incorporates an adaptation of the Black-Scholes option pricing model. As market quotations are not available for identical commodity derivatives, indirect valuation techniques are required. The District's derivative instruments for fuel cost natural gas hedges, which are presented as an asset and a deferred inflow on the statement of net position, have been categorized as Level 2 inputs.



# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 14. NET POSITION AND FUND BALANCE REPORTING

The Statement of Net Position for governmental activities reflects a negative unrestricted net position of \$85,931,454. This is primarily due to the District's net pension liability and net OPEB liability, including related deferred inflows and deferred outflows of resources, all of which amount to a combined \$112 million.

#### **Governmental Fund Balances**

In the Balance Sheet - Governmental Funds, the District has classified fund balances into nonspendable, committed, restricted, assigned and unassigned amounts. Restricted amounts represent the following:

- Capital Projects Fund - Bond funds restricted for road system and building improvements subject to specific provisions in bond resolutions.
- Debt Service Fund - Assets required for servicing general obligation bond indebtedness under the District's trust indenture.

Committed amounts in the general fund represent certain fees specifically set aside by action of the Board to be used solely to maintain the integrity of the drainage system. Also included are amounts set aside due to property appraiser disputes. Note 15 discusses these disputes in more detail.

### 15. COMMITMENTS AND CONTINGENCIES

#### Construction

As of September 30, 2023, the District's Board of Supervisors authorized a budget of approximately \$124.3 million for current or in-process major transportation and other construction projects. Executed construction commitments associated with these projects approximated \$76.1 million and of this amount, approximately \$14.3 million was spent as of September 30, 2023.

#### Purchased Power and Gas

The District has entered into Purchase Power Agreements ("PPA") with Investor Owned Utilities (IOUs), private solar developers and municipal entities throughout Florida for the purchase and sale of power at wholesale rates, and associated transmission service. In general, except for solar PPAs, purchase PPAs require the counterparty to pay reservation charges for capacity to reserve the right to call on such capacity as needed. The District's budgeted minimum commitment for fiscal year 2023 reservation charges under its agreements was estimated at \$7,085,250. There are no requirements for the District to sell wholesale power or reserve capacity for wholesale sales. Initial terms of the District's existing agreement expires on December 31, 2024, with various provisions for renewal or cancellation by the District and the respective counterparty in the agreement.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

#### 15. COMMITMENTS AND CONTINGENCIES - CONTINUED

##### Purchased Power and Gas - Continued

On September 13, 2015, the District entered into a Service Agreement for Network Integration Transmission Service ("NITS") with Duke Energy for the period January 1, 2016 through December 31, 2020. On February 26, 2020, the District signed a restated Service Agreement for NITS with Duke Energy for the period March 1, 2020 through March 1, 2025. Although the agreement expires in 2025, the District has contractual rollover rights for 5-year increments. The District's budgeted transmission commitment for fiscal year 2023 under the NITS agreement was estimated at \$9,812,523.

On May 27, 2015, the District entered into a Purchase Power Agreement with Duke Energy for the purchase of solar energy from the "Mickey Solar" array. The agreement is for a term of 15 years with a total commitment to purchase approximately 109,000 MWh at a rate of \$68.95/MWh, or approximately \$7,515,550. The annual cost for fiscal year 2023 was estimated at \$557,116.

On October 9, 2017, the District entered into a Purchase Power Agreement with Origis Energy for the purchase of solar energy from the FL Solar 5, LLC facility. The agreement is for a term of 17 years with the option to extend the term up to 20 years. For the 17-year term, the District is committed to purchase approximately 1,978,360 MWh at a rate of \$38.76/MWh or approximately \$76,681,234. The annual cost for fiscal year 2023 was estimated at \$3,814,372.

On February 24, 2021, the District entered into a third Purchase Power Agreement to purchase solar energy from Bell Ridge Solar, LLC for a 20-year term. On March 23, 2022, based on mutual agreement of the parties the First Amendment to the original PPA with Bell Ridge Solar, LLC for the purchase of solar energy was executed. The term of the original agreement of 20 years equates to a total commitment to purchase approximately 3,699,482 MWh at a rate of \$33.96/MWh or approximately \$125,634,409. The annual cost for fiscal year \$30,126 is estimated at \$2,362,597.

The District is also obligated to purchase pipeline capacity to transport natural gas under two transportation and supply agreements with Florida Gas Transmission Company ("FGT"), dated December 1991 and October 1993, respectively. The terms of the FGT agreements expire in the year 2025; however, the District has contractual rollover rights for 10-year increments. Minimum reservation payments under these agreement were budgeted at approximately \$3,402,279 for fiscal year 2023.

The District also has a backup natural gas interconnection agreement with Peoples Gas System ("PGS"). The term of the PGS agreement expires in the year 2028 unless extended by the District. The District is in conversations with PGS to extend the existing agreement. Minimum payments under this agreement were budgeted at approximately \$477,600 for fiscal year 2023.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 15. COMMITMENTS AND CONTINGENCIES - CONTINUED

#### Purchased Power and Gas - Continued

The District has entered forward contracts for specified periods of time to purchase the natural gas commodity at either specified swap prices in the future or collars where prices fluctuate within a ceiling and floor. In general, the District's portfolio primarily consists of swaps and occasionally collars. The District enters these financial contracts to help plan its natural gas costs for the year and to protect itself against an increase in market price of the commodity. These purchases (hedges) are made in compliance with the District's Energy Risk Management Program (ERMP). It is possible the market price before or at the specified time to purchase natural gas may be lower or higher than the price at which the District is hedged. This would serve to reduce or increase the value of the hedge contracts at the time of settlement. If the market price for the commodity is more than the hedge price, the District benefits by only paying the fixed price of the hedge. However, if the market price for the commodity is less than the fixed price of the hedge, the District would pay the fixed price for the swap. The exposure for the District occurs if the counterparty fails to fulfill the hedge contracts.

#### Labor Services Agreement

In October 2022, the District entered into an Amended and Restated Labor Services Agreement ("LSA") with Reedy Creek Energy Services (RCES), to furnish all labor and services necessary to operate, maintain, repair, renew and administer a solid waste collection and disposal system, a wastewater system, a potable water system, a natural gas distribution system, an electric generation and distribution system, a chilled water system, and a hot water system (collectively the "utility systems"). The LSA was amended in February 2023 to clarify certain terms of the LSA. The term of the agreement as amended continues through December 2032, however, the termination date (as part of the settlement agreement with WDW, discussed in "Litigation and Other Claims" below) will terminate in 2028. The maximum amount billable under the LSA (Operating Services Fee Cap) in fiscal year 2023 was \$33,724,250. The Operational Services Fee Cap for fiscal year 2024 is \$35,502,576.

#### Inter-local Agreement

Prior to fiscal year 2023, the District (former Reedy Creek Improvement District) entered into an inter-local agreement with the cities of Bay Lake and Lake Buena Vista to provide administrative, managerial, accounting and other services. Administrative and accounting services included, but were not limited to, procurement and contract administration, financial services, technology services and risk management. Other services included water management and utilities, permitting and fire and emergency management services.

In September 2023, the District announced it would be terminating the administrative, managerial and accounting services portion of the agreements in fiscal year 2024. That termination became effective January 16, 2024.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

#### 15. COMMITMENTS AND CONTINGENCIES - CONTINUED

##### Duke Energy Letter of Credit

In October 2022, the District entered into an Irrevocable Standby Letter of Credit ("LOC") with Truist Bank in the amount of \$3 million. The LOC was requested by Duke Energy subsequent to the passing of Senate Bill 4-C, which dissolved 6 independent special districts, including the former RCID. Duke Energy was named beneficiary and is allowed to draw under the letter of credit in the event of payment default by the District under the purchased power agreement. The LOC expires January 31, 2025.

##### STOPR Agreements

In September 2007, the District entered into an agreement with the City of St. Cloud, Tohopekaliga Water Authority ("TWA"), and Orange and Polk Counties to jointly perform permit compliance monitoring activities as required by the Water Use Permits issued by the South Florida Water Management District. Between 2010 and June 2016, Orange County was the contract manager and the District's payments were made to Orange County upon receipt of an invoice. In March 2016, the District executed an amendment to the original agreement that (1) made TWA the contract manager and (2) extended the term of the agreement. The agreement, as amended, requires the District to contribute 18.2% of the total costs. As of September 30, 2023, the District has paid \$1,366,693 for these efforts.

In August 2011, the District entered into an agreement with the Water Cooperative of Central Florida (which currently consists of the City of St. Cloud, TWA, Orange County and Polk County) to participate in the preliminary design and permitting of the Cypress Lake Wellfield Alternative Water Supply project. Originally TWA was the contract manager but with the First Amendment approved in June 2014, the Water Coop became the contract manager and the District's payments were made to them. The agreement, as amended, required the District to contribute \$749,139 for this work. Effective March 1, 2023 the District withdrew from the Cypress Lake Alternative Water Supply agreement. No additional payments were made to the Water Coop in fiscal year 2023.

##### Litigation and Other Claims

Various suits and claims arising in the ordinary course of operations are pending against the District. Management believes the ultimate disposition of such matters, including the cases described below, will not materially affect the financial position of the District or the results of its operations, or the District's ability to pay debt service on existing outstanding bonds.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## NOTES TO THE FINANCIAL STATEMENTS - CONTINUED

Year Ended September 30, 2023

### 15. COMMITMENTS AND CONTINGENCIES - CONTINUED

#### Litigation and Other Claims - Continued

Various suits involve Walt Disney Parks and Resort US, Inc. and Disney Vacation Development, Inc. (collectively, "WDP and DVD Plaintiffs") naming the Orange County Property Appraiser, the Orange County Tax Collector and the District as defendants and challenging the Orange County Property Appraiser's valuation of multiple commercial parcels and contesting the legality and validity of the 2015 through 2022 ad valorem tax assessments on the parcels paid to the District. WDP and DVD Plaintiffs claim that the value of each of the assessments on the parcels does not represent the just value of the parcels because it exceeds the fair value thereof and claims the appraiser included the value of certain intangible property in the assessment in violation of law. WDP and DVD Plaintiffs have requested the court set aside the 2015 through 2022 assessments and resulting taxes to the extent they exceed the just value of such property and issue a new tax bill in said reassessed amounts. As a result of these claims, the Court of Appeals instructed that a revaluation be calculated by the Orange County Property Appraiser's office using the Court of Appeals' recommendations on the parcels applicable to the District. While the District anticipates further adjustments to the tax collections for fiscal years 2016 through 2023 (assessments in 2015 through 2022), it cannot predict the outcome of these cases. The District has committed fund balance in the amount of \$5 million to cover potential future settlements.

The federal litigation filed by Walt Disney Parks and Resorts, U.S., Inc. ("WDW"), which was dismissed by the Northern District of Florida and is currently on appeal to the Eleventh Circuit (Fla. Case No. 4:23-CV-00163-MW-MJF), could if WDW were successful, have the impact of unwinding the existing governance structure of the District and return it to the previous governance structure, which the District operated under for over 50 years. Moreover, if the declaration of restrictive covenants favoring WDW, being challenged by CFTOD in the Orange County Circuit Court (Case No. 2023-CA-011818-O), were declared valid and enforceable, such could have the impact of limiting the future development of CFTOD's real estate assets. Also, if the development agreement were declared valid and enforceable, such could have the impact of requiring the District to complete future capital improvement projects that would require the issuance of additional debt, therefore subjecting the District to additional debt service requirements similar to what the District has operated under in prior years.

The Board announced at a public meeting on March 27, 2024, just prior to publishing these financial statements, that a settlement had been reached with WDW in the above pending lawsuits, which had no financial impact on the District.

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### REQUIRED SUPPLEMENTARY INFORMATION (RSI) SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

#### Roadways

(Note 2. A.)

<b>Fiscal Year</b>	<b>Percentage of Roadways</b>		
	<b>Excellent</b>	<b>Good/Satisfactory</b>	<b>Poor</b>
<b>2023</b>	67 %	26 %	7 %
<b>2022</b>	69 %	25 %	6 %
<b>2021</b>	70 %	23 %	7 %
<b>2020</b>	70 %	24 %	6 %
<b>2019</b>	72 %	21 %	7 %

#### Bridges

(Note 2. B.)

<b>Fiscal Year</b>	<b>Number of Bridges by Category</b>				
	<b>Excellent</b>	<b>Good</b>	<b>Fair</b>	<b>Poor</b>	<b>Total</b>
<b>2023 *</b>	14	49	1	-	64
<b>2022</b>	58	2	N/A	-	60
<b>2021</b>	50	3	N/A	-	53
<b>2020</b>	50	8	N/A	-	58
<b>2019</b>	50	8	N/A	-	58

#### Water Control Structures

(Note 2. C.)

<b>Fiscal Year</b>	<b>Number of Structures by Category</b>				
	<b>Excellent</b>	<b>Good</b>	<b>Fair</b>	<b>Poor</b>	<b>Total</b>
<b>2023 *</b>	13	11	-	-	24
<b>2022</b>	17	7	N/A	-	24
<b>2021</b>	18	6	N/A	-	24
<b>2020</b>	18	6	N/A	-	24
<b>2019</b>	18	4	N/A	-	22

\* Rating category modified in 2023; see further explanation below.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT  
INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

Fiscal Year	Budgeted Costs			Actual Costs		
	Roads	Bridges	Water Control Structures	Roads	Bridges	Water Control Structures
<b>2024</b>	\$ 8,331,100	\$ 1,100,000	\$ 3,450,000	\$ -	\$ -	\$ -
<b>2023</b>	14,129,000	830,000	1,900,000	10,105,448	36,049	977,659
<b>2022</b>	12,238,876	4,285,000	1,760,000	2,626,838	3,547,250	847,977
<b>2021</b>	6,607,600	3,220,400	1,025,000	3,713,650	1,588,609	450,492
<b>2020</b>	4,345,000	95,000	1,378,400	1,624,955	47,071	708,075
<b>2019</b>	2,000,000	1,644,673	1,903,000	1,026,195	165,000	625,522

**1. ELECTION TO USE MODIFIED APPROACH**

The District has elected to use the "Modified Approach" as defined by GASB No. 34 for infrastructure reporting for its roads, bridges and water control structures. The infrastructure capital assets are managed using an asset management system with (1) an up-to-date inventory; (2) condition assessments conducted at a minimum of every three years; and (3) an estimated annual amount to maintain and preserve the asset at the established condition assessment level.

**2. BASIS FOR CONDITION ASSESSMENTS AND TARGETED CONDITION LEVEL**

**A. Roads**

Streets and roads are constantly deteriorating due to environmental causes (weathering and aging) and structural causes (repeated traffic loading). The rate at which pavement deteriorates depends on the original construction quality, environmental conditions, drainage, traffic loading and interim maintenance procedures. The District bases all pavement design on existing traffic counts, proposed traffic generation due to planned development and known loading factors.

In an effort to ensure the quality of the District's roadway network, the District performs a physical condition assessment of the public streets/roadways within its jurisdiction using the Road Manager Condition Evaluation test method. Roads are evaluated and given a numerical rating, or Pavement Condition Index ("PCI") of 1 through 100. This identifies the condition and helps determine what work is required. The ratings were based on visual observation of the roads surface condition: defects or deformation, cracking (transverse, reflective, longitudinal and alligator), and patching/pot hole frequency.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT  
INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

**2. BASIS FOR CONDITION ASSESSMENTS AND TARGETED CONDITION LEVEL - CONTINUED**

**A. Roads - Continued**

Using the PCI Index, the following conditions were defined:

<u>Condition</u>	<u>PCI Rating</u>
Excellent	80 - 100
Good/Satisfactory	60 - 79
Poor	1 - 59

Complete assessments to evaluate the PCI ratings shall occur at a minimum every three years. In addition, yearly inspections are performed to account for changing conditions that may impact previous ratings.

The District has elected to maintain roads within the system at a minimum of 80% rated in excellent or good/satisfactory condition. As of the date of this report, 93% of the District's roads were in excellent or good/satisfactory condition.

In prioritizing roadway repairs, a benefit value for each roadway is determined based on the roadway use and the projected cost of the necessary repair. Based on the identified priorities, the District budgets for and schedules the pavement repairs. During fiscal year 2023, the District completed three pavement resurfacing repair projects that began in fiscal year 2022 and started a fourth project that will finish in early fiscal year 2024. The remaining work needed to upgrade the 7% of roadways in the poor category is programmed for subsequent fiscal years.

In addition to roadway construction and major asphalt refurbishment, the District continued with routine/ongoing maintenance and repairs throughout the roadway system. The routine work in 2023 encompassed maintenance repairs of asphalt, shoulder protection and replacement of guardrail totaling \$10,105,448.

**B. Bridges**

Bridges within the District are inspected bi-annually by a qualified Florida licensed Structural Engineer on a rolling basis. Bridge inspections are performed according to the latest National Bridge Inspection ("NBI") Standards and Florida Department of Transportation ("FDOT") requirements. As part of the inspection process, the bridge deck, super-structure, substructure and culvert (if applicable) are rated according to standard requirements. To be more consistent with industry standards, in 2023 the District implemented the NBI Condition Rating used by FDOT, which assigns classifications based on the table below:



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**  
REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT  
INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

**2. BASIS FOR CONDITION ASSESSMENTS AND TARGETED CONDITION LEVEL - CONTINUED**

**B. Bridges - Continued**

<u>Condition</u>	<u>NBI Condition Rating</u>
Excellent	8 - 9
Good/Satisfactory	6 - 7
Fair	5
Poor	1 - 4

The earliest bridges constructed within the District were placed into service in 1972 and a majority of the bridges were constructed during the following 25 years. Over the past eight years, the District has undergone major infrastructure expansion with additional bridges being placed into service, older bridges undergoing major modifications and numerous bridges retired from service.

The District has elected to maintain 90% of its bridges within the excellent or good category. As of the date of this report, 98% of the District's bridges were in excellent or good condition.

Preservation and maintenance of bridge structures is an on-going activity and allows the bridges to be classified as either Excellent or Good condition. Based on inspection results/recommendations, bridge installations and repairs were completed at a cost of \$36,049.

**C. Water Control Structures**

The Master Drainage System within the District is comprised of 66 river miles of canals and waterway. It incorporates 24 major water control structures comprised of Amil Gates, sharp crested weirs, and one set of 48" diameter culverts. Amil Gates are constant level water control structures. These gates provide a consistent water level within the waterways or canals, and open due to increasing water pressure during a storm event, thereby allowing flood waters to pass downstream and exit the District. Weirs maintain water levels at a set elevation; as the flood waters rise due to a storm event, they spill over the weirs and pass downstream. The set of 48" culverts act as an overflow or pass through, allowing flood waters to pass to an adjacent wetland on the eastern perimeter of the District. Construction on a majority of these structures began in the late 1960's, thus many are approaching 60 years of service time. Ongoing maintenance and major rehabilitative work has extended the useful life of the structures allowing them to remain operational.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## REQUIRED SUPPLEMENTARY INFORMATION (RSI) SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

### 2. BASIS FOR CONDITION ASSESSMENTS AND TARGETED CONDITION LEVEL - CONTINUED

#### C. Water Control Structures - Continued

Structures are classified by their overall condition and were listed as Excellent, Good or Poor condition. In 2023, the District added the Fair category to better classify structures along the condition spectrum described below. This rating is generated by the annual inspection and condition assessment report. The Annual Water Control Structure Report lists all items inspected both above ground and below the water surface. Using this information, the structure condition is assigned, the required repairs are prioritized and the repair work is scheduled. Required repairs are listed as Priority 1, 2 or 3. Priority 1 signifies a major rehabilitative repair. Priority 1 repairs are items that if not repaired, may degrade the integrity of the structural element or reduce the operational capacity of the structure. Historically, we have found Priority 1 repairs often occur in underwater conditions and have evolved over long periods of time. This type of repair may require extensive construction work and as such, cannot always be done immediately. These major repairs are programmed and budgeted to occur in a future year. Priority 2 repairs are those that may impact the operational capacity of the structure but do not cause major cost impacts and can be addressed during annual routine maintenance. Priority 3 identifies items not in current need of repair but signify a condition, though noteworthy, that is expected to remain stable for a number of years. As such, the recommendation is that Priority 3 items need not be separately scheduled for repair, but addressed when the structure undergoes Priority 1 or Priority 2 repairs. As the structures continue to age, our annual inspections reveal an increasing number of Priority 1 and 2 repairs, and the annual maintenance for the water control system has begun to trend upward.

Based on the results of inspections and priority ranking of repairs, the following condition level categories have been assigned:

<u>Condition</u>	<u>Category Characteristics</u>
Excellent	<ul style="list-style-type: none"><li>- No existing safety deficiencies</li><li>- Acceptable performance expected, no operational impacts</li><li>- Routine maintenance required, generally priority 3 and 2 repairs</li><li>- Widespread typical deterioration</li></ul>
Good	<ul style="list-style-type: none"><li>- No existing safety deficiencies</li><li>- Acceptable performance expected</li><li>- Minor operational impacts not critical to flood control</li><li>- Routine maintenance required, generally priority 3 and 2 repairs</li><li>- Widespread typical deterioration</li><li>- Isolated significant condition exists that require remedial action greater than routine work and/or secondary studies/investigation. May include an isolated priority 1 repair.</li></ul>

## CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

### REQUIRED SUPPLEMENTARY INFORMATION (RSI) SCHEDULES SUPPORTING MODIFIED APPROACH FOR DISTRICT INFRASTRUCTURE CAPITAL ASSETS

Year Ended September 30, 2023

## 2. BASIS FOR CONDITION ASSESSMENTS AND TARGETED CONDITION LEVEL - CONTINUED

### C. Water Control Structures - Continued

- Poor
- No existing safety deficiencies for normal operation conditions. Extreme hydrologic events may result in safety deficiencies.
  - Maintenance required to prevent developing safety concerns
  - Acceptable performance expected
  - Minor operational impacts not critical to flood control, but potential threat to flood control operations if impacts continue to deteriorate
  - Multiple conditions exist that require remedial action greater than routine work and/or secondary studies/investigation
  - Widespread severe deterioration

The District has elected to maintain water control structures within the system at 80% in excellent or good condition and have no structures in poor condition. As of the date of this report, 100% of the District's structures were rated in excellent or good condition.

During fiscal year 2023, the District conducted routine maintenance on the system, which included repairs on structures, levees and debris removal throughout the canal system and maintenance/repair of erosion issues. The cost of these activities totaled \$977,659.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## REQUIRED SUPPLEMENTARY INFORMATION (RSI) OTHER POSTEMPLOYMENT BENEFITS

Year Ended September 30, 2023

### Schedule of Changes in the District's Net OPEB Liability and Related Ratios

Last 6 Fiscal Years\*

	<u>2023</u>	<u>2022</u>	<u>2021</u>	<u>2020</u>	<u>2019</u>	<u>2018</u>
<b>TOTAL OPEB LIABILITY</b>						
Service cost	\$ 1,124,357	\$ 2,019,443	\$ 1,926,349	\$ 1,511,559	\$ 1,219,287	\$ 1,179,666
Interest	2,655,985	1,840,307	1,851,303	2,167,491	2,521,415	2,332,664
Change in benefit terms	-	-	374,816	-	-	-
Difference between expected and actual experience	-	2,763,542	-	(6,200,300)	-	-
Changes of assumptions	(954,595)	(22,662,394)	(935,997)	6,505,338	18,890,916	(6,120,684)
Benefit payments	(2,058,314)	(2,218,031)	(1,757,481)	(1,709,222)	(1,523,266)	(1,521,768)
<b>Net change in total OPEB liability</b>	<b>767,433</b>	<b>(18,257,133)</b>	<b>1,458,990</b>	<b>2,274,866</b>	<b>21,108,352</b>	<b>(4,130,122)</b>
<b>Total OPEB liability, beginning of year</b>	<b>66,304,404</b>	<b>84,561,537</b>	<b>83,102,547</b>	<b>80,827,681</b>	<b>59,719,329</b>	<b>63,849,451</b>
<b>Total OPEB liability, end of year</b>	<b>\$ 67,071,837</b>	<b>\$ 66,304,404</b>	<b>\$ 84,561,537</b>	<b>\$ 83,102,547</b>	<b>\$ 80,827,681</b>	<b>\$ 59,719,329</b>
<b>PLAN FIDUCIARY NET POSITION</b>						
Contributions - employer	\$ 3,072,626	\$ 3,233,531	\$ 2,774,518	\$ 2,743,348	\$ 2,552,995	\$ 12,521,768
Net investment income (loss)	360,829	(1,011,926)	(60,629)	488,190	637,649	2,399
Benefit payments	(2,058,314)	(2,218,031)	(1,757,481)	(1,709,222)	(1,523,266)	(1,521,768)
<b>Net change in plan fiduciary net position</b>	<b>1,375,141</b>	<b>3,574</b>	<b>956,408</b>	<b>1,522,316</b>	<b>1,667,378</b>	<b>11,002,399</b>
<b>Plan fiduciary net position, beginning of year</b>	<b>15,152,075</b>	<b>15,148,501</b>	<b>14,192,093</b>	<b>12,669,777</b>	<b>11,002,399</b>	<b>-</b>
<b>Plan fiduciary net position, end of year</b>	<b>16,527,216</b>	<b>15,152,075</b>	<b>15,148,501</b>	<b>14,192,093</b>	<b>12,669,777</b>	<b>11,002,399</b>
<b>District's net OPEB liability, end of year</b>	<b>\$ 50,544,621</b>	<b>\$ 51,152,329</b>	<b>\$ 69,413,036</b>	<b>\$ 68,910,454</b>	<b>\$ 68,157,904</b>	<b>\$ 48,716,930</b>
<b>Plan fiduciary net position as a percentage of the total OPEB liability</b>	<b>24.64 %</b>	<b>22.85 %</b>	<b>17.91 %</b>	<b>17.08 %</b>	<b>15.68 %</b>	<b>18.42 %</b>
<b>Covered-employee payroll</b>	<b>\$ 29,670,506</b>	<b>\$ 28,667,156</b>	<b>\$ 29,475,581</b>	<b>\$ 28,294,306</b>	<b>\$ 27,612,000</b>	<b>\$ 26,678,408</b>
<b>District's net OPEB liability as a percentage of covered-employee payroll</b>	<b>170.35 %</b>	<b>178.44 %</b>	<b>235.49 %</b>	<b>243.55 %</b>	<b>246.84 %</b>	<b>182.61 %</b>

\*Information in this schedule is intended to display the last 10 years; however, information is not available for all prior years. Additional years will be displayed as information becomes available.

#### Notes to Schedule

Changes of assumptions - The discount rate increased from 4.00% to 4.09% at September 30, 2023.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## REQUIRED SUPPLEMENTARY INFORMATION (RSI) OTHER POST EMPLOYMENT BENEFITS - CONTINUED

Year Ended September 30, 2023

### Schedule of the District's Contributions

Last 6 Fiscal Years\*

Fiscal Year	Actuarially Determined Contribution	Contributions in Relation to the Actuarially Determined Contribution	Contribution Deficiency (Excess)	Covered Employee Payroll	Contributions as a Percentage of Covered Employee Payroll
2023	\$ 4,047,323	\$ 3,072,626	\$ 974,697	\$ 29,670,506	10.36 %
2022	5,171,142	3,233,531	1,937,611	28,667,156	11.28 %
2021	5,075,307	2,774,518	2,300,789	29,475,581	9.41 %
2020	4,838,645	2,743,348	2,095,297	28,294,306	9.70 %
2019	4,507,464	2,552,995	1,954,469	27,612,000	9.25 %
2018	3,580,651	12,521,768	(8,941,117)	26,678,408	46.94 %

\* Information in this schedule is intended to display the last 10 years; however, information is not available for all prior years. Additional years will be displayed as information becomes available.

#### Notes to Schedules

Valuation Date: September 30, 2023

Methods and assumptions used to determine contribution rates:

Actuarial cost method	Entry Age Normal based on level basis over the earnings of the individual between entry age and assumed exit age(s). Projected Unit Credit method used in years 2018 and prior.
Amortization period	30-year open group
Asset valuation method	Fair market value
Contributions	Contributions to the VEBA Trust are not codified or mandated but the District's funding strategy is to contribute a minimum of \$1 million to the Trust per year.
Inflation	2.50%
Healthcare cost trend rates	6.5% initial, decreasing .25% per year to an ultimate rate of 4.5% for medical; 4.0% dental; 3.0% vision
Salary increases per year	3.50%
Investment rate of return (discount rate)	4.09%
Retirement age	Based on the 2021 Florida Retirement System Actuarial Valuation
Mortality	PUB-2010 mortality table with scale MP-2021

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

**REQUIRED SUPPLEMENTARY INFORMATION (RSI)**  
**OTHER POST EMPLOYMENT BENEFITS - CONTINUED**

Year Ended September 30, 2023

**Schedule of Investment Returns**

Last 6 Fiscal Years \*

<b>Fiscal Year</b>	<b>Annual Money-Weighted Rate of Return, Net of Investment Expense</b>
2023	2.4%
2022	(6.4)%
2021	(0.3)%
2020	4.0%
2019	5.8%
2018	0.0%

\* Information in this schedule is intended to display the last 10 years; however, information is not available for all prior years. Additional years will be displayed as information becomes available. Fiscal year 2018 was 0.0% as The Plan was funded at the end of the fiscal year.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
PENSIONS

Year Ended September 30, 2023

**Schedule of the District's Proportionate Share of the Net Pension Liability - Pension Plan**

Florida Retirement System

Last 10 Fiscal Years\*

<u>Calendar Year</u>	<u>CFTOD's Proportion of the Net Pension Liability</u>	<u>CFTOD's Proportionate Share of the Net Pension Liability</u>	<u>CFTOD's Covered Employee Payroll</u>	<u>CFTOD's Proportionate Share of the Net Pension Liability as a Percentage of its Covered Employee Payroll</u>	<u>Plan Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
2023	0.12810 %	\$ 51,043,615	\$ 35,229,560	144.89 %	82.38 %
2022	0.13088 %	48,696,935	34,235,982	142.24 %	82.89 %
2021	0.12138 %	9,169,131	31,367,402	29.23 %	96.40 %
2020	0.14788 %	64,091,387	33,311,667	192.40 %	78.85 %
2019	0.15020 %	51,728,123	32,604,660	158.65 %	82.61 %
2018	0.14924 %	44,950,699	31,337,271	143.44 %	84.26 %
2017	0.13850 %	40,967,776	27,550,271	148.70 %	83.89 %
2016	0.14236 %	35,945,064	26,833,753	133.95 %	84.88 %
2015	0.12545 %	16,204,183	24,758,513	65.45 %	92.00 %
2014	0.12860 %	7,846,750	23,975,240	32.73 %	96.09 %

\*Amounts presented for each fiscal year were determined as of June 30.

# CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT

## REQUIRED SUPPLEMENTARY INFORMATION (RSI) PENSIONS - CONTINUED

Year Ended September 30, 2023

### Schedule of the District's Contributions - Pension Plan

Florida Retirement System

Last 10 Fiscal Years\*

<u>Fiscal Year</u>	<u>Contractually Required Contribution</u>	<u>Contributions in Relation to the Contractually Required Contribution</u>	<u>Contribution Deficiency (Excess)</u>	<u>CFTOD's Covered Employee Payroll</u>	<u>Contributions as a Percentage of Covered Employee Payroll</u>
2023	\$ 7,164,161	\$ 7,164,161	\$ -	\$ 36,198,395	19.79 %
2022	6,072,376	6,072,376	-	34,180,174	17.77 %
2021	5,193,646	5,193,646	-	32,345,424	16.06 %
2020	5,173,531	5,173,531	-	32,847,147	15.75 %
2019	5,114,578	5,114,578	-	33,220,360	15.40 %
2018	4,642,954	4,642,954	-	31,540,901	14.72 %
2017	4,027,501	4,027,501	-	28,358,740	14.20 %
2016	3,815,742	3,815,742	-	27,184,949	14.04 %
2015	3,459,545	3,459,545	-	25,052,616	13.81 %
2014	3,199,940	3,199,940	-	24,221,740	13.21 %

\*Amounts presented for each fiscal year were determined as of September 30.

#### Changes in assumptions

The District is not aware of any changes in assumptions during the fiscal year.

#### Change in benefit terms

Effective July 1, 2023, the maximum period of time an eligible member may participate in DROP increased from 60 months to 96 months. The effective annual rate of interest earned on accumulated ending balances in the DROP program increased from 1.3% to 4.0%.



**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
PENSIONS - CONTINUED

Year Ended September 30, 2023

**Schedule of the District's Proportionate Share of the Net Pension Liability - HIS Plan**

Health Insurance Subsidy Program

Last 10 Fiscal Years\*

<u>Calendar Year</u>	<u>CFTOD's Proportion of the Net Pension Liability</u>	<u>CFTOD's Proportionate Share of the Net Pension Liability</u>	<u>CFTOD's Covered Employee Payroll</u>	<u>CFTOD's Proportionate Share of the Net Pension Liability as a Percentage of its Covered Employee Payroll</u>	<u>Plan Fiduciary Net Position as a Percentage of the Total Pension Liability</u>
2023	0.08864 %	\$ 14,077,700	\$ 35,229,560	39.96 %	4.12 %
2022	0.09394 %	9,950,153	34,235,982	29.06 %	4.81 %
2021	0.08857 %	10,863,849	31,367,402	34.63 %	3.56 %
2020	0.09597 %	11,718,223	33,311,667	35.18 %	3.00 %
2019	0.09749 %	10,908,108	32,604,660	33.46 %	2.63 %
2018	0.09590 %	10,150,278	31,337,271	32.39 %	2.15 %
2017	0.08638 %	9,235,838	27,550,271	33.52 %	1.64 %
2016	0.08682 %	10,118,388	26,833,753	37.71 %	0.97 %
2015	0.08138 %	8,299,010	24,758,513	33.52 %	0.50 %
2014	0.08064 %	7,539,962	23,975,240	31.45 %	0.99 %

\*Amounts presented for each fiscal year were determined as of June 30.

**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT**

REQUIRED SUPPLEMENTARY INFORMATION (RSI)  
PENSIONS - CONTINUED

Year Ended September 30, 2023

**Schedule of the District's Contributions - HIS Plan**

Health Insurance Subsidy Program

Last 10 Fiscal Years\*

<b>Fiscal Year</b>	<b>Contractually Required Contribution</b>	<b>Contributions in Relation to the Contractually Required Contribution</b>	<b>Contribution Deficiency (Excess)</b>	<b>CFTOD's Covered Employee Payroll</b>	<b>Contributions as a Percentage of Covered Employee Payroll</b>
2023	\$ 633,993	\$ 633,993	\$ -	\$ 36,198,395	1.75 %
2022	567,391	567,391	-	34,180,174	1.66 %
2021	536,934	536,934	-	32,345,424	1.66 %
2020	545,263	545,263	-	32,847,147	1.66 %
2019	551,458	551,458	-	33,220,360	1.66 %
2018	523,579	523,579	-	31,540,901	1.66 %
2017	470,755	470,755	-	28,358,740	1.66 %
2016	451,270	451,270	-	27,184,949	1.66 %
2015	340,982	340,982	-	25,052,616	1.36 %
2014	294,282	294,282	-	24,221,740	1.21 %

\*Amounts presented for each fiscal year were determined as of September 30.

**Changes in assumptions**

From 2022 to 2023, the municipal rate used to determine total pension liability increased from 3.54% to 3.65%.

**Change in benefit terms**

Effective July 1, 2023, employer contribution rates increased from 1.66% to 2.0% of gross compensation for active members. Additionally, the monthly HIS payment increased from \$5 to \$7.50 for each year of creditable service, the minimum HIS payment increased from \$30 to \$45, and the maximum HIS payment increased from \$150 to \$225.



**Report of Independent Auditor on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards***

To the District Administrator, Deputy District Administrator, and Board of Supervisors  
Central Florida Tourism Oversight District  
Lake Buena Vista, Florida

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of Central Florida Tourism Oversight District, formerly known as Reedy Creek Improvement District (the "District") as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the District's basic financial statements, and have issued our report thereon dated March 28, 2024.

**Report on Internal Control over Financial Reporting**

In planning and performing our audit of the financial statements, we considered the District's internal control over financial reporting ("internal control") as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the District's internal control. Accordingly, we do not express an opinion on the effectiveness of the District's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses or significant deficiencies may exist that were not identified.

**Report on Compliance and Other Matters**

As part of obtaining reasonable assurance about whether the District's financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

**Purpose of this Report**

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

*Cherry Bekaert LLP*

Orlando, Florida  
March 28, 2024



**Report of Independent Accountant on Compliance  
With Local Government Investment Policies**

To the District Administrator, Deputy District Administrator and Board of Supervisors  
Central Florida Tourism Oversight District  
Lake Buena Vista, Florida

We have examined Central Florida Tourism Oversight District's, formerly known as Reedy Creek Improvement District (the "District") compliance with the local government investment policy requirements of Section 218.415, Florida Statutes, during the year ended September 30, 2023. Management of the District is responsible for the District's compliance with the specified requirements. Our responsibility is to express an opinion on the District's compliance with the specified requirements based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the District complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the District complied with the specified requirements. The nature, timing, and extent of the procedures selected depend on our judgement, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

We are required to be independent and to meet our other ethical responsibilities in accordance with relevant ethical requirements relating to the engagement.

Our examination does not provide a legal determination on the District's compliance with the specified requirements.

In our opinion, the District complied, in all material respects, with the local investment policy requirements of Section 218.415, Florida Statutes, during the year ended September 30, 2023.

The purpose of this report is to comply with the audit requirements of Section 218.415, Florida Statutes, and Rules of the Auditor General.

*Cherry Bekaert LLP*

Orlando, Florida  
March 28, 2024



## Report of Independent Auditor on Compliance with Trust Indenture

To the Board of Supervisors  
Central Florida Tourism Oversight District  
Lake Buena Vista, Florida

We have audited, in accordance with auditing standards generally accepted in the United States, the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of Central Florida Tourism Oversight District, formerly known as Reedy Creek Improvement District (the "District") as of and for the year ended September 30, 2023, and the related notes to the financial statements, which collectively comprise the District's basic financial statements, and have issued our report, with unmodified opinions, thereon dated March 28, 2024.

In connection with our audit, nothing came to our attention that caused us to believe the District failed to comply with any of the terms, covenants, provisions, or conditions of Sections 4.01-4.03, 5.01-5.17 and 6.01-6.02 of the Trust Indenture dated November 1, 1987, as amended and supplemented, with Truist Bank, formerly Sun Bank d.b.a. SunTrust, (the "Trustee"), which assigned its rights and duties to US Bank, insofar as they relate to accounting matters. However, our audit was not directed primarily toward obtaining knowledge of such noncompliance. Accordingly, had we performed additional procedures, other matters may have come to our attention regarding the District's compliance with the above referenced terms, covenants, provisions, or conditions of Sections 4.01-4.03, 5.01-5.17, and 6.01-6.02 of the Trust Indenture dated November 1, 1987, as amended and supplemented, insofar as they refer to accounting matters.

This report is intended solely for the information and use of the Board of Supervisors, management of the District, and the Trustee and is not intended to be and should not be used by anyone other than these specified parties.

*Cherry Bekaert LLP*

Orlando, Florida  
March 28, 2024



## Independent Auditor’s Management Letter

To the District Administrator, Deputy District Administrator and Board of Supervisors  
Central Florida Tourism Oversight District  
Lake Buena Vista, Florida

### Report of the Financial Statements

We have audited the financial statements of the governmental activities, the business-type activities, each major fund and the aggregate remaining fund information of Central Florida Tourism Oversight District, formerly known as Reedy Creek Improvement District (the “District”), as of and for the fiscal year ended September 30, 2023, and have issued our report thereon dated March 28, 2024.

### Auditor’s Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Chapter 10.550, Rules of the Auditor General.

### Other Reporting Requirements

We have issued our Report of Independent Auditor on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of the Financial Statements Performed in Accordance with *Government Auditing Standards*; and Report of Independent Accountant on Compliance with Local Government Investment Policies regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in those reports, which are dated March 28, 2024, should be considered in conjunction with this management letter.

### Prior Audit Findings

Section 10.554(1)(i)1., Rules of the Auditor General, requires that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report. Corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report.

### Official Title and Legal Authority

Section 10.554(1)(i)4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. The District has included such disclosures in the notes to the financial statements. There are no component units related to this entity.

### Financial Condition and Management

Section 10.554(1)(i)5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the District has met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the District did not meet any of the conditions described in Section 218.503(1), Florida Statutes.

Pursuant to Sections 10.554(1)(i)5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures for the District. It is management’s responsibility to monitor the District’s financial condition, and our financial condition assessment was based in part on representations made by management and review of financial information provided by same.

Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. Appendix A to this letter, Findings 2023-1 through 2023-6, are to improve financial management. We did not audit the District's response to these matters in Appendix A.

**Specific Information**

As required by Section 218.39(3)(c), Florida Statutes, and Section 10.554(1)(i)6, Rules of the Auditor General, the District provided the following information (unaudited):

- a. The total number of District employees compensated in the last pay period of the fiscal year as 367.
- b. The total number of independent contractors to whom nonemployee compensation was paid in the last month of the District's fiscal year as 4.
- c. All compensation earned by or awarded to employees, whether paid or accrued, regardless of contingency as \$36,198,395.
- d. All compensation earned by or awarded to nonemployee independent contractors, whether paid or accrued, regardless of contingency as \$151,055.
- e. Each construction project with a total cost of at least \$65,000 approved by the District that is scheduled to begin on or after October 1 of the fiscal year being reported, together with the total expenditures for such project as listed below:

Project Name	Budget	Inception Date	Expenditures to Date
Environmental Lab, New Bldg & Drainage area	\$4,200,000.00	10/1/2022	\$4,670,948.00
Bridges & Pedestals	830,000	10/1/2022	36,049
R.O. BVD/WW Intersection PH1A Improvements	610,000	10/1/2022	586,899
R.O. Truss repl on Epcot Center Dr	95,000	10/1/2022	62,918
Pavement-FC Blvd/Hartzog Rd North	3,967,000	10/1/2022	3,851,421
World Dr (southbound lanes) Epcot Cntr Dr to Osc Pkwy	4,510,000	10/1/2022	1,727,022
R.O. Paving Rehab-BVD (WW to BR# 26 & #27)	1,107,000	10/1/2022	1,101,507
Osceola Pkwy Major erosion repairs	275,000	10/1/2022	167,884
Guardrail Project	803,000	10/1/2022	241,999
R.O. Paving Vict Way BVD to Osc Pkwy	2,062,000	10/1/2022	2,087,711
R.O. Signals, Mast Arms, Posts, reflectors, etc	1,400,000	10/1/2022	416,934
C-4 Repair of outfall structure	600,000	10/1/2022	371,296
S-14 Rehab-R.O.	650,000	10/1/2022	104,852
Clearing and Snagging Waterways	500,000	10/1/2022	501,511
Erosion Repairs	150,000	10/1/2022	0
FS2 Lighting and Doors	456,000	10/1/2022	428,636
Backup Generator at Fleet	175,000	10/1/2022	59,588
LED Right of Way	250,000	10/1/2022	43,005
FS2 HVAC	110,000	10/1/2022	0
Security Doors Lime & Orange	300,000	10/1/2022	17,946
Sign Replacement - Level 5 Orange & Lime	85,000	10/1/2022	143,922
Ped Bridge Brick Sealing - Tower A, B, C, D, E, F, G	110,000	10/1/2022	78,500
Ped Bridge Painting - Towers D, E, F, G	120,000	10/1/2022	51,160

- f. A budget variance based on the budget adopted under Section 189.016(4), Florida Statutes, before the beginning of the fiscal year being reported if the District amends a final adopted budget under Section 189.016(6), Florida Statutes, as 0.



As required by Section 218.39(3)(c), Florida Statutes, and Section 10.554(1)(i)7, Rules of the Auditor General, the District provided the following information (unaudited):

- a. The millage rate or rates imposed by the District as 13.9.
- b. The total amount of ad valorem taxes collected by or on behalf of the District as \$179,283,918.
- c. The total amount of outstanding bonds issued by the District and the terms of such bonds as \$813,948,000.

**Additional Matters**

Section 10.554(1)(i)3., Rules of the Auditor General, requires us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but warrants the attention of those charged with governance. In connection with our audit, we did not note any such findings.

**Purpose of this Letter**

The purpose of this management letter is to communicate certain matters prescribed by Chapter 10.550, Rules of the Auditor General. Accordingly, this management letter is not suitable for any other purpose.

*Cherry Bekaert LLP*

Orlando, Florida  
March 28, 2024

**Central Florida Tourism Oversight District**  
INDEPENDENT AUDITOR'S MANAGEMENT LETTER – APPENDIX A

SEPTEMBER 30, 2023

**Current Year Recommendation**

**Credit Card Policy**

*Statement of Condition 2023-1:* It was noted during audit procedures that, while the District does have a travel policy covering travel specific expenses which can be put on the credit cards issued to various employees, there is no policy covering employee general credit card usage detailing allowable expenses, spending limits, and review and approval requirements.

*Criteria:* The District should have a policy covering employee general credit card usage, and all credit card charges should be reviewed and approved, not just those related to travel.

*Cause of Condition:* The District does not have a policy covering employee general credit card usage.

*Effect of Condition:* There is potential for District credit cards to be used inappropriately.

*Recommendation:* We recommend the District adopt a policy over employee general credit card usage. This policy should include specific aspects such as credit card allowable expenses, spending limits, and review and approval requirements.

*Management Response:* We currently have a travel policy which addresses District issued credit card usage for District business related travel. The travel policy also addresses approvals and allowable expenses. In addition to this, we will prepare a credit card policy to define other allowable business uses not related to travel, which will also include spending limits, reviews and approvals. We expect to have this in place prior to fiscal year end 2024.

**Capital Asset Review**

*Statement of Condition 2023-2:* The District has a significant amount of capital assets recorded on the financial statements and as such, it is important to have structured procedures for overseeing the net book values and potential impairments related to these capital assets. Currently, the District does not have a standard process for reviewing these long-lived assets for potential impairments in carrying value.

*Criteria:* Structured procedures should exist for overseeing the net book values and potential impairments related to capital assets.

*Cause of Condition:* The District does not have a standard process for reviewing these long-lived assets for potential impairments in carrying value.

*Effect of Condition:* There is potential for long-lived assets to have inaccurate net book values which would affect financial reporting.

*Recommendation:* We recommend the District establish a process for periodically reviewing capital asset records for potential impairment and adjustments to carrying values in order to maintain accurate capital asset books and records.

*Management Response:* The District does have procedures for ensuring the operational condition of assets. These procedures involve routine maintenance and periodic testing of equipment not in use. For District systems with an undepreciated value greater than \$500,000 and individual assets with an undepreciated value greater than \$100,000, the District finance department will collaborate with operations to establish a written policy for yearly evaluations that document annual maintenance procedures performed, future use and net book value. We expect to have this in place prior to fiscal year-end 2024.

**Central Florida Tourism Oversight District**  
INDEPENDENT AUDITOR'S MANAGEMENT LETTER – APPENDIX A

SEPTEMBER 30, 2023

**Related Party Transactions**

*Statement of Condition 2023-3:* The District engages in many related party transactions throughout the year. We noted that the District does not have a standard process regarding review and identification of related party transactions.

*Criteria:* The District should have a clear process for determination and review of related parties and related transactions.

*Cause of Condition:* The District does not have a process for thorough review and identification of related party transactions.

*Effect of Condition:* There is potential for undisclosed related party transactions.

*Recommendation:* We recommend the District adopt a policy covering the determination, review, and disclosure requirements of related party transactions. This policy should cover all transactions, deals, and arrangements made between the District and related parties in which a pre-existing business relationship has been established, and any other dealings between the District and related parties with whom the District conducts business.

*Management Response:* We have implemented a new process for reviewing related party transactions with our primary landowner and have documented that process in a narrative, which we have shared with our auditors. Our financial statement disclosures for fiscal year 2023 conform to this new process.

**Infrastructure Assets Condition Assessments**

*Statement of Condition 2023-4:* In accordance with Governmental Accounting Standards Board ("GASB") 34, the District should follow requirements and establish certain condition assessment thresholds related to capitalized infrastructure assets recorded under the modified approach. As of year-end, there were no infrastructure asset condition assessment thresholds established for maintaining these assets under the modified approach.

*Criteria:* The District should establish certain condition assessment thresholds related to capitalized infrastructure assets, in accordance with GASB 34.

*Cause of Condition:* As of year-end, there were no infrastructure asset condition assessment thresholds established for maintaining these assets under the modified approach.

*Effect of Condition:* Noncompliance with disclosure requirements under GASB 34.

*Recommendation:* We recommend that a financial policy be implemented to establish appropriate condition assessment thresholds for infrastructure assets in accordance with GASB 34 modified approach criteria.

*Management Response:* We adopted our "Condition Level Policy for Reporting Infrastructure Assets Using Modified Approach" (Policy 2024-07) on 3/15/2024 as required. The thresholds described in the policy are disclosed in the RSI section of our 2023 financial statements.

**Central Florida Tourism Oversight District**  
INDEPENDENT AUDITOR'S MANAGEMENT LETTER – APPENDIX A

SEPTEMBER 30, 2023

**Construction in Progress Review**

*Statement of Condition 2023-5:* The District has a significant amount of construction in progress for various ongoing capital projects recorded on the financial statements and as such, it is important to have structured procedures for overseeing these capital projects. The District does not have a standard process to review construction in progress in order to ensure that all projects are valid, ongoing, active and properly recorded.

*Criteria:* It is important to have procedures for overseeing capital projects to ensure they have not become stale or cancelled.

*Cause of Condition:* The District does not have a standard process to review construction in progress in order to ensure that all projects are valid, ongoing, active, and properly recorded.

*Effect of Condition:* There is potential for stale or canceled projects to remain in construction in progress, which could result in inaccurate financial reporting.

*Recommendation:* We recommend the District define a process to review the construction in progress balances on a regular basis in order to maintain accurate capital asset books and records.

*Management Response:* We have implemented a new process for reviewing construction in progress projects and have documented that process in a narrative, which we have shared with our auditors. Our financial statement disclosures for fiscal year 2023 conform to this new process.

**Land Transactions**

*Statement of Condition 2023-6:* The District enters into land sale, land swap and land acquisition agreements from time to time to facilitate operations and growth. The District does not have a standard process that covers land sales, land swaps or land acquisitions; therefore, there is no uniform approach to obtaining valuations for transaction prices for these deals, leading to limited evidence upon which these types of transactions are based.

*Criteria:* land sale, land swap and land acquisition agreements should have evidence of proper valuations for transaction prices.

*Cause of Condition:* The District does not have a standard process that covers the treatment of land sales, land swaps or land acquisitions.

*Effect of Condition:* There is potential for land transactions to not be properly valued or have inaccurate basis for financial reporting, and underlying evidence to support appropriateness of prices paid is not always retained.

*Recommendation:* We encourage the District to have a standard process that includes an accurate appraisal when entering into land sale, land swap and land acquisition agreements, providing readily identifiable support for transaction amounts.

*Management Response:* We recognize the comment and while these types of transactions are infrequent, we will develop a standard process to apply to land transactions including providing evidence of proper valuations. This process will also enable Administration and Legal to work with Finance in obtaining supporting documentation related to the transaction. We expect to have this in place prior to fiscal year-end 2024.

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**CENTRAL FLORIDA TOURISM OVERSIGHT DISTRICT  
BOARD OF SUPERVISORS REPORT 9.2**

**Board Meeting Date: 04/24/2024**

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Subject: FY 2024 Carryforward Budget Amendment

Presented By: Susan Higginbotham

Department: Finance

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**STAFF RECOMMENDATION (Motion Ready):** Approve Agenda Item 9.2 carryforward of FY2023 funds to FY2024 for district projects and funding needs in the amount of \$4,192,697

**RELEVANT STRATEGIC GOALS:** Operational Excellence

**PROOF OF PUBLICATION:** N/A

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**BACKGROUND:** The District was unable to complete several projects in FY2023 for milling and resurfacing on World Drive South, priority guardrail replacements, drainage erosion repairs of Structures # 101, 14 and 405, along with needed additional funding in FY2024 for the Lynx bus route addition.

**FINDINGS AND CONCLUSIONS:** Funding is available and can be carry forwarded from the FY2023 budget to complete these projects and funding needs.

**FISCAL IMPACT:** No fiscal impact. Budget appropriations of \$4,192,697 is available from FY2023 to complete projects budgeted in the prior fiscal year and to support areas with funding needs since the budget was adopted.

**PROCUREMENT REVIEW:** N/A

**LEGAL REVIEW:** N/A

**ALTERNATIVE:** N/A

**SUPPORT MATERIALS:** Power Point slide for Budget Amendment FY24-1