12051 Corporate Boulevard, Orlando, FL 32817; 407-382-3256

The following is the proposed agenda for the special meeting of the Board of Supervisors for the Holly Hill Road East Community Development District, scheduled to be held **Thursday, October 11, 2018 at 9:15 a.m. at the Offices of Cassidy Homes, 346 East Central Ave., Winter Haven, FL 33880.** Questions or comments on the Board Meeting or proposed agenda may be addressed to Jane Gaarlandt at janeg@fishkind.com or (407) 382-3256. As always, the personal attendance of three (3) Board Members will be required to constitute a quorum.

If you would like to attend the Board Meeting by phone, you may do so by dialing: Phone: 1-866-546-3377 (New) Participant Code: 964985 (New)

PROPOSED BOARD OF SUPERVISORS' MEETING AGENDA

Administrative Matters

- Roll Call to Confirm Quorum
- Public Comment Period [for any members of the public desiring to speak on any proposition before the Board]

Business Matters

- 1. Amenity Center Financing
 - A. Consideration of Second Joint Agreement Between Holly Hill Road East Community Development District, The North Boulevard Community Development District And HHR East, LLC, Regarding The Joint Acquisition Of Certain Work Product, Improvements And Real Property
 - B. Consideration of Resolution 2019-01 Authorizing Not to Exceed \$550,000 Bond Anticipation Note, Series 2018 (Amenity Center Line of Credit)
- 2. Consideration of Construction Funding Agreement with HHR East, LLC for Phase 2 Costs
- 3. Consideration of Acquisition Agreement with HHR East, LLC, Regarding Phase 2 Work Product, Improvements, and Real Property
- 4. Consideration of Assignment of Construction Contract for the Amenity Facility
 - A. Assignment of Contract
 - B. Phase 2 Construction Contract Between Tucker Paving, Inc., and HHR East, LLC
- 5. Consideration of Resolution 2019-02, Direct Purchase Resolution
- 6. Consideration of the Uniform Collection Agreement between Polk County Tax Collector and the District

Other Business

Staff Reports District Counsel Interim Engineer District Manager Supervisor Requests and Audience Comments Adjournment

Amenity Center Financing



Second Joint Agreement Between Holly Hill Road East Community Development District, The North Boulevard Community Development District And HHR East, LLC, Regarding The Joint Acquisition Of Certain Work Product, Improvements And Real Property

SECOND AGREEMENT BETWEEN THE HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT, THE NORTH BOULEVARD COMMUNITY DEVELOPMENT DISTRICT AND HHR EAST, LLC, REGARDING THE JOINT ACQUISITION OF CERTAIN WORK PRODUCT, IMPROVEMENTS AND REAL PROPERTY

THIS SECOND JOINT ACQUISITION AGREEMENT ("Agreement") is made and entered into this _____ day of ______, 2018, by and between:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in the City of Davenport, Polk County, Florida, with a mailing address of 12051 Corporate Blvd., Orlando, Florida 32817 ("HHECDD");

NORTH BOULEVARD COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, and located in City of Haines City, Polk County, Florida, with a mailing address of 12051 Corporate Blvd., Orlando, Florida 32817 ("NBCDD", together with HHECDD, referred to as the "Districts" and individually as a "District"); and

HHR EAST, LLC, a Florida limited liability company, primary Developer within the District, with a mailing address of 346 E. Central Avenue, Winter Haven, Florida 33880 ("**Developer**", collectively with the Districts referred to as the "**Parties**").

RECITALS

WHEREAS, HHECDD and NBCDD are local units of special purpose government located entirely within Polk County, Florida that have been established for the purpose of planning, financing, constructing, installing, and/or acquiring certain improvements, facilities and services in conjunction with the development of the lands located within the Districts; and

WHEREAS, the Districts were created by and established pursuant to Chapter 190, Florida Statutes pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended ("Act"), and are validly existing under the Constitution and laws of the State of Florida; and

WHEREAS, the City of Davenport and the City of Haines City have each granted the Districts special powers under subsection 190.012(2)(a) to "plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain additional systems and facilities for: parks and facilities for indoor and outdoor recreational, cultural, and educational uses" pursuant to City of Davenport Ordinance 8-14 and City of Haines City Ordinance 17-1555, respectively; and

WHEREAS, HHR EAST, LLC, the developer of the lands within HHECDD, ("Developer"), has approached the Districts expressing a desire for one or more of the Districts

to acquire certain amenities, as detailed and more specifically described in HHECDD's *Amended* and *Restated Engineer's Report* dated March 21, 2018, and NBCDD's *Engineer's Report* dated April 2017 (together, as subsequently amended, the "Engineer's Reports"), attached hereto as **Composite Exhibit A** and by reference incorporated herein (the "Amenities"); and

WHEREAS, the HHECDD Board of Supervisors ("HHECDD Board") and the NBCDD Board of Supervisors ("NBCDD Board," and together with the HHECDD Board, the "Boards" and individually as a "Board") would like to jointly acquire and/or construct and operate the Amenities; and

WHEREAS, the Act authorizes the Districts to issue bonds for the purpose, among others, of planning, financing, constructing or acquiring, operating and/or maintaining certain infrastructure, including the Amenities, within or without the boundaries of the Districts; and

WHEREAS, as originally established, approximately fifty five percent (55%) of the total residential units expected to be developed within the Districts are located within the boundaries of HHECDD and approximately forty five percent (45%) of the total residential units expected to be developed within the Districts are located within the boundaries of NBCDD; and

WHEREAS, the Districts have accordingly determined that HHECDD is the appropriate location for the Amenities to be located; and

WHEREAS, the Districts have and presently intend to further finance the planning, design, acquisition, construction, and installation of the Amenities; and

WHEREAS, to promote equity and fiscal efficiency, the Boards pursuant to that certain *Interlocal Agreement* by and between the Districts dated as of September 22, 2017, desire for both of the Districts to issue a proportionate share the Bonds (hereinafter defined) to fund the acquisition and/or construction of the Amenities; and

WHEREAS, the Parties previously entered into that certain Agreement Regarding the Joint Acquisition Agreement of Certain Work Product, Improvements, and Real Property dated September 22, 2017, regarding the financing and acquisition of certain work product, improvements, and real estate constituting all or a portion of the Amenities attributable to the first phase of each District ("Initial Joint Acquisition Agreement"); and

WHEREAS, NBCDD has issued its \$4,965,000 Special Assessment Bonds, Series 2017 (the "NBCDD Phase 1 Bonds"), in part to finance the acquisition and/or construction of a portion of the infrastructure associated with Phase 1 in NBCDD, including portions of the Amenities; and

WHEREAS, HHECDD has issued its \$4,160,000 Special Assessment Bonds, Series 2017 (the "HHECDD Phase 1 Bonds," and together with NBCDD Phase 1 Bonds, the "Phase 1 Bonds"), in part to finance the acquisition and/or construction of a portion of the infrastructure associated with Phase 1 in HHECDD, including portions of the Amenities; and

WHEREAS, the Districts intend to use a portion of the Phase 1 Bond proceeds to acquire certain work product, improvements, and real estate constituting a portion of the Amenities attributable to the first phase of each District pursuant to the Initial Joint Acquisition Agreement; and

WHEREAS, the Districts and Developer presently intend to enter into this Agreement regarding the financing and acquisition of the remainder of the Amenities not funded from the proceeds of the Phase 1 Bonds, as further described in the Engineer's Report (the "Remaining Amenities"); and

WHEREAS, the Districts intend to finance all or a portion of the Remaining Amenities through the issuance and delivery by HHECDD to the Developer of that certain Bond Anticipation Note, Series 2018 (Amenity Center Line of Credit) (the "Note") and the use of portions of the proceeds from the issuance of one or more series of bonds to permanently finance future phases in each District, including without limitation retirement of the Note (the "Future Phase Bonds," and together with the Note, the "Future Amenity Bonds"); and

WHEREAS, the Districts have not had sufficient monies on hand to allow the Districts to contract directly for: (i) the preparation of the surveys, testing, reports, drawings, plans, permits, specifications, and related documents necessary to complete the Amenities ("Work **Product**"); or (ii) construction and/or installation of all of the improvements comprising the Amenities ("Improvements"); and

WHEREAS, the Districts acknowledge the Developer's need to commence or cause commencement of development of the lands within the Districts in order to maintain certain permits and entitlements associated with the land within the Districts; and

WHEREAS, in order to avoid a delay in the commencement of the development of the Work Product and/or the Improvements, the Developer has advance funded, commenced, and/or completed certain of the Work Product and/or Improvements, and Developer may cause funds to be advanced and/or the Improvements to be completed to the extent that the proceeds of the Future Phase Bonds are insufficient to do so; and

WHEREAS, the District desires to commence the purchase of certain portions of the Work Product and the Improvements, and/or accept assignment of certain agreements regarding the same; and

WHEREAS, the Developer and the Districts are entering into this Agreement to set forth the process by which the Districts may acquire the Work Product, the Improvements, and any related real property interests ("Real Property") from Developer.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt of which and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals stated above are true and correct and by this reference are incorporated as a material part of this Agreement.

2. WORK PRODUCT AND IMPROVEMENTS. The Parties agree to cooperate and use good faith and best efforts to undertake and complete the acquisition process contemplated by this Agreement on such date or dates as the Parties may jointly agree upon ("Acquisition Date"). Subject to any applicable legal requirements (e.g., including, but not limited to, those laws governing the use of proceeds from tax exempt bonds), and the requirements of this Agreement, the Districts agree to acquire completed Work Product and Improvements comprising the Amenities.

- a. **Request for Conveyance and Supporting Documentation** When Work Product or Improvements are ready for conveyance by or on behalf of the Developer to HHECDD on behalf of the Districts, the Developer shall notify the Districts in writing, describing the nature of the Work Product and/or Improvement and estimated cost. Additionally, Developer agrees to provide, at or prior to the Acquisition Date, the following: (i) documentation of actual costs paid, (ii) instruments of conveyance such as bills of sale or such other instruments as may be requested by the Districts, and (iii) any other releases, warranties, indemnifications or documentation as may be reasonably requested by the Districts.
- b. Costs Subject to any applicable legal requirements (e.g., but not limited to, those laws governing the use of proceeds from tax exempt bonds), the availability of proceeds from the Future Amenity Bonds, and the requirements of this Agreement, the Districts agree to pay the actual reasonable cost of creation/construction of the Work Product or Improvements incurred by the Developer. The Developer shall provide copies of any and all invoices, bills, receipts, or other evidence of costs incurred by the Developer for any Work Product and/or Improvements. Each District's District Engineer shall review all evidence of cost and shall certify to both District Boards the total actual amount of cost, which in each District Engineers' opinion is reasonable for the Work Product and/or Improvements. The opinion of cost of each District's District Engineer shall be set forth in a Joint Engineer's Certificate which shall accompany the requisition for funds from each District's trustee for the Future Amenity Bonds ("Trustee").
- c. *Conveyances on "As Is" Basis* Unless otherwise agreed, all conveyances of Work Product and/or Improvements shall be on an "as is" basis. In addition, the Developer agrees to assign, transfer and convey to HHECDD on behalf of the Districts any and all rights against any and all firms or entities which may have caused any latent or patent defects, including, but not limited to, any and all warranties and other forms of indemnification.
- d. *Right to Rely on Work Product and Releases* The Developer agrees to release to HHECDD on behalf of the Districts all right, title, and interest

which the Developer may have in and to any Work Product conveyed hereunder, as well as all common law, statutory, and other reserved rights, including all copyrights in the Work Product and extensions and renewals thereof under United States law and throughout the world, and all publication rights and all subsidiary rights and other rights in and to the Work Product in all forms, mediums, and media, now known or hereinafter devised; provided that Developer may make such release on a non-exclusive basis to the extent that Developer reasonably determines that Developer requires such rights in connection with the ownership or operation of the lands owned by Developer within the Districts and/or the future sale of lots within the Districts. To the extent determined necessary by the Districts, the Developer shall reasonably obtain all releases from any professional providing services in connection with the Work Product to enable the Districts to use and rely upon the Work Product. The Districts agree to allow the Developer access to and use of the Work Product without the payment of any fee by the Developer. However, to the extent the Developer's access to and use of the Work Product causes the Districts to incur any cost or expense, such as copying costs, the Developer agrees to pay such cost or expense.

- e. *Transfers to Third Party Governments* If any item acquired is to be conveyed to a third party governmental body, then the Developer agrees to cooperate and provide such certifications, documents, bonds, warranties, and/or forms of security as may be required by that governmental body, if any.
- f. *Permits* The Developer agrees to cooperate fully in the transfer of any permits to HHECDD on behalf of the Districts or a governmental entity with maintenance obligations for any Improvements conveyed pursuant to this Agreement, provided that HHECDD on behalf of the Districts or such governmental entity accepts the associated operation and maintenance obligations.
- g. *Engineer's Certification* HHECDD shall accept any completed Work Product and/or Improvements following each District's District Engineer (or other consulting engineer reasonably acceptable to the Districts), in his/her professional opinion, is able to certify that, in addition to any other requirements of law: (i) the Work Product and/or Improvements are part of the Amenities; (ii) the price for such Work Product and/or Improvements does not exceed the actual reasonable cost of the Work Product and/or Improvements; (iii) as to Work Product, the Work Product is capable of being used for the purposes intended by the Districts, and, as to any Improvements, the Improvements were installed in accordance with their specifications, and are capable of performing the functions for which they were intended; and (iv) as to any Improvements, all known plans, permits and specifications necessary for the operation and maintenance of the Improvements are complete and on

file with the Districts, and have been transferred, or are capable of being transferred, to the Districts for operations and maintenance responsibilities.

3. ASSIGNMENT OF CONTRACTS. The Parties agree HHECDD shall accept the assignment of certain contracts. Such acceptance is predicated upon (i) each contractor providing a bond in the form and manner required by section 255.05, Florida Statutes, (ii) receipt by HHECDD of a release from each general contractor acknowledging each assignment and the validity thereof, acknowledging the furnishing of the bond or other security required by section 255.05, F.S., if any, and waiving any and all claims against the HHECDD arising as a result of or connected with such assignment. Developer hereby indemnifies and holds the Districts harmless from any claims, demands, liabilities, judgments, costs, or other actions which may be brought against or imposed upon the Districts by any contractors, subcontractors, sub-subcontractors, materialmen, and others providing labor or services in conjunction with each such contract and including claims by members of the public as such claims relate to the period of time prior to the HHECDD's acceptance of the assignment.

4. CONVEYANCE OF REAL PROPERTY. The Developer agrees that it will convey to HHECDD on behalf of the Districts at or prior to the Acquisition Date, as determined solely by the Districts, by a special warranty deed or other instrument acceptable to the HHECDD Board together with a metes and bounds or other description, the Real Property upon which any Improvements are constructed or which are necessary for the operation and maintenance of, and access to, the Improvements.

- **a.** *Cost.* The Parties agree that all Real Property shall be provided to the Districts at no cost, unless (i) the costs for the Real Property are included as part of the Amenities, and (ii) the purchase price for the Real Property is less than or equal to the appraised value of the Real Property, based on an appraisal obtained by the District for this purpose. The parties agree that the purchase price shall not include amounts attributable to the value of Improvements on the Real Property and other Improvements serving the Real Property that have been, or will be, funded by the Districts.
- **b.** *Fee Title and Other Interests* The Districts may determine in their reasonable discretion that fee title for Real Property is not necessary and in such cases HHECDD shall accept such other interest in the lands upon which the Improvements are constructed as the Districts deem acceptable, such as non-exclusive easement interests.
- c. *Developer Reservation* Any conveyance of Real Property hereunder by special warranty deed or other instrument shall be subject to a reservation by Developer of its right and privilege to use the area conveyed to enable the construction by third parties of any Improvements and any future improvements to such area for any related purposes (including, but not limited to, construction vehicle ingress and egress relating to the Development) not inconsistent with the Districts' use, occupation or enjoyment thereof.

- d. *Fees, Taxes, Title Insurance* The Developer shall pay the cost for recording fees and documentary stamps required, if any, for the conveyance of the Real Property upon which the Improvements are constructed. The Developer shall be responsible for all taxes and assessments levied on the Real Property upon which the Improvements are constructed until such time as the Developer conveys all said lands to HHECDD. At the time of conveyance, the Developer shall provide, at its expense, an owner's title insurance policy or other evidence of title in a form satisfactory to the Districts.
- e. *Boundary Adjustments* Developer and the Districts agree that future boundary adjustments may be made as deemed reasonably necessary by all parties in order to accurately describe the Real Property conveyed to the Districts and lands which remain in Developer's ownership. The parties agree that any Real Property transfers made to accommodate such adjustments shall be accomplished by donation. However, the party requesting such adjustment shall pay any transaction costs resulting from the adjustment, including but not limited to taxes, title insurance, recording fees or other costs. Developer agrees that if a court or other governmental entity determines that a re-platting of the Real Property within the Districts is necessary, Developer shall pay or cause a third party to pay all costs and expenses associated with such actions.

5. TAXES, ASSESSMENTS, AND COSTS.

- a. Taxes and Assessments on Property Being Acquired. The Districts are exempt governmental units acquiring property pursuant to this Agreement for use exclusively for public purposes. Accordingly, in accordance with Florida law, the Developer agrees to place in escrow with the County tax collector an amount equal to the current ad valorem taxes and non-ad valorem assessments (with the exception of those ad valorem taxes and non-ad valorem assessments levied by the Districts) prorated to the date of transfer of title, based upon the expected assessment and millage rates giving effect to the greatest discount available for early payment.
 - i. If, and only to the extent the property acquired by HHECDD is subject to ad valorem taxes or non-ad valorem assessments, the Developer agrees to reimburse HHECDD for payment, or pay on its behalf, any and all ad valorem taxes and non-ad valorem assessments imposed during the calendar year in which each parcel of property is conveyed.
 - **ii.** Nothing in this Agreement shall prevent the Districts from asserting any rights to challenge any taxes or assessments imposed, if any, on any property of the Districts.
- **b.** *Notice.* The Parties agree to provide notice to the other within thirty (30) calendar days of receipt of any notice of potential or actual taxes, assessments, or costs, as a result of any transaction pursuant to this Agreement, or notice of

any other taxes, assessments, or costs imposed on the property acquired by the Districts as described in subsection a. above. The Developer covenants to make any payments due hereunder in a timely manner in accordance with Florida law. In the event that the Developer fails to make timely payment of any such taxes, assessments, or costs, the Developer acknowledges the Districts' right to make such payment. If the Districts make such payment, the Developer agrees to reimburse the Districts within thirty (30) calendar days of receiving notice of such payment, and to include in such reimbursement any fees, costs, penalties, or other expenses which accrued to the Districts as a result of making such a payment, including interest at the maximum rate allowed by law from the date of the payment made by the District.

c. *Tax liability not created.* Nothing herein is intended to create or shall create any new or additional tax liability on behalf of the Developer or the Districts. Furthermore, the parties reserve all respective rights to challenge, pay under protest, contest or litigate the imposition of any tax, assessment, or cost in good faith they believe is unlawfully or inequitably imposed and agree to cooperate in good faith in the challenge of any such imposition.

ACQUISITIONS AND FUTURE AMENITY BOND PROCEEDS. The 6. Districts shall in good faith pursue the issuance of Future Amenity Bonds to finance their respective portions of the Amenities. In the event that either District issues Future Amenity Bonds and has bond proceeds available to pay for any portion of the Amenities acquired by HHECDD on their behalf, and subject to the terms of the applicable documents relating to the Future Amenity Bonds, as applicable, then the District shall promptly make payment for any such acquired Work Product, Improvements or Real Property pursuant to the terms of this Agreement; provided, however, that in the event the District's bond counsel determines that any such acquisitions are not properly compensable for any reason, including, but not limited to federal tax restrictions imposed on tax-exempt financing, the District shall not be obligated to make payment for such acquisitions. Pursuant to this Agreement, interest shall not accrue on any amounts owed for any prior acquisitions, unless otherwise provided for in connection with the issuance of the Note. In the event either District does not or cannot issue sufficient bonds within five (5) years from the date of this Agreement to pay for all acquisitions hereunder, and, thus does not make payment to the Developer for any unfunded acquisitions, then the Parties agree that such District shall have no payment or reimbursement obligation whatsoever for those unfunded acquisitions, unless otherwise provided for in connection with payment of the Note. The Developer acknowledges that the Districts may convey some or all of the Work Product and/or Improvements to a general purpose unit of local government (e.g., the County) and consents to the Districts' conveyance of such Work Product and/or Improvements prior to any payment being made by the Districts.

7. **DEFAULT.** A default by any party under this Agreement shall entitle the others to all remedies available at law or in equity, which may include, but not be limited to, the right of damages and/or specific performance.

8. INDEMNIFICATION. For all actions or activities which occur prior to the date of the acquisition of the relevant Real Property, Improvement or Work Product hereunder, the Developer agrees to indemnify and hold harmless the Districts and its officers, staff, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or claims of any nature arising out of, or in connection with, the use by the Developer, its officers, agents, employees, invitees or affiliates, of the Real Property, Improvement, or Work Product, including litigation or any appellate proceedings with respect thereto, irrespective of the date of the initiation or notice of the claim, suit, etc.; provided, however, that the Developer shall not indemnify the Districts for a default by the Districts under this Agreement or the use of such Real Property, Improvement or Work Product by the Districts, its engineers, employees, contractors, or such persons' or entities' negligence.

9. ATTORNEYS' FEES AND COSTS. In the event that any party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that the prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by each District and the Developer.

11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of each District and the Developer; the Districts and the Developer have complied with all the requirements of law; and the Districts and the Developer have full power and authority to comply with the terms and provisions of this instrument.

12. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

А.	If to HHECDD:	Holly Hill Road East Community Development District 12051 Corporate Blvd. Orlando, Florida 32817 Attn: District Manager
	With a copy to:	Hopping Green & Sams, PA 119 South Monroe Street, Suite 300 Post Office Box 6526 Tallahassee, Florida 32314 Attn: District Counsel

В.	If to NBCDD:	North Boulevard Community Development District 12051 Corporate Blvd. Orlando, Florida 32817 Attn: District Manager
	With a copy to:	Hopping Green & Sams, PA 119 South Monroe Street, Suite 300 Post Office Box 6526 Tallahassee, Florida 32314 Attn: District Counsel
C.	If to Developer:	HHR EAST, LLC 346 E. Central Avenue Winter Haven, FL 33880 Attn: Scott Shapiro
	With a copy to:	Straughn & Turner, P.A 255 Magnolia Avenue, S.W. Winter Haven, Florida 33880 Attn: Richard Straughn

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a nonbusiness day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the Districts and counsel for the Developer may deliver Notice on behalf of the Districts and the Developer, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

13. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between HHECDD, NBCDD, and the Developer as an arm's length transaction. All parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, all parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either of the Districts or the Developer.

14. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the Districts and the Developer and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Districts and the Developer any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the

provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Districts and the Developer and their respective representatives, successors, and assigns.

15. ASSIGNMENT. No Party to this Agreement may assign this Agreement or any monies to become due hereunder without the prior written approval of each of the other Parties hereto.

16. **TERMINATION.** This Agreement may be terminated upon the earlier of (i) the District's acquisition of all Work Product, Improvements, and Real Property related to the Amenities, and payment of the same, all as provided herein; or (ii) execution of an instrument in writing by each District and the Developer providing for such termination.

17. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Polk County, Florida.

18. **PUBLIC RECORDS.** The Developer understands and agrees that all documents of any kind provided to the Districts in connection with this Agreement may be public records and treated as such in accordance with Florida law.

19. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

20. CONFLICTS. To the extent that the terms of this Agreement conflict with the terms of the Initial Joint Acquisition Agreement, the Parties agree the terms of this Agreement shall control.

21. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the Districts beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or by other operation of law.

22. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

23. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and

acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

24. EFFECTIVE DATE. This Agreement shall be effective as of _____, 2018.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

	WHEREFORE,	the Parties	below execute this	Agreement.
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Witness:	HOLLY HILL ROAD EAST COMMUNITY Development District
Print Name	Chairperson, Board of Supervisors
Witness:	Attest: Secretary
Print Name	
Witness:	North Boulevard Community Development District
Print Name	Chairperson, Board of Supervisors
Witness:	
Print Name	Attest: Secretary
Witness:	HHR EAST, LLC
Print Name	By: <u>Scott Shapiro</u> Its: <u>Manager</u>
Witness:	

Print Name

EXHIBIT A Amenities

Resolution 2019-01

RESOLUTION NO. 2019-01

A RESOLUTION AUTHORIZING THE ISSUANCE AND DELIVERY OF COMMUNITY DEVELOPMENT HOLLY HILL ROAD EAST A DISTRICT (CITY OF DAVENPORT, FLORIDA) BOND ANTICIPATION NOTE, SERIES 2018 (AMENITY CENTER LINE OF CREDIT), IN A PRINCIPAL AMOUNT NOT TO EXCEED \$550,000, TO PROVIDE INTERIM FUNDS FOR THE PAYMENT OF A PORTION OF THE COSTS OF THE ACQUISITION OF AN AMENITY CENTER TO SERVE RESIDENTS OF THE DISTRICT AND OF THE NORTH BOULEVARD DISTRICT; APPROVING THE DEVELOPMENT COMMUNITY PRIVATE PLACEMENT NEGOTIATED SALE OF THE NOTE, APPOINTING A PAYING AGENT AND REGISTRAR FOR THE NOTE; CREATING A NOTE REDEMPTION ACCOUNT; PROVIDING FOR INCIDENTAL ACTION; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Holly Hill Road East Community Development District (the "District") is a local unit of special-purpose government organized and existing in accordance with the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the "Act"), and Ordinance No. 814 enacted by the City Commission (the "City Commission") of the City of Davenport, Florida (the "City") on July 10, 2017, as amended by Ordinance No. 841 enacted by the City Commission on March 5, 2018; and

WHEREAS, North Boulevard Community Development District ("North Boulevard," and collectively with the District, the "CDDs") is also a local unit of special-purpose government organized and existing in accordance with the Act, and Ordinance No. 17-1555 enacted by the City Commission of the City of Haines City, Florida on April 6, 2017; and

WHEREAS, the CDDs were created for the purpose of delivering certain community development services and facilities within their respective jurisdictions, and the CDDs have, through an Interlocal Agreement, dated as of September 20, 2017 (the "Interlocal Agreement") decided to undertake the planning, financing and acquisition of certain infrastructure improvements pursuant to the Act consisting of an amenity center (the "Amenity Center"), to be located within and owned by the District, as described in Schedule "I" hereto; and

WHEREAS, the CDDs have entered into an agreement with HHR East LLC, a Florida limited liability company (the "Developer"), dated September 22, 2017 (the "Initial Joint Acquisition Agreement") for the joint acquisition of certain work product, improvements and real estate constituting a portion of the Amenity Center, up to the amount of \$1,000,000; and

WHEREAS, it is the CDDs intention to use a portion of the proceeds of their respective series of Series 2017 Bonds (as hereinafter defined) to jointly acquire certain work product, improvements, and real estate constituting a portion of the Amenity Center pursuant to the Initial Joint Acquisition Agreement; and

WHEREAS, the CDDs and the Developer now intend to enter into a second joint acquisition agreement for the joint acquisition of the remainder of the Work Product, Improvements and/or Real Property relating to the Amenity Center, the nature and cost of which are to be determined by the District Engineer (the "Second Joint Acquisition Agreement," and together with the Initial Joint Acquisition Agreement, collectively referred to herein as the "Joint Acquisition Agreements"); and

WHEREAS, pursuant to the Second Joint Acquisition Agreement, the Developer will agree to fund the costs of the Amenity Center to the extent that proceeds of the Series 2017 Bonds and Amenity Bonds (as defined herein) issued in the future by the CDDs for such purpose, are insufficient; and

WHEREAS, the District has authorized the issuance of not to exceed \$18,000,000 aggregate principal amount of Special Assessment Bonds, of which \$4,160,000 in principal amount have previously been issued for the purpose of funding a portion of the costs of the acquisition and construction of certain infrastructure improvements for the District's Phase 1 (which included a portion of the costs of the Amenity Center) and are outstanding (the "HHRE Series 2017 Bonds"); and

WHEREAS, North Boulevard has authorized the issuance of not to exceed \$15,000,000 aggregate principal amount of Special Assessment Bonds, of which \$4,965,000 in principal amount have previously been issued for the purpose of funding a portion of the costs of the acquisition and construction of certain infrastructure improvements for the North Boulevard's Phase 1 (which included a portion of the costs of the Amenity Center) and are outstanding (the "NB Series 2017 Bonds" and together with the HHRE Series 2017 Bonds, the "Series 2017 Bonds"); and

WHEREAS, the CDDs intend to fund the remaining costs of acquiring and constructing the Amenity Center from a portion of the proceeds of outstanding Series 2017 Bonds and future series of Special Assessment Bonds (such portion collectively, "Amenity Bonds"); and

WHEREAS, because the Amenity Center must be completed before a sufficient amount of Amenity Bond proceeds will be available to fund it, the Developer has agreed pursuant to the Joint Acquisition Agreements to advance funds periodically on an interim basis on behalf of the District to acquire, construct and equip the portions of the Amenity Center for which Amenity Bond proceeds are not available (the "Loan"), and

WHEREAS, the District wishes to evidence its obligation to repay the Loan by the issuance of a bond anticipation note to the Developer, pursuant to the Constitution and laws of the State of Florida, specifically Section 190.014 of the Act; and

WHEREAS, in the event that Amenity Bonds cannot be issued in the future to repay the Loan, the District intends to authorize the imposition, levy and collection of non ad valorem special assessments pursuant to Chapters 170 and 197, Florida Statutes ("Amenity Special Assessments"), on benefited lands within Phase 3, and if the District boundaries are amended to add it, Phase 4 of the District to repay the Loan;

NOW, THEREFORE, BE IT RESOLVED THAT:

The Board of Supervisors of the District (the Description of Note. Section 1: "Board") hereby authorizes the borrowing of money and the issuance of a Bond Anticipation Note (Amenity Center Line of Credit) (the "Note") in fully registered certificated form as herein provided. The Note shall be dated the date of its issuance and delivery, shall evidence advances in the aggregate principal amount of not to exceed \$550,000, shall mature no later than December 5, 2020, shall be subject to redemption in whole or in part at any time without premium or penalty, shall bear interest from the date of each advance at a rate of 5.50% per annum, subject to compliance with the provisions of Section 159.825(1)(d), Florida Statutes, payable at maturity or upon earlier redemption thereof, and shall be repaid first from the proceeds of each series of Amenity Bonds when, as and if issued by the District to pay a pro-rata portion of the cost of the Amenity Center; and second, from the proceeds of collection of Amenity Special Assessments, when, and if levied and collected by the District on lands within Phase 3, and if the District boundaries are amended to add it, Phase 4 of the District. The Note shall be in substantially the form of "Exhibit "A" attached hereto, which form is hereby approved, subject to such changes, additions, deletions and insertions as shall be approved by the Chairman or Designated Member and the Secretary or an Assistant Secretary, which approval shall be conclusively evidenced by the execution thereof.

Section 2: Negotiated Sale of Note. The Note shall be sold by a private negotiated sale to the Developer. It is hereby found, ascertained, determined and declared by the Board that a private negotiated sale of the Note of the District in an aggregate principal amount not exceeding \$550,000 to the Developer will best effectuate the purposes of the Act, is in the best interest of the District and is necessitated by, in general, the characteristics of the issue and prevailing market conditions and specifically, the following additional reasons, as to which specific findings are hereby made:

(a) because of the complexity of the financing structure of the Amenity Center, and the need for funding of components of the Amenity Center on a draw-down basis prior to the issuance of Amenity Bonds to fund the public infrastructure of future phases of development within the District, it is desirable to issue the Note pursuant to a private negotiated sale;

(b) because of the uncertainty of timing of development of future phases of the District, it is in the best interests of the District to sell the Note by a private negotiated sale;

(c) issuing the Note on a taxable draw-down basis to the Developer provides the most attractive financing for the District; and

(d) the District will not be adversely affected if the Note is not sold pursuant to a competitive sale.

The consummation of the Loan through the negotiated sale of the Note to the Developer is hereby authorized pursuant to Section 218.385, Florida Statutes, as amended. The Board hereby authorizes and directs the Chairman or the Chairman's designee (the "Designated Member") to take all action necessary to consummate such sale, upon approval by the District Manager and consultants, provided that the aggregate principal amount advanced on the Note shall not exceed \$550,000, the Note shall be redeemable in whole or in part at any time at a price of 100% of the principal amount to be redeemed plus accrued interest thereon. The Note shall not be sold, assigned or transferred in any manner.

The actions of the District and its officers and consultants previously taken regarding the negotiation of the Loan are hereby ratified and confirmed and the District and its officers and consultants are hereby authorized and directed to take such further action as the District or its officers or consultants deem necessary or desirable to effect the purposes of the Loan.

Section 3: Execution of Note. The Note shall be executed with the manual signature of the Chairman or a Designated Member of the Board and countersigned by the manual signature of the Secretary of the Board and the seal of the District shall be imprinted or impressed or reproduced by facsimile thereon.

Section 4: Security and Source of Payment of Note. The principal of and interest on the Note shall be payable solely from, and shall be secured solely by, and the Developer shall have a first and prior lien to the extent of the unpaid principal of and interest on the Note on, the proceeds of (i) Amenity Bonds issued to permanently fund acquisition and construction of all or a portion of the Amenity Center, when and as if issued, and (ii) if Amenity Bonds are not issued in an amount sufficient to pay the Note at maturity, Amenity Special Assessments, when, and if, levied and collected on lands within Phase 3, and if the District boundaries are amended to add it, Phase 4 of the District to fund the acquisition and construction of the proceeds of outstanding Amenity Bonds.

THE NOTE IS A LIMITED OBLIGATION OF THE DISTRICT PAYABLE SOLELY AS PROVIDED HEREIN AND NEITHER THE PROPERTY, THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE DISTRICT, THE CITY, POLK COUNTY, FLORIDA (THE "COUNTY"), THE STATE OF FLORIDA (THE "STATE"), OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED AS SECURITY FOR THE PAYMENT OF THE NOTE, EXCEPT THAT THE DISTRICT IS OBLIGATED, IF IT CANNOT ISSUE A SUFFICIENT AMOUNT OF AMENITY BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF ALL OR A PORTION OF THE AMENITY CENTER, TO LEVY AND TO EVIDENCE AND CERTIFY, OR CAUSE TO BE CERTIFIED, FOR COLLECTION, AMENITY SPECIAL ASSESSMENTS TO SECURE AND PAY THE NOTE. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE DISTRICT, THE CITY, THE COUNTY, THE STATE, OR ANY OTHER POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

The District hereby agrees to take such actions as are necessary to repay the Note, including without limitation, the issuance of Amenity Bonds and the levy and collection of Amenity Special Assessments in the manner and to the extent described herein. The District covenants and agrees that the assessment proceedings under which the Amenity Special Assessments shall be authorized and approved, shall provide for levy and collection of all amounts due with respect to the Note.

Section 5: Paying Agent and Registrar. The Board acting through the District Manager shall serve as Paying Agent and Registrar for the Note.

Section 6: Use of Proceeds of the Loan. Incremental payments or advances made by the Developer to pay a portion of the costs of the design, acquisition, construction, equipping and installation of portions of the Amenity Center shall constitute advances under the Loan; provided, however, that in the event the Districts' bond counsel or District Engineer determines that any such payment or advance is not properly compensable for any reason, including, but not limited to federal tax restrictions imposed on tax-exempt financing, such payment or advance by the Developer shall not constitute an advance under the Loan and the CDDs shall not be obligated to make payment for such. Prior to or simultaneously with such advance the Developer shall provide the District and the District Engineer with a written notice of advance, listing the dollar amounts and payees, and Developer and District Engineer shall certify that such advance represents a portion of the cost of the Amenity Center described in the Joint Acquisition Agreements and has not been the basis of any prior advance. The form of such Notice of Advance is attached hereto as Exhibit B.

Section 7: Creation of Note Redemption Account. There is hereby authorized the establishment of an account to be maintained by the District designated as the "Holly Hill Road East Community Development District Note Redemption Account" (the "Note Redemption Account") which account shall be separate and apart from all other funds and accounts of the District. The District shall deposit into the Note Redemption Account, the portion of proceeds of Amenity Bonds of each series allocable to acquisition of the Amenity Center, or in the event there are not sufficient Amenity Bond proceeds to repay the Loan, then proceeds of the Amenity Special Assessments levied on lands within Phase 3, and if the District boundaries are amended to add it, Phase 4 of the District in respect of the assessable Amenity Center improvements constructed or acquired by the Developer and conveyed to the District, in amounts sufficient to pay the principal of the Note and accrued interest thereon, whether at maturity or upon prior redemption.

Section 8: Resolution to Constitute a Contract. Upon the closing of the Loan and the issuance of the Note hereby authorized, this Resolution will constitute a contract with the Developer and the Developer may enforce the provisions hereof by appropriate proceedings.

Section 9: Defeasance. If, at any time the District shall have paid the principal of and interest on the Note then, and in that event, the right, title and interest of the Developer in the Note Redemption Account as set forth in Section 7 hereof shall no longer be in effect, the Note shall no longer be deemed to be outstanding and unpaid for the purposes of this Resolution and this Resolution shall thereupon cease, determine and become void without further action of the Board.

Section 10: Modification or Amendment. Modifications and amendments to this Resolution or any proceeding of the Board amendatory hereof may be made without the consent of the Developer for purposes of clarification, curing any ambiguity or curing, correcting or supplementing any defective provisions (whether because of any inconsistency with any other provisions hereof or otherwise), in such manner as shall not impair the security for or adversely affect the rights of the Developer; provided, however, that no other modification or amendment

of this Resolution or of any proceeding of the Board amendatory hereof or supplemental hereto, may be made without the consent in writing of the Developer.

Section 11: Remedies. The Developer may by suit, action, mandamus or other proceeding in any court of competent jurisdiction, protect and enforce any and all rights under the laws of the State of Florida, or granted and contained in this Resolution, and may enforce and compel the performance of all duties required by this Resolution or by any applicable statutes to be performed by the District or by any officer thereof.

Section 12: Other Actions. The Chairman, a Designated Member, the Secretary and all other employees and consultants of the Board and the District are hereby authorized and directed to take all actions necessary or desirable in connection with the issuance and delivery of the Note and the consummation of the Loan and all transactions in connection therewith, including the execution of all necessary or desirable certificates, documents, papers, and agreements and the undertaking and fulfillment of all transactions referred to in or contemplated by this Resolution. The District hereby covenants and agrees with the Developer, that (i) it will use its best efforts to pursue and accomplish the issuance, sale and delivery of Amenity Bonds in anticipation of which the Note is issued and will do all things within its power to effect the issuance, sale and delivery thereof; and if Amenity Bonds cannot be issued or proceeds thereof are not sufficient to fully fund acquisition of the Amenity Center, (ii) it will take all steps as necessary within a reasonable time to impose, levy and collect Amenity Special Assessments in amounts sufficient to retire the Note.

Section 13: Severability. If any one or more of the provisions of this Resolution or of the Note herein authorized shall for any reason be held illegal or invalid, such illegality or invalidity shall not affect any other provision of this Resolution or of the Note, but this Resolution and the Note shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

Section 14: Open Meetings. It is hereby found and determined that all official acts of the District concerning and relating to the issuance, sale, and delivery of the Note, including but not limited to adoption of this Resolution by the Board, were taken in open meetings of the members of the Board and all deliberations of the members of the Board that resulted in such official acts were in meetings open to the public, in compliance with all legal requirements including, but not limited to, the requirements of Florida Statutes, Section 286.011

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Section 15: Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED in Public Session of the Board of Supervisors of Holly Hill Road East Community Development District, this 11th day of October, 2018.

Attest:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

Secretary, Board of Supervisors

Chairman, Board of Supervisors

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SCHEDULE I

DESCRIPTION OF AMENITY CENTER IMPROVEMENTS

Description	Amount
Parks and Amenities	\$997,163*

* Estimates are based on 2018 costs.

Source: Holly Hill Road East Community Development District First Amendment to the Amended and Restated Engineer's Report prepared by Dennis Wood Engineering, LLC, dated June 2018.

EXHIBIT A

FORM OF THE NOTE

No. R-1

Not to Exceed \$550,000

UNITED STATES OF AMERICA **STATE OF FLORIDA** HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT (CITY OF DAVENPORT, FLORIDA) **BOND ANTICIPATION NOTE, SERIES 2018** (AMENITY CENTER LINE OF CREDIT)

Interest	Dated	Maturity
Rate	Date	Date
5.50%	September 19, 2018	December 5, 2020

Registered Owner: HHR EAST, LLC

Principal Amount: NOT TO EXCEED FIVE HUNDRED FIFTY THOUSAND DOLLARS

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT, a community development district duly created and existing pursuant to Chapter 190, Florida Statutes (the "District"), which shall also serve as Registrar and Paying Agent, for value received, hereby promises to pay (but only out of the sources hereinafter mentioned) to the registered Owner set forth above, on the Maturity Date set forth above, the principal amount shown above, or so much thereof as has been advanced on behalf of the District by the Registered Owner pursuant to the Note Resolution (as defined herein), and to pay (but only out of the sources hereinafter mentioned) interest on the outstanding principal amount hereof from the Dated Date set forth above to the Maturity Date set forth above or earlier Redemption Date (hereinafter defined), at the rate per annum set forth above. Notwithstanding the foregoing, if the Maturity Date is not a Business Day (hereinafter defined), then all amounts due on the Maturity Date shall be payable on the first Business Day succeeding such Maturity Date, but shall be deemed paid on the Maturity Date. The term "Business Day" shall mean any day other than a Saturday or Sunday or other day on which banking institutions in the City in which the Registered Owner is located are authorized or obligated to be closed. The payment of principal at maturity or Redemption Price, together with interest accrued thereon, shall be made by the District acting through its District Manager, as Registrar and Paying Agent only upon presentation and surrender hereof at the designated office of the Paying Agent, to the registered Owner at the address set forth on the registration books maintained by the Registrar at least five (5) days prior to the date of such payment. Interest on this Note will be computed on the basis of the actual number of days elapsed over a 360-day year, compounded annually, and payable at maturity or upon earlier redemption.

This Note is issued pursuant to Resolution No. 2018-17 of the Board of Supervisors of the District, adopted on September 19, 2018 (the "Note Resolution") and the provisions of Chapters 190 and Section 215.431, Florida Statutes, for the purpose of paying all or a portion of the costs of constructing and acquiring certain assessable improvements constituting a portion of the Amenity Center (as defined in the Note Resolution). By the acceptance of this Note, the Registered Owner hereof assents to all of the provisions of the Note Resolution.

THE NOTE IS A LIMITED OBLIGATION OF THE DISTRICT PAYABLE SOLELY AS PROVIDED HEREIN AND NEITHER THE PROPERTY, THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE DISTRICT, THE CITY, POLK COUNTY, FLORIDA (THE "COUNTY"), THE STATE OF FLORIDA (THE "STATE"), OR ANY OTHER POLITICAL SUBDIVISION THEREOF, IS PLEDGED AS SECURITY FOR THE PAYMENT OF THE NOTE, EXCEPT THAT THE DISTRICT IS OBLIGATED, IF IT CANNOT ISSUE A SUFFICIENT AMOUNT OF AMENITY BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF ALL OR A PORTION OF THE AMENITY CENTER, TO LEVY AND TO EVIDENCE AND CERTIFY, OR CAUSE TO BE CERTIFIED, FOR COLLECTION, AMENITY SPECIAL ASSESSMENTS TO SECURE AND PAY THE NOTE. THE NOTE DOES NOT CONSTITUTE AN INDEBTEDNESS OF THE DISTRICT, THE CITY, THE COUNTY, THE STATE, OR ANY OTHER POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

This Note is issuable only as a single registered note in current interest bearing certificated form, in the denomination of the maximum principal amount of the Loan. This Note may not be sold, assigned or transferred in any manner.

The Registered Owner shall provide the District with periodic statements at the time of each advance by the Registered Owner, regarding advances of principal of this Note made by the Registered Owner on the District's behalf for Amenity Center improvements, and prepayments of principal of this Note made by the District to the Registered Owner from the proceeds of one or more series of Amenity Bonds as provided in the Resolution, together with the interest accrued at the applicable interest rate provided in this Note.

All payments received hereunder shall be applied first to the payment of interest due and payable, with the balance applied to principal. All accrued and unpaid interest and outstanding principal shall be paid in full in a single payment on January 5, 2022.

This Note is subject to redemption in whole or in part prior to maturity upon the issuance of one or more series of Amenity Bonds, in whole or in part on the first day of any Interest Period selected by the District ("Redemption Date"), upon 10 days' prior notice to the Registered Owner of the Note, at a redemption price equal to the principal amount being prepaid plus interest accrued thereon to the Redemption Date ("Redemption Price"). On the date designated for redemption, notice having been given and money for the payment of the Redemption Price being held by the District, this Note shall become and be due and payable at the Redemption Price and interest hereon shall cease to accrue and the Owner hereof shall have no rights in respect of this Note except to receive payment of the Redemption Price thereof so held by the District. The failure of the District to give the notice hereinabove provided, or any defect therein, shall not in any manner defeat the effectiveness of a call for redemption if notice thereof is actually given to the Owner thereof and such Note is presented for redemption as aforesaid.

This Note shall have all the qualities and incidents, including negotiability, of investment securities within the meaning and for all the purposes of the Uniform Commercial Code of the State of Florida.

This Note is issued with the intent that the laws of the State of Florida shall govern its construction.

It is hereby certified, recited and declared that all acts, conditions and things required by the Constitution and laws of the State of Florida and the resolution of the District to happen, exist and be performed precedent to and in the issuance of this Note, have happened, exist and have been performed as so required.

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IN WITNESS WHEREOF, Holly Hill Road East Community Development District, has caused this Note to bear the signature of the Chairman of its Board of Supervisors and the official seal of the District to be hereon and attested by the signature of the Secretary to the Board of Supervisors.

[SEAL]

Attest:

HOLLY HILL ROAD EAST COMMUNITY **DEVELOPMENT DISTRICT**

By: _____ Chairman, Board of Supervisors

By: ______ Secretary, Board of Supervisors

EXHIBIT B

FORM OF NOTICE OF ADVANCE FOR AMENITY CENTER IMPROVEMENTS

HHR East LLC, a Florida limited liability company (the "Developer") does hereby notify Holly Hill Road East Community Development District (the "District") and Dennis Wood Engineering, LLC (the "District Engineer") of the following Advance by the Developer under the Loan to the District, evidenced by the District's Bond Anticipation Note, Series 2018 (Amenity Center Line of Credit) (the "Note"):

Date of Advance:

Amount of Advance: \$

The undersigned on behalf of the Developer hereby certifies as follows:

The Advance has been made for capital costs of the Amenity Center described in 1. the Joint Acquisition Agreements.

The payees, dollar amounts and dates of each Amenity Center expenditure by the 2. Developer are set forth in the attachment hereto.

Such Amenity Center expenditures have been properly incurred and have not 3. been the basis of any previous Notice of Advance.

The Developer has not been paid or reimbursed by the District for any amount of 4. the Advance.

HHR EAST, LLC

By: Landmark Investment Services, LLC. Its Manager

Date of Notice:

By:_____ Authorized Officer

The undersigned District Engineer hereby certifies as follows:

The Advance has been made for capital costs of the Amenity Center described in 1. the Joint Acquisition Agreements.

Such Amenity Center expenditures have been properly incurred and have not 2. been the basis of any previous Notice of Advance.

District Engineer

Construction Funding Agreement with HHR East, LLC for Phase 2 Costs

CONSTRUCTION FUNDING AGREEMENT BETWEEN THE HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT AND HHR EAST, LLC

THIS AGREEMENT is made and entered into this ____ day of _____, 2017, by and between:

Holly Hill Road East Community Development District, a local unit of specialpurpose government established pursuant to Chapter 190, *Florida Statutes*, and located in the City of Davenport, Florida, with a mailing address of 12051 Corporate Blvd., Orlando, Florida 32817 (the "**District**"), and

HHR East, LLC, a Florida limited liability company and a landowner in the District whose address is 346 E. Central Avenue, Winter Haven, Florida 33880 ("Landowner").

RECITALS

WHEREAS, the District was established by an ordinance adopted by the City Commission of the City of Davenport, Florida, for the purposes of planning, financing, constructing, acquiring, operating and/or maintaining certain infrastructure; and

WHEREAS, the Landowner is the owner of certain undeveloped lands located within Phase 2 of the boundaries of the District as such lands are further described in Exhibit A attached hereto and incorporated herein (hereinafter, the "Phase 2 Development") upon which the District's improvements have been or will be made; and

WHEREAS, the District, pursuant to Chapter 190, *Florida Statutes*, is authorized to levy such taxes, special assessments, fees, and other charges as may be necessary in furtherance of the District's activities and services; and

WHEREAS, the District is anticipated to be without sufficient funds available to provide for the construction of anticipated master improvements and facilities benefitting the Phase 2 Development, which are described in the *Amended and Restated Engineer's Report* dated March 21, 2018, as amended by the *First Amendment to the Engineer's Report* dated June 2018, both attached hereto as **Exhibit B**, including construction and design, engineering, legal, or other construction, professional, or administrative costs for Phase 2 (collectively, the "**Phase 2 Improvements**"); and

WHEREAS, in order to induce the District to proceed at this time with the construction of the necessary or desired Phase 2 Improvements, the Landowner desires to provide the funds necessary to enable the District to proceed with such Phase 2 Improvements if and when the District exhausts the funds on deposit in the construction account; and

WHEREAS, the District anticipates accessing the public bond market in the future to obtain financing for the construction of the Phase 2 Improvements as described in Exhibit B, and

the parties agree that, in the event that bonds are issued, the funds provided under this Agreement will be reimbursable from those bonds.

Now, THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. Incorporation of Recitals. The recitals stated above are true and correct and by this reference are incorporated herein as a material part of this Agreement.

2. Funding. Landowner agrees to make available to the District such monies as are necessary to enable the District to proceed with, and expedite, the design, engineering, and construction of the Phase 2 Improvements. Landowner will make such funds available on a monthly basis, within fifteen (15) days of a written request by the District. The funds shall be placed in the District's depository as determined by the District.

Repayment. The parties agree that the funds provided by Landowner pursuant to 3. this Agreement will be properly reimbursable from proceeds of the District's issuance of taxexempt bonds. Within forty-five (45) days of receipt from time to time of sufficient funds by the District for the financing of some or all of the Phase 2 Improvements, the District shall reimburse Landowner until full reimbursement is made or until all funds generated by the anticipated financing are exhausted, exclusive of interest, for the funds advanced under Section 2 above; provided, however, that in the event bond counsel engaged in connection with the District's issuance of bonds providing such financing determines that any such monies advanced or expenses incurred are not properly reimbursable for any reason, including, but not limited to federal tax restrictions imposed on tax-exempt financing, the District shall not be obligated to reimburse such monies advanced or expenses incurred. If the District does not or cannot issue bonds to provide the funds for the Phase 2 Improvements within five (5) years of the date of this Agreement, and, thus does not reimburse the Landowner for the funds advanced, then the parties agree that such funds shall be deemed paid in lieu of taxes, fees, or assessments which might be levied or imposed by the District.

4. **Default.** A default by either party to this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages, injunctive relief and/or specific performance, but shall exclude, in any event, consequential, incidental, special or punitive damages.

5. Enforcement of Agreement. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover all fees and costs incurred, including reasonable attorneys' fees and costs for trial, alternative dispute resolution, or appellate proceedings.

6. Agreement. This instrument shall constitute the final and complete expression of this Agreement between the parties relating to the subject matter of this Agreement.

7. Amendments. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both of the parties hereto.

8. Authorization. The execution of this Agreement has been duly authorized by the appropriate body or official of all parties hereto, each party has complied with all of the requirements of law, and each party has full power and authority to comply with the terms and provisions of this instrument.

9. Notices. All notices, requests, consents and other communications hereunder ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

А.	If to District:	Holly Hill Road East Community Development District c/o Fishkind & Associates, Inc. 12051 Corporate Boulevard Orlando, Florida 32817 Attn: District Manager
	With a copy to:	Hopping Green & Sams, P.A. 119 S. Monroe Street, Suite 300 Tallahassee, Florida 32301 Attn: Roy Van Wyk
В.	If to Landowner:	HHR East, LLC 346 E. Central Avenue Winter Haven, FL 33880 Attn: Scott Shapiro
	With a copy to:	Straughn & Turner, P.A. 255 Magnolia Avenue, SW Winter Haven, Florida Attn: Richard Straughn

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the parties may deliver Notice on behalf of the parties. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein. 10. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof; and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective representatives, successors and assigns.

11. ASSIGNMENT. Neither party may assign this Agreement or any monies to become due hereunder without the prior written approval of the other party.

12. CONTROLLING LAW. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida.

13. **EFFECTIVE DATE.** The Agreement shall be effective after execution by all parties hereto and shall remain in effect unless terminated by any of the parties hereto.

14. **PUBLIC RECORDS.** Landowner understands and agrees that all documents of any kind provided to the District or to District staff in connection with the work contemplated under this Agreement are public records and are treated as such in accordance with Florida law and the District's Record Retention Schedule.

15. COUNTERPARTS. This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties execute this Agreement to be effective the day and year first written above.

Attest:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Print Name:

Chairperson, Board of Supervisors

HHR EAST, LLC, a Florida limited liability company

By: Landmark Investment Services, LLC Its: Manager

By:

Print Name: Scott H. Shapiro Its: Managing Member

Exhibit A: Phase 2 Legal Description

Exhibit B: Amended and Restated Engineer's Report, dated, March 21, 2018, as amended by the First Amendment to the Amended and Restated Engineer's Report, dated June 2018

Exhibit A:

Phase 2 Legal Description

TRACTS 12-16 IN THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 27 SOUTH, RANGE 27 EAST, FLORIDA DEVELOPMENT COMPANY, ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 60 THRU 63, PUBLIC RECORDS OF POLK COUNTY, FLORIDA, LESS AND EXCEPT THAT PART OF TRACTS 15 AND 16 DESCRIBED AS FOLLOWS:

COMMENCE AT THE INTERSECTION OF THE NORTH LINE OF SAID TRACT 16 AND THE EAST RIGHT-OF-WAY LINE OF HOLLY HILL ROAD ACCORDING TO THAT CERTAIN QUIT CLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 781, PAGE 713 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE SOUTH 00°29'37" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 190.60 FEET TO THE POINT OF BEGINNING FOR THIS DESCRIPTION; THENCE DEPARTING SAID EAST RIGHT-OF-WAY LINE, NORTH 89°37'22" EAST, A DISTANCE OF 16.28 FEET TO THE RADIAL INTERSECTION WITH A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE/DELTA OF 90°48'01" (CHORD = 35.60 FEET, CHORD BEARING = NORTH 45°01'22" EAST) FOR A DISTANCE OF 39.62 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°34'37" EAST, A DISTANCE OF 384.80 FEET; THENCE SOUTH 00°25'23" WEST, A DISTANCE OF 110.00 FEET; THENCE SOUTH 89°34'37" EAST, A DISTANCE OF 120.00 FEET; THENCE SOUTH 00°25'23" WEST, A DISTANCE OF 95.00 FEET; THENCE NORTH 89°34'37" WEST, A DISTANCE OF 541.81 FEET, TO THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE OF HOLLY HILL ROAD; THENCE NORTH 00°29'37" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 179.45 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED LANDS BEING SUBJECT TO AN EASEMENT FOR INGRESS-EGRESS, CROSS ACCESS AND PARKING OVER AND ACROSS THAT PART OF TRACTS 15 AND 16 IN THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 27 SOUTH, RANGE 27 EAST, FLORIDA DEVELOPMENT COMPANY, ACCORDING TO PLAT THEREOF RECORDED IN PLAT BOOK 3, PAGES 60 THRU 63, PUBLIC RECORDS OF POLK COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:.

<u>COMMENCE</u> AT THE INTERSECTION OF THE NORTH LINE OF SAID TRACT 16 AND THE EAST RIGHT-OF-WAY LINE OF HOLLY HILL ROAD ACCORDING TO THAT CERTAIN QUIT CLAIM DEED RECORDED IN OFFICIAL RECORDS BOOK 781, PAGE 713 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE SOUTH 00°29'37" EAST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 90.59 FEET TO THE <u>POINT OF BEGINNING</u> FOR THIS EASEMENT DESCRIPTION; THENCE DEPARTING SAID EAST RIGHT-OF-WAY LINE, NORTH 89°37'22" EAST, A DISTANCE OF 16.49 FEET TO THE RADIAL INTERSECTION WITH A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE/DELTA OF 89°11'59" (CHORD = 35.11 FEET, CHORD BEARING = SOUTH 44°58'38" EAST) FOR A DISTANCE OF 38.92 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 89°34'37" EAST, A DISTANCE OF 384.80 FEET; THENCE SOUTH 00°25'23" WEST, A DISTANCE OF 50.00 FEET; THENCE NORTH 89°34'37" WEST, A DISTANCE OF 384.80 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 25.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE/DELTA OF 90°48'01" (CHORD = 35.60 FEET, CHORD BEARING = SOUTH 45°01'22" WEST) FOR A DISTANCE OF 39.62 FEET; THENCE DEPARTING SAID CURVE ALONG A RADIAL LINE, SOUTH 89°37'22" WEST, A DISTANCE OF 16.28 FEET TO THE AFOREMENTIONED EAST RIGHT-OF-WAY LINE; THENCE NORTH 00°29'37" WEST, ALONG SAID EAST RIGHT-OF-WAY LINE, A DISTANCE OF 100.01 FEET TO THE <u>POINT OF</u> <u>BEGINNING.</u>

APPROXIMATELY 21.92 ACRES

Exhibit B:

Amended and Restated Engineer's Report, dated, March 21, 2018, as amended by the First Amendment to the Amended and Restated Engineer's Report, dated June 2018

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT AMENDED AND RESTATED

ENGINEER'S REPORT FOR CAPITAL IMPROVEMENTS

Prepared for:

BOARD OF SUPERVISORS HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

Prepared by:

DENNIS WOOD ENGINEERING, LLC 1925 BARTOW ROAD LAKELAND, FL 33801 PH: 863-940-2040

MARCH 21, 2018

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

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- EXHIBIT 8- Summary of Proposed District Facilities
- EXHIBIT 9- Overall Site Plan

AMENDED AND RESTATED ENGINEER'S REPORT HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

I. INTRODUCTION

The Holly Hill Road East Community Development District (the "District") is bisected by North Boulevard West, east of Holly Hill Road, City of Davenport (the "City"), Polk County, (the "County"), Florida. The District currently contains approximately 111 acres, and is expected to consist of 486 single family lots, recreation / amenity areas, parks, and associated infrastructure.

The CDD was established under City Ordinance No. 814, which was approved by the City Commission on July 10, 2017, as amended by City Ordinance No. 841, which was approved by the City on March 5, 2018. This Amended and Restated Engineer's Report amends the previously adopted Engineer's Report to reflect the addition of lands to the District by Ordinance 841. The additional lands are reflected as part of Phase 3. The District will own and operate the public roadways and stormwater management facilities, as well as the landscape, irrigation, signage, and recreational facilities within the development.

Public improvements and facilities financed, acquired, and/or constructed by the District will be designed and constructed to conform to regulatory criteria from the City, the County, Southwest Florida Water Management District (SWFWMD), and other applicable agencies with regulatory jurisdiction over the development. An overall estimate of probable cost is of the public improvements provided in Exhibit 7 of this report.

This "Capital Improvement Plan" or "Report" reflects the present intentions of the District and the landowners. It should be noted that the location of proposed facilities and improvements may be adjusted during the final design, permitting, and implementation phases. It should also be noted that these modifications are not expected to diminish the benefits received by the property within the District. The District reserves the right to make reasonable adjustments to the development plan to meet applicable regulatory requirements of agencies with jurisdiction over the development, while maintaining comparable level of benefits to the lands served by the improvements. Changes and modifications are expected as changes in regulatory criteria are implemented.

Implementation of any proposed facilities or improvements outlined in this Report requires written approval from the District's Board of Supervisors. Estimated costs outlined in this report are based on best available information, which includes but is not limited to previous experience with similar projects. Actual costs could be different than estimates because final engineering and specific field conditions may affect construction costs.

All roadway improvements including sidewalks in the right-of-way and storm drainage collection systems (from the curb inlets to their connection to the Stormwater ponds) within the development will be maintained by the District. Water distribution and wastewater collection systems (gravity lines, force mains, and lift stations) will, upon completion, be dedicated to the City for ownership and maintenance.

II. PURPOSE AND SCOPE

The purpose of this Report is to provide engineering support to fund improvements in the District. This Report will identify the proposed public infrastructure to be constructed or acquired by the District along with an opinion of probable cost.

Contained within this Report is a brief description of the public infrastructure to be constructed or acquired by the District. The District will finance, construct, acquire, operate, and maintain specific portions of the proposed public infrastructure. An assessment methodology consultant has been retained by the District, who will develop the assessment and financing methodology to be applied using this Report.

The predominant portion of this Report provides descriptions of the proposed public infrastructure improvements, determination of estimated probable construction costs, and the corresponding benefits associated with the implementation of the described improvements. Detailed site construction plans and specifications have not yet been completed and permitted for the improvements described herein. The engineer has considered, and in specific instances has relied upon, the information and documentation prepared or supplied by others, and information that may have been provided by public entities, public employees, the landowner, site construction contractors, other engineering professionals, land surveyors, the District Board of Supervisors, and its staff and consultants.

III. THE DEVELOPMENT

The development will consist of 486 single family homes and associated infrastructure ("Development"). The Development is a planned residential community is located on the north and south side of North Boulevard West, and east of Holly Hill Road in the City of Davenport and lies within Section 4 and 5, Township 27 South, Range 27 East, all within the City. The Development has received zoning approval by the City. PUD approval shall be obtained prior to plan submission to the City, and the property has an underlying Future Land Use Designation of RM & RH (Residential Medium and Residential High). The development will be constructed in three (3) phases.

IV. THE CAPITAL IMPROVEMENTS

The Capital Improvement Plan, (the "CIP"), consists of public infrastructure in Phases 1, 2, and 3. The primary portions of the CIP will entail stormwater pond construction, roadways built to an "urban" typical section, water and sewer facilities and off-site improvements (including turn lanes and extension of water and sewer mains to serve the development).

There will also be stormwater structures and conveyance culverts within the CIP which will outfall into the on-site retention ponds. These structures and pond areas comprise the overall stormwater facilities of the CIP. Installation of the water distribution and wastewater collection system will also occur at this time. Below ground installation of power, telecommunications and cable TV will occur, but will not be funded by the District. Installation of street lights within the public right of way will be funded by the District.

As a part of the recreational component of the CIP, a public park will be constructed adjacent to Holly Hill Road and will have connectivity via walking trails to the other portions of the District. The public park will be accessed by the public roadways and walking trails.

V. CAPITAL IMPROVEMENT PLAN COMPONENTS

The Capital Improvement Plan includes the following:

Stormwater Management Facilities

Stormwater management facilities consisting of storm conveyance systems and retention ponds are contained within the District boundaries. Stormwater runs off via roadway curb and gutter to storm inlets. Storm culverts convey the runoff into the proposed retention ponds for water quality treatment and attenuation. The proposed stormwater systems will utilize dry retention for biological pollutant assimilation to achieve water quality treatment. The design criteria for the District's stormwater management systems is regulated by the City, the County, and the SWFWMD. There are no known surface waters or natural wetlands on or immediately adjacent to the Development.

Federal Emergency Management Agency Flood Insurance Rate Map (FEMA FIRM) Panel No. 12105C-0220G and 12105C-0240G (dated 12/22/2016) demonstrates that the property is located within Flood Zone X. Based on this information and the site topography, it does not appear that floodplain compensation is required.

During the construction of stormwater management facilities, utilities and roadway improvements, the contractor will be required to adhere to a *Stormwater Pollution Prevention Plan* (SWPPP) as required by Florida Department of Environmental Protection (FDEP) as delegated by the Environmental Protection Agency (EPA). The SWPPP will be prepared to depict for the contractor the proposed locations of required erosion control measures and staked turbidity barriers specifically along the down gradient side of any proposed construction activity. The site contractor will be required to provide the necessary reporting on various forms associated with erosion control, its maintenance and any rainfall events that occur during construction activity.

<u>Public Roadways</u>

The proposed public roadway sections are to be 50' R/W with 24' of asphalt and Miami curb or Type F curb and gutter on both sides. The proposed roadway section will consist of stabilized subgrade, lime rock, crushed concrete or cement treated base and asphalt wearing surface. The proposed curb is to be 2' wide and placed along the edge of the proposed roadway section for purposes of protecting the integrity of the pavement and also to provide stormwater runoff conveyance to the proposed stormwater inlets. Underdrain is provided as necessary to control groundwater and protect the roadway base material.

The proposed roadways will also require signing and pavement markings within the public rights-of-way, as well as street signs depicting street name identifications, and addressing, which will be utilized by the residents and public. As stated above, the District's funding of roadway construction will occur for all public roadways.

Water and Wastewater Facilities

A potable water system inclusive of water main, gate valves, fire hydrants and appurtenances will be installed for the Development. The water service provider will be the City of Davenport Public Utilities. The water system will be a "looped" system. These facilities will be installed within the proposed public rights-of-way within the District. This water will provide the potable (domestic) and fire protection services which will serve the entire District.

A domestic wastewater collection system inclusive of gravity sanitary sewer mains and sewer laterals will be installed. The gravity sanitary sewer mains will be 8" diameter PVC. The gravity sanitary sewer lines will be placed inside of the proposed public rights-of-way, under the proposed paved roadways. Branching off from these sewer lines will be laterals to serve the individual lots. A lift station is anticipated for this CIP. Flow from the lift station shall be connected to either a force main along North Blvd or within the unopened right of way of 10th Street.

Reclaimed water is not available for this site. An irrigation well to be funded by the District will be installed onsite to provide irrigation within the public right of way or irrigation water service shall be provided as part of the domestic water system design. Any water, sewer, or reclaim water pipes or facilities placed on private property will not be publicly funded.

Off-Site Improvements

The District will provide funding for the anticipated turn lanes at the development entrance. The site construction activities associated with the CIP are anticipated for completion by phases based on the following estimated schedule: Phase 1 in 2018; Phase 2 in 2019; Phase 3 in 2019. Upon completion of each phase of these improvements, inspection/certifications will be obtained from the SWFWMD; the Polk County Health Department (water distribution system), Polk County Environmental Protection Commission (HCEPC) (wastewater collection) and the City.

Amenities and Parks

The District will provide funding for an Amenity Center to include the following: parking area, pavilion with restroom facilities, pool, tot lot, dog park/all-purpose play field, and walking trails between the phases to provide connectivity to the Amenity Center.

Miscellaneous

The stormwater improvements, landscaping and irrigation, recreational improvements, street lighting, and certain permits and professional fees as described in this report, are being financed by the District with the intention for benefiting all of the developable real property within the District. The construction and maintenance of the proposed public improvements will benefit the development for the intended use as a single-family planned development.

VI. PERMITTING

Construction permits for all phases are required and include the SWFWMD Environmental Resource Permit (ERP), and City construction plan approval. There are no Army Corps of Engineer (ACOE) jurisdictional wetlands within the CIP boundaries; therefore no permits are required from that agency.

Following is a summary of required permits obtained and pending for the construction of the public infrastructure improvements for the District:

PHASE 1

Permits / Approvals	Approval / Expected Date					
Zoning Approval (City of Davenport)	City of Davenport Ordinance (Approved)					
Preliminary Plat (City of Davenport)	City of Davenport (Approved)					
SWFWMD ERP	Approved					
Construction Permits (Davenport)	July 2017					
FDEP Water	Approved					
FDEP Sewer	Approved					
FDEP NOI	Approved					

*Amenity Center shall require separate permitting. Permits required are Construction Permit, FDEP, Water, FDEP Sewer, SWFWMD, and FDEP NOI.

PHASE 2

Permits / Approvals	Approval / Expected Date					
Zoning Approval (Davenport)	City of Davenport City Ordinance (Approved)					
Preliminary Plat (Davenport)	July 2018					
SWFWMD ERP	October 2018					
Construction Permits (Davenport)	October 2018					
FDEP Water	October 2018					
FDEP Sewer	October 2018					
FDEP NOI	September 2018					

PHASE 3

Permits / Approvals	Approval / Expected Date					
Zoning Approval (Davenport)	City of Davenport City Ordinance (Approved)					
Preliminary Plat (Davenport)	July 2018					
SWFWMD ERP	October 2018					
Construction Permits (Davenport)	October 2018					
FDEP Water	October 2018					
FDEP Sewer	October 2018					
FDEP NOI	October 2018					

VII. RECOMMENDATION

As previously described within this report, the public infrastructure as described is necessary for the development and functional operation as required by the City. The site planning, engineering design and construction plans for the infrastructure are in accordance with the applicable requirements of the City of Davenport, and the SWFWMD. It should be noted that the infrastructure will provide its intended use and function so long as the construction and installation is in substantial conformance with the design construction plans and regulatory permits.

Items utilized in the *Opinion of Probable Costs* for this report are based upon proposed plan infrastructure as shown on construction drawings incorporating specifications in the most current SWFWMD and the City regulations.

VIII. REPORT MODIFICATION

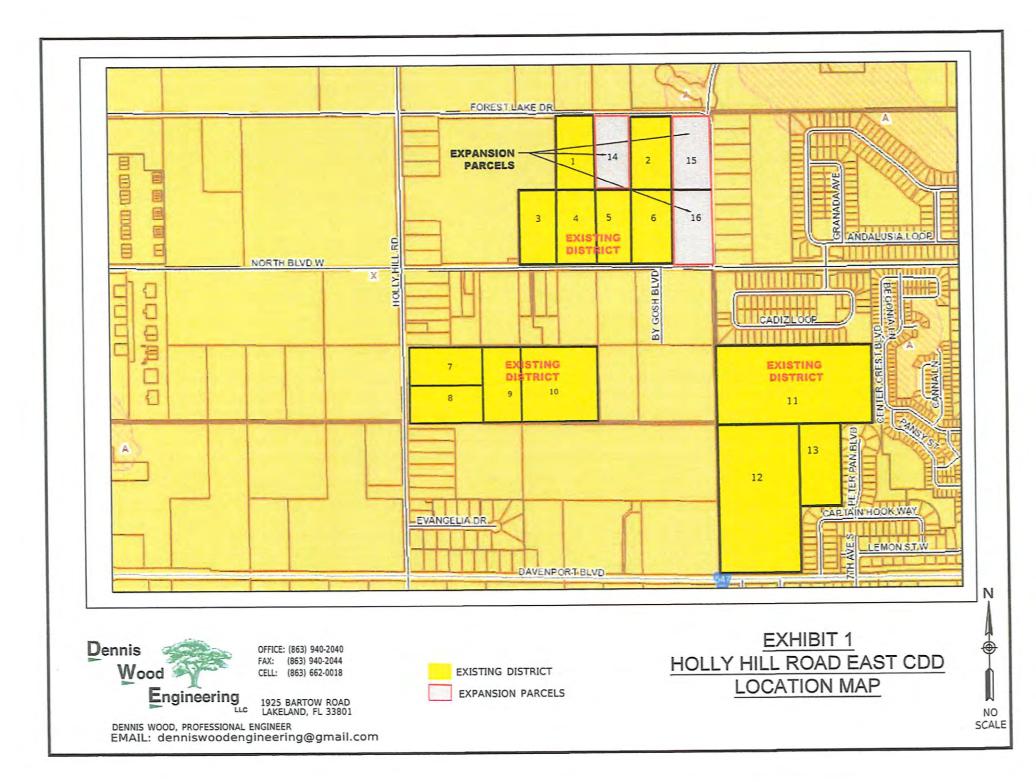
During development and implementation of the public infrastructure improvements as described for the District, it may be necessary to make modifications and/or deviations for the plans. However, if such deviations and/or revisions do not change the overall primary objective of the plan for such improvements, then the costs differences would not materially affect the proposed cost estimates.

IX. CONCLUSION

It is our professional opinion that the public infrastructure costs for the CIP provided in this Report are reasonable to complete the construction of the public infrastructure improvements. Furthermore, the public infrastructure improvements will benefit and add value to lands within the District at least equal to the costs of such improvements.

The *Opinion of Probable Costs* of the public infrastructure improvements is only an estimate and is not a guaranteed maximum price. The estimated costs are based upon unit prices currently experienced on an ongoing and similar basis for work in the County. However, labor market, future costs of equipment, materials, changes to the regulatory permitting agencies activities, and the actual construction processes employed by the chosen site contractor are beyond the engineer's control. Due to this inherent opportunity for changes (upward or downward) in the construction costs, the total, final construction cost may be more or less than this estimate.

Based upon the presumption that the CIP construction continues in a timely manner, it is our professional opinion that the proposed public infrastructure improvements when constructed and built in substantial conformance with the approved plans and specifications, can be completed and used for their intended function. Be advised that we have utilized historical costs and direct unit costs from site contractors and consultants in the County, which we believe to be necessary in order to facilitate accuracy associated with the *Opinion of Probable Costs*. Based upon the information above, it is our professional opinion that the acquisition and construction costs of the proposed CIP can be completed at the cost as stated.



LEGAL DESCRIPTION HOLLY HILL ROAD EAST - COMMUNITY DEVELOPMENT DISTRICT

BEGIN AT THE NORTHWEST CORNER OF SAID TRACT 29, AND RUN THENCE ALONG THE NORTH LINE THEREOF S-89°53'06"-E, 326.18 FEET TO THE NORTHEAST CORNER THEREOF, SAID PONT ALSO BEING THE SOUTHWEST CORNER OF SAID TRACT 21; THENCE ALONG THE WEST LINE OF SAID TRACT 21 N-00°25'33"-W, 640.90 FEET TO A POINT ON THE SOUTH MAINTAINED RIGHT-OF-WAY LINE OF FOREST LAKE DRIVE ACCORDING TO THE MAP AS RECORDED IN MAP BOOK 17, PAGES 100-108,PUBLIC RECORDS OF POLK COUNTY, FLORIDA: THENCE ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: 1) S-89°49'04"-E, 95.08 FEET; THENCE 2) S-88'09'06"-E, 71.24 FEET; THENCE 3) S-89'58'57"-E, 160.16 FEET TO A POINT ON THE EAST LINE OF SAID TRACT 21; THENCE DEPARTING SAID MAINTAINED RIGHT-OF-WAY LINE, AND ALONG THE EAST LINE OF SAID TRACT 21 S-00'23'18"-E, 638,91 FEET TO THE SOUTHEAST CORNER THEREOF, SAID POINT ALSO BEING THE NORTHWEST CORNER OF SAID TRACT 27; THENCE ALONG THE NORTH LINE OF SAID TRACT 27 S-89'53'06"-E, 326.98 FEET TO THE NORTHEAST CORNER THEREOF; THENCE ALONG THE WEST LINE OF SAID TRACT 21 S-00'23'11"-W, 635.57 FEET TO A POINT ON SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE OF FOREST LAKE DRIVE; THENCE ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE OF FOLLOWING TWO (2) COURSES: 1) S-89'36'39"-E, 187.39 FEET; THENCE 2) S-89'59'30"-E, 139.69 FEET TO A POINT ON THE EAST LINE OF SAID TRACT 23; THENCE DEPARTING SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE OF FOREST LAKE DRIVE; THENCE ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE OF FOLLOWING TWO (2) COURSES: 1) S-89'36'39"-E, 187.39 FEET; THENCE 2) S-89'59'30"-E, 139.69 FEET TO A POINT ON THE EAST LINE OF SAID TRACT 23; THENCE DEPARTING SAID SOUTH MAINTAINED RIGHT-OF-WAY LINE, AND ALONG THE EAST LINE OF SAID TRACT 23 S-00'23'04"-E, 634.92 FEET TO THE SOUTHEAST CORNER THEREOF, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT 26; THENCE ALONG THE EAST LINE OF SAID TRACT 25 S-00'22'59"-E, 633.38 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE, AND DALONG THE EAST LINE OF SAID TRACT 26 S-00'22'59"-E, 633.78 FEET TO A P

PROPERTY DESCRIBED CONTAINS 28.58 ACRES, MORE OR LESS.

AND

BEGIN AT THE NORTHEAST CORNER OF SAID TRACT 12 AND RUN THENCE ALONG THE EAST LINE THEREOF, S-00*39'44"-E, 650.29 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG THE SOUTH LINE OF SAID TRACTS 12, 13, 14, 15 AND 16 N-89*20'55"-W, 1628.90 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF HOLLY HILL ROAD, PER O.R. BOOK 781, PAGE 713 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE, AND THEN CONTINUING ALONG THE EAST RIGHT-OF-WAY OF HOLLY HILL ROAD, PER O.R. BOOK 781, PAGE 715 PUBLIC RECORDS OF POLK COUNTY, FLORIDA N-00*29'26"-W, 643.68 FEET TO A POINT ON THE NORTH LINE OF SAID TRACT 16; THENCE ALONG THE NORTH LINE OF SAID TRACTS 16, 15, 14, 13 AND 12, S-89"34'47"-E, 1626.84 FEET TO THE POINT OF BEGINNING.

PROPERTY DESCRIBED CONTAINS: 24.17 ACRES, MORE OR LESS.

AND

BEGIN AT THE NORTHWEST CORNER OF SAID TRACT 16, AND RUN THENCE ALONG THE NORTH LINE OF SAID TRACTS 16, 15, 14, AND 13 N-89*43'00"-E, 1309.54 FEET TO THE NORTHEAST CORNER OF SAID TRACT 13; THENCE ALONG THE EAST LINE OF SAID TRACT 13 AND THE SOUTHERLY PROJECTION THEREOF, S-00*47'35"-E, 667.62 FEET TO A POINT ON THE SOUTH LINE OF THE NORTHWEST ½ OF THE SOUTHWEST ½ OF SAID SECTION Q4; THENCE ALONG SAID SOUTH LINE N-89*38'02"-W, 331.52 FEET; THENCE ALONG THE NORTHERLY PROJECTION OF THE EAST LINE OF SAID TRACT 19 AND THE EAST LINE OF SAID TRACT 19 S-00*48'45"-E, 667.55 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG THE EAST LINE OF SAID TRACT 19 AND THE EAST LINE OF SAID TRACT 19 S-00*48'45"-E, 667.55 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG THE EAST LINE OF SAID TRACT 19 AND THE EAST LINE OF SAID TRACT 19 S-00*48'45"-E, 667.55 FEET TO THE SOUTHEAST CORNER THEREOF; THENCE ALONG THE EAST LINE OF SAID TRACT 19 AND THE SOUTHWEST CORNER OF SAID TRACT 19, ALSO BEING THE NORTHEAST CORNER OF SAID TRACT 31; THENCE ALONG THE EAST LINE OF SAID TRACT 31 S-00*47'10"-E, 628.70 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF COUNTY ROAD 547 (80' RIGHT-OF-WAY WIDTH); THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE S-89'29'00"-W, 647.50 FEET TO A POINT ON THE WEST LINE OF SAID TRACT 32; THENCE ALONG SAID WEST LINE HEREOF, AND ALONG THE WEST LINE OF SAID TRACT 17 AND THE NORTHERLY PROJECTION ON THE WEST LINE OF SAID TRACT 32; THENCE ALONG SAID WEST LINE THEREOF, AND ALONG THE WEST LINE OF SAID TRACT 17 AND THE NORTHERLY PROJECTION ON THE WEST LINE OF SAID TRACT 32; THENCE ALONG SAID WEST LINE OF THE SOUTHWEST ½ OF SAID SECTION 04, ALSO BEING THE SOUTH HEREOF, N-00*46'25"-W, 1298.68 FEET TO A POINT ON THE NORTH LINE OF THE SOUTHWEST ½ OF THE SOUTHWEST ½ OF SAID SECTION 04, ALSO BEING THE SOUTH LINE OF THE NORTHWEST ½ OF THE SOUTHWEST ½ OF SAID SECTION 04, ALSO BEING THE SOUTH LINE OF THE NORTHWEST ½ OF SAID SECTION 04; THENCE ALONG THE SOUTHWEST ½ OF SAID SECTION OF THE WEST LINE OF SAID TRACT 16, AND ALONG SAID WEST LINE N-

PROPERTY DESCRIBED CONTAINS: 44.47 ACRES, MORE OR LESS

AND

BEGIN AT A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE SOUTHWEST CORNER OF SAID TRACT 22, SAID POINT ALSO BEING THE NORTHWEST CORNER OF TRACT 27 OF SAID HOLLY HILL GROVE & FRUIT COMPANY SUBDIVISION, AND RUN ALONG THE WEST LINE OF SAID TRACT 22 N-00*23'47"-W, 642.49 FEET TO THE INTERSECTION OF SAID WEST LINE AND THE SOUTH MAINTAINED RIGHT-OF-WAY OF FOREST LAKE DRIVE PER MAP BOOK 17, PAGE 100, PUBLIC RECORDS OF POLK COUNTY, FLORIDA: THENCE ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY OF FOREST LAKE DRIVE PER MAP BOOK 17, PAGE 100, PUBLIC RECORDS OF POLK S-89*09'22"-E, 206.27 FEET; THENCE 3) S-89*49'49"-E, 20.44 FEET TO THE INTERSECTION OF SAID SOUTH MAINTAINED RIGHT-OF-WAY AND THE EAST LINE OF SAID TRACT 22; THENCE ALONG SAID EAST LINE S-00*22'41"-E, 640.18 FEET TO A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE SOUTHEAST CORNER OF SAID TRACT 22; THENCE ALONG SAID EAST LINE S-00*22'41"-E, 640.18 FEET TO A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE SOUTHEAST CORNER OF SAID TRACT 22, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT 27; THENCE ALONG THE SOUTH LINE OF SAID TRACT 22, ALSO BEING THE NORTH LINE OF SAID TRACT 27, N-89*55'26"-W, 326.76FEET TO THE <u>POINT OF BEGINNING.</u>

THE ABOVE DESCRIBED LANDS CONTAIN 4.82 ACRES, MORE OR LESS.

AND

BEGIN AT A 5/8" IRON ROD WITH CAP "LB 8135" STANDING AT THE INTERSECTION OF THE WEST LINE OF SAID TRACT 25 AND THE NORTH RIGHT-OF-WAY OF NORTH BOULEVARD WEST PER OFFICIAL RECORDS BOOK 794, PAGE 787, PUBLIC RECORDS OF POLK COUNTY, FLORIDA, AND RUN ALONG SAID WEST LINE N-00*22*38"-W, 635.40 FEET TO A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE NORTHWEST CORNER OF SAID TRACT 25, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID TRACT 24: THENCE ALONG THE WEST LINE OF SAID TRACT 24 N-00*22*38"-W, 640.57 FEET TO A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE NITERSECTION OF SAID WEST LINE AND THE SOUTH MAINTAINED RIGHT-OF-WAY OF FOREST LAKE DRIVE PER MAP BOOK 17, PAGE 100, PUBLIC RECORDS OF POLK COUNTY, FLORIDA: THENCE ALONG SAID SOUTH MAINTAINED RIGHT-OF-WAY THE FOLLOWING EIGHT (8) COURSES; 1) N-89*47'20"-E, 165.81 FEET; THENCE 2)S-89*23'34"-E, 56.51 FEET; THENCE 3) S-84*02'15"-E, 28.73 FEET: THENCE (4) S-69*03'33"-E, 26.63 FEET; THENCE (5)S-59*18'02"-E, 25.17 FEET; THENCE (6) S-40*32'53"-E, 25.66 FEET; THENCE (7) S-22*07'34"-E, 27.32 FEET; THENCE (8)S-07'00'55"-E, 14.43 FEET TO THE EAST LINE OF SAID TRACT 24, SID TRACT 24, SID TRACT 24, SID POINT ALSO BEING SAID EAST LINE S-00*19'41"-E, 556.53 FEET TO A 5/8" IRON ROD AND CAP "LB 8135" STANDING AT THE SOUTHEAST CORNER OF SAID TRACT 24, SID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT 25; THENCE ALONG THE EAST LINE OF SAID TRACT 25.00'19'41"-E, 63.04 FEET TO THE NORTH RIGHT-OF-WAY OF NORTH BOULEVARD WEST PER OFFICIAL RECORDS BOOK 794, PAGE 787, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH RIGHT-OF-WAY OF NORTH N-89*48'36"-W, 324.57 FEET TO A 5/8" IRON ROD AND CAP "LB EAST LINE OF SAID TRACT 25.00'19'41"-E, 63.04 FEET TO THE NORTH RIGHT-OF-WAY OF NORTH POULEVARD WEST PER OFFICIAL RECORDS BOOK 794, PAGE 787, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH RIGHT-OF-WAY N-89*48'36"-W, 324.57 FEET TO THE <u>POINT OF BEGINNING.</u>

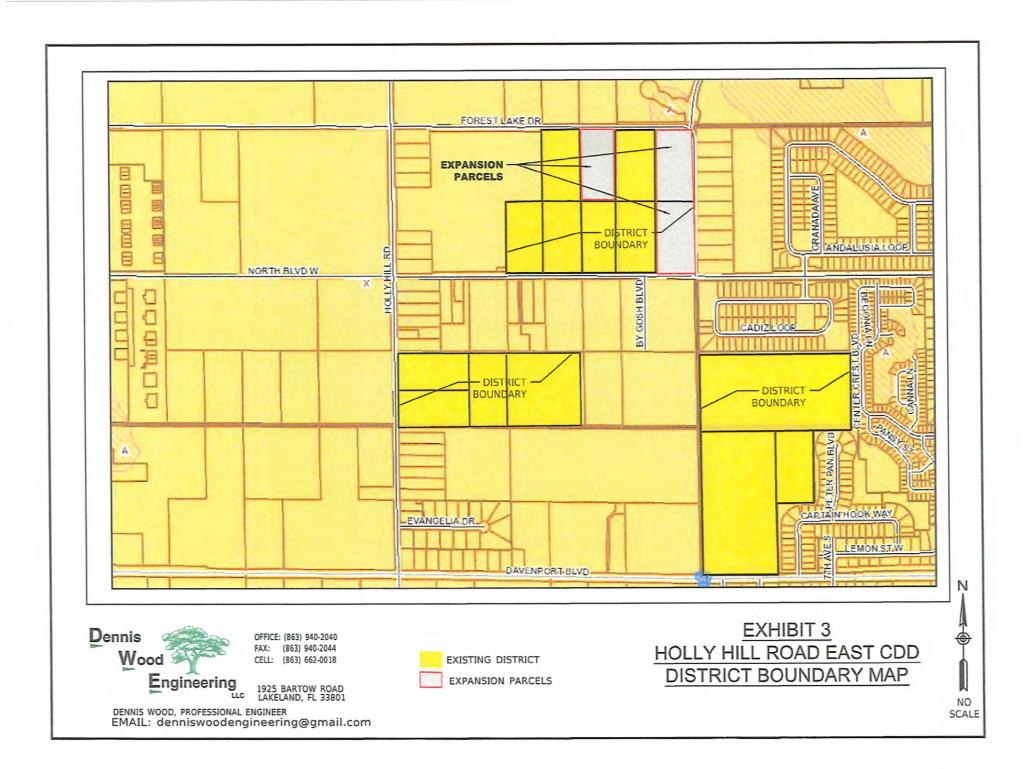
THE ABOVE DESCRIBED LANDS CONTAIN 9.48 ACRES, MORE OR LESS.

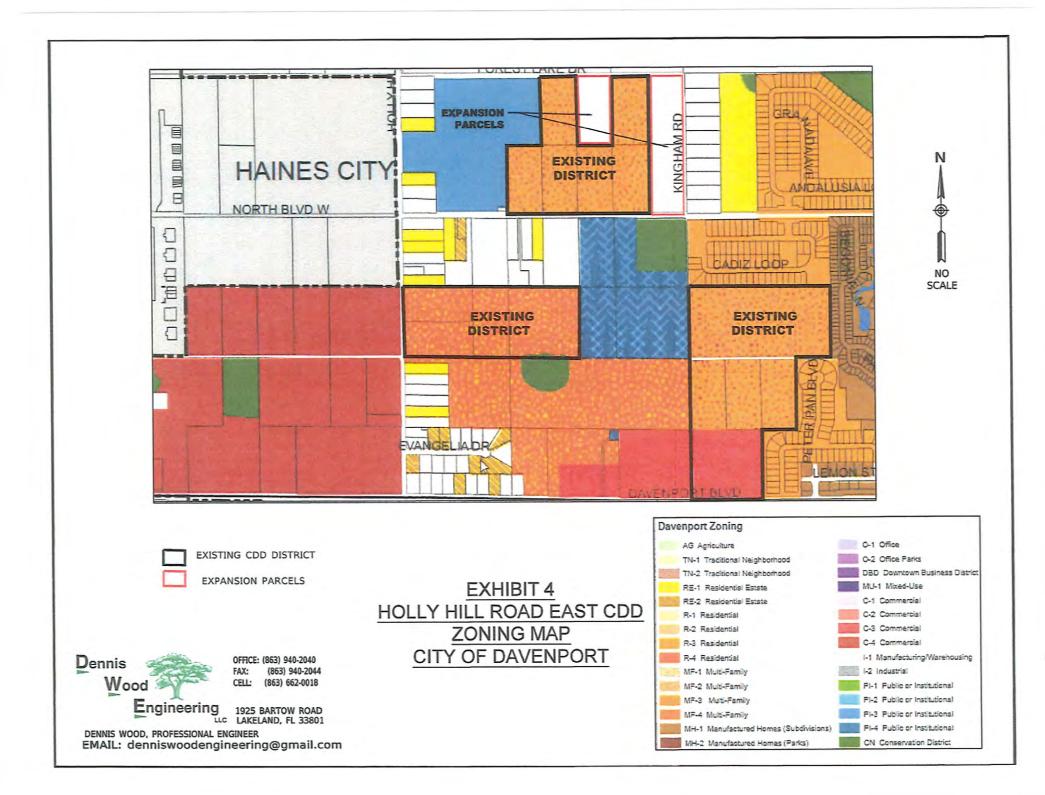
ALL THE ABOVE DESCRIBED LANDS CONTAIN 111.52 ACRES, MORE OR LESS

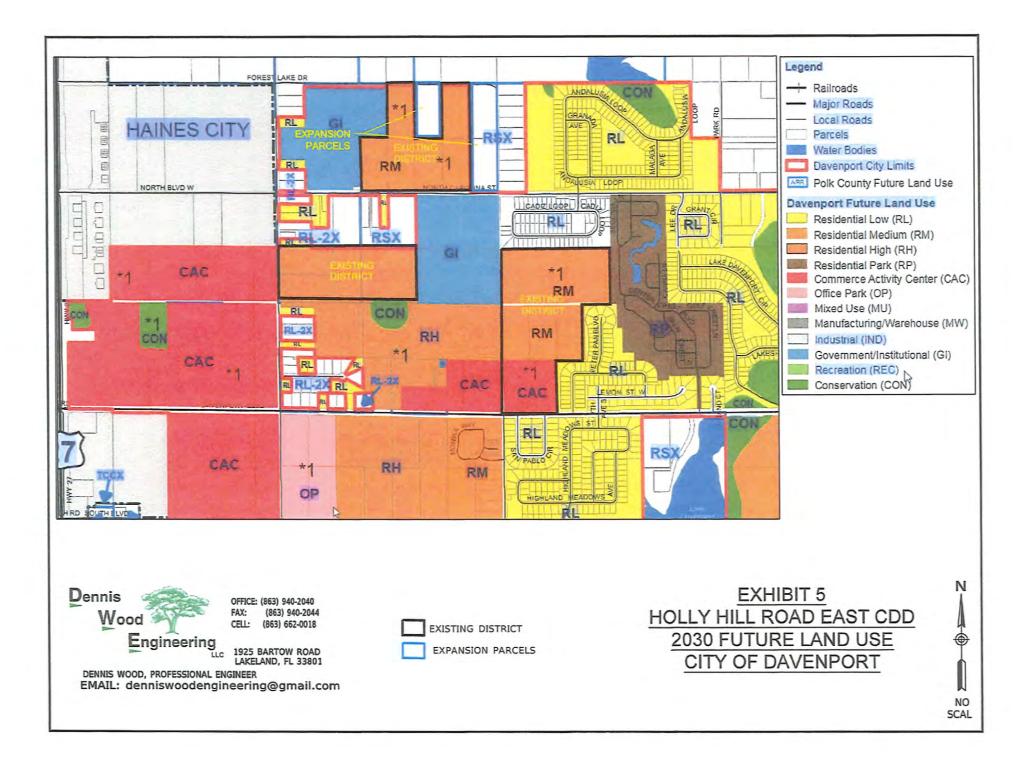


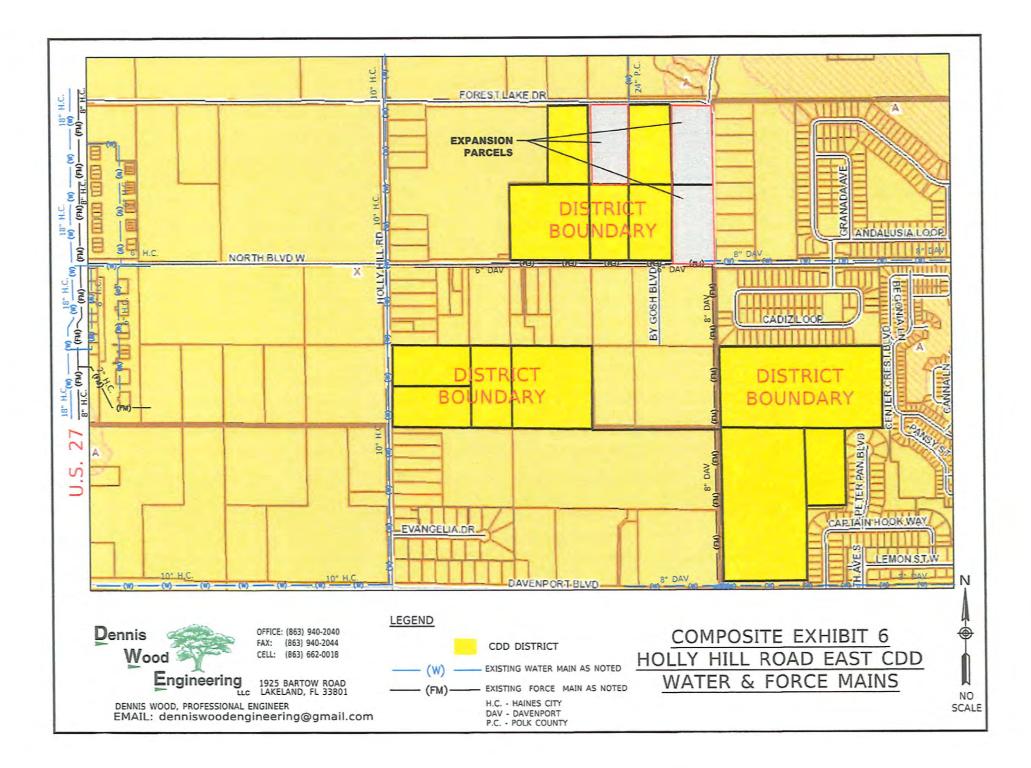
EXHIBIT 2 LEGAL DESCRIPTION (NOT A SURVEY)

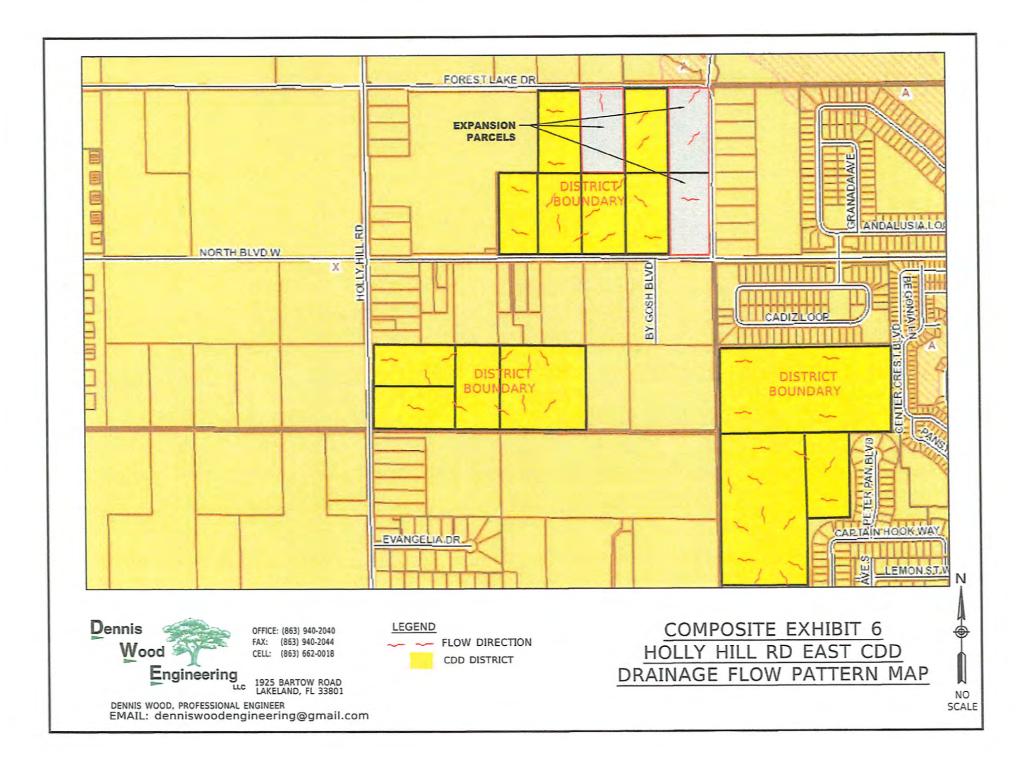
PAGE 1 OF 1











Composite Exhibit 7 Holly Hill Road East Community Development District Summary of Probable Cost

Number of Lots Infrastructure ⁽³⁾⁽⁶⁾		<u>204</u> Phase 1		<u>100</u> Phase 2		<u>182</u> Phase <u>3</u>		<u>486</u> <u>Total</u>	
Stormwater Management (1)(2)(3)(5)(6)(7)	\$	2,427,600	\$	1,190,000	\$	2,165,800	\$	5,783,400	
Utilities (Water, Sewer, & Street Lighting) (1)(5)(7)(9)	\$	1,142,400	\$	560,000	\$	1,019,200	\$	2,721,600	
Roadway (1)(4)(5)(7)	\$	882,300	\$	432,500	\$	787,150	\$	2,101,950	
Entry Feature & Signage (1)(7)(8)	\$	100,000	\$	170,000	\$	365,000	\$	635,000	
Parks and Amenities (1)(7)	\$	404,963	\$	140,000	\$	255,037	\$	800,000	
Contingency	\$	200,000	\$	105,000	\$	191,000	\$	496,000	
TOTAL	\$	5,277,263	\$	2,722,500	\$	4,963,187	\$	12,962,950	

Notes:

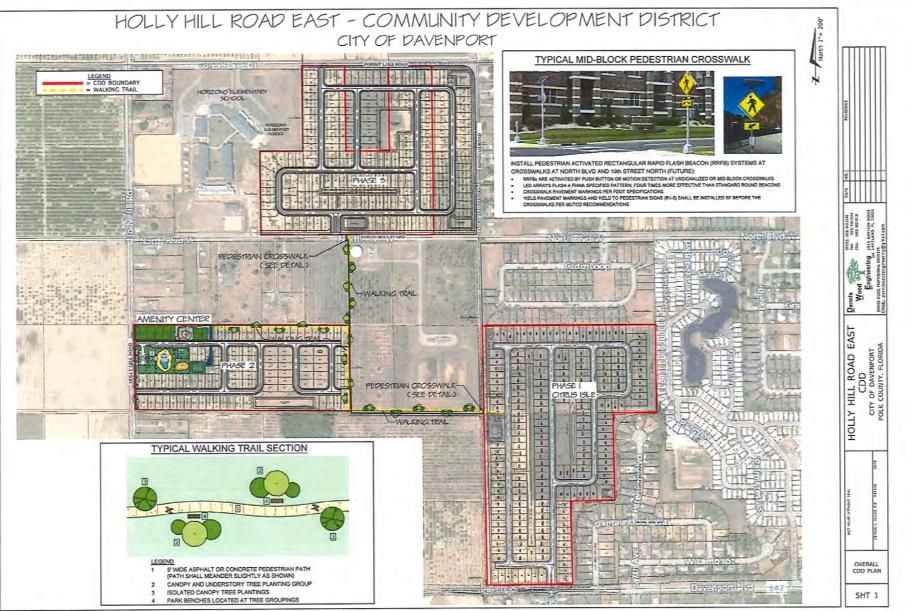
- Infrastructure consists of roadway improvements, Stormwater management facilities, master sanitary sewer lift station and utilities, entry feature, landscaping and signage, and neighborhood parks.
- 2. Excludes grading of each lot in conjunction with home construction, which will be provided by home builder.
- 3. Includes Stormwater pond excavation.
- 4. Includes sub-grade, base, asphalt paving, curbing, and civil/site engineering.
- 5. Includes subdivision infrastructure and civil/site engineering.
- 6. Stormwater does not include grading associated with building pads.
- 7. Estimates are based on 2017 cost.
- 8. Includes entry features, signage, hardscape, landscape, irrigation and fencing.
- CDD will enter into a Lighting Agreement with Duke Energy for the street light poles and lighting service.
- 10. Estimates based on 486 lots.

Exhibit 8 Holly Hill Road East Community Development District Summary of Proposed District Facilities

District Infrastructure	<u>Construction</u>	<u>Ownership</u>	Capital Financing*	<u>Operation and</u> <u>Maintenance</u>	
Entry Feature & Signage	District	District	District Bonds	District	
Stormwater Facilities	District	District	District Bonds	District	
Lift Stations/Water/Sewer	District	City of Davenport	District Bonds	City of Davenport	
Street Lighting/Conduit	District	District	District Bonds	District	
Road Construction	District	District	District Bonds	District	
Parks and Amenities	District	District	District Bonds	District	

*Costs not funded by bonds will be funded by the developer

EXHIBIT 9



Z/U/a

HOLLY HILL ROAD EAST

COMMUNITY DEVELOPMENT DISTRICT

FIRST AMENDMENT TO THE AMENDED AND RESTATED ENGINEER'S REPORT

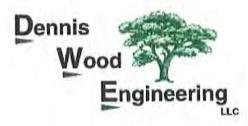
PREPARED FOR:

BOARD OF SUPERVISORS

HOLLY HILL ROAD EAST

COMMUNITY DEVELOPMENT DISTRICT

PREPARED BY:



1925 Bartow Road • Lakeland, FL 33801 • 863-940-2040

JUNE 2018

HOLLY HILL ROAD EAST

COMMUNITY DEVELOPMENT DISTRICT

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EXHIBIT 7-SUMMARY OF PROBABLE COST

HOLLY HILL ROAD EAST

FIRST AMENDMENT TO THE ENGINEER'S REPORT

I. PURPOSE

The Purpose of this First Amendment is to Amend Exhibit 7 (Summary of Probable Cost) of the Amended and Restated Engineer's Report dated March 21, 2018 (the "Engineer's Report"), to adjust for cost adjustments for the Amenity Center and the completion of Phase 1 for the project. Exhibit 7 has been revised to reflect the cost adjustment for the amenity center and is included herein.

II. AMENITY CENTER

The cost projection for the amenity center improvements were adjusted to reflect the updated amenity center layout, as shown in Exhibit 7 attached hereto. Except specifically amended herein, the Engineer's Report shall remain in full force and effect, unaltered by this First Amendment.

Exhibit 7 Holly Hill Road East Community Development District

Number of Lots Infrastructure ⁽³⁾⁽⁶⁾		204 Phase 1		<u>100</u> Phase 2 (1)		<u>182</u> Phase 3(1)		<u>486</u> <u>Total</u>	
Stormwater Management (1)(2)(3)(5)(6)(7)	\$	2,427,600	\$	1,190,000	\$	2,165,800	\$	5,783,400	
Utilities (Water, Sewer, & Street Lighting) (1)(5)(7)(9)	\$	1,142,400	\$	560,000	\$	1,019,200	\$	2,721,600	
Roadway (1)(4)(5)(7)	\$	882,300	\$	432,500	\$	787,150	\$	2,101,950	
Entry Feature & Signage (1)(7)(8)	\$	100,000	\$	170,000	\$	365,000	\$	635,000	
Parks and Amenities (1)(7)	\$	404,963	\$	210,000	\$	382,200	\$	997,163	
Contingency	\$	200,000	\$	105,000	\$	191,000	\$	496,000	
TOTAL	\$	5,277,263	\$	2,792,500	Ş	5,090,350	\$	13,160,113	

Summary of Probable Cost

Notes:

- Infrastructure consists of roadway improvements, Stormwater management facilities, master sanitary sewer lift station and utilities, entry feature, landscaping and signage, and neighborhood parks.
- 2. Excludes grading of each lot in conjunction with home construction, which will be provided by home builder.
- 3. Includes Stormwater pond excavation.
- 4. Includes sub-grade, base, asphalt paving, curbing, and civil/site engineering.
- 5. Includes subdivision infrastructure and civil/site engineering.
- 6. Stormwater does not include grading associated with building pads.
- 7. Estimates are based on 2018 cost.
- 8. Includes entry features, signage, hardscape, landscape, irrigation and fencing.
- 9. CDD will enter into a Lighting Agreement with Duke Energy for the street light poles and lighting service.
- 10. Estimates based on 486 lots.

Holly Hill Road East Community Development District

Acquisition Agreement with HHR East, LLC, Regarding Phase 2 Work Product, Improvements, and Real Property

AGREEMENT BETWEEN HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT AND THE HHR EAST, LLC, REGARDING THE ACQUISITION OF CERTAIN WORK PRODUCT, IMPROVEMENTS AND REAL PROPERTY

THIS ACQUISITION AGREEMENT ("Agreement") is made and entered into this th day of ______, 2018, by and between:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Davenport, Florida, with a mailing address of 12051 Corporate Boulevard, Orlando, Florida 32167 (the "**District**"), and

HHR EAST, LLC, a Florida limited liability company, the owner of certain lands within the boundaries of the District, with a mailing address of 301 W. Platt Street, Suite 671, Tampa, Florida 33606 (the "Landowner" and, together with the District, the "Parties").

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Commission in and for the City of Davenport, Florida, (the "City") pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (the "Act"), and is validly existing under the Constitution and laws of the State of Florida; and

WHEREAS, the Act authorizes the District to issue bonds for the purpose, among others, of planning, financing, constructing, reconstructing, operating, and/or maintaining certain infrastructure, including roadways, stormwater management, wastewater management, utilities, parks and facilities for recreational, cultural, and educational activities, landscaping, signage, hardscaping, security systems and facilities, and other infrastructure projects within or without the boundaries of the District; and

WHEREAS, the Landowner is the owner of certain lands in Polk County (the "County") located within the boundaries of the District ("Landowner Lands"); and

WHEREAS, the District has adopted an improvement plan to finance the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities, and services in the District's Phase 2, as detailed in the Holly Hill Road East Community Development District Amended and Restated Engineer's Report for Capital Improvements, dated March 21, 2018, as amended in the First Amendment to the Amended and Restated Engineer's Report, dated June 2018 (together, the "Engineer's Report"), attached to this Agreement as Composite Exhibit A, and incorporated herein by this reference, and referred to as the "Series 2018 Project"; and

WHEREAS, the District intends to finance a portion of the Series 2018 Project through the use of proceeds from the anticipated sale of Holly Hill Road East Community Development District Special Assessment Bonds, Series 2018 ("Series 2018 Bonds"); and

WHEREAS, the District has not had sufficient monies on hand to allow the District to contract directly for: (i) the preparation of the surveys, testing, reports, drawings, plans, permits, specifications, and related documents necessary to complete the Series 2018 Project ("Work **Product**"); or (ii) construction, reconstruction, and/or installation of all of the improvements comprising the Series 2018 Project (the "Improvements"); and

WHEREAS, the Series 2018 Project includes the construction and/or acquisition of an amenity facility that will be funded by a portion of the Series 2018 Bond proceeds ("Amenity Project"); and

WHEREAS, the District, Landowner, and North Boulevard Community Development District has entered into that certain Second Agreement Regarding the Joint Acquisition of Certain Work Product Improvements and Real Property related to the Amenity Project (the "Second Joint Acquisition Agreement"); and

WHEREAS, the District and Landowner each acknowledge and agree that obligations under this Agreement are limited to those portions of the Series 2018 Project not otherwise provided for under the Second Joint Acquisition Agreement; and

WHEREAS, the Landowner needs to have the Improvements constructed in an expeditious and timely manner in order to develop the development; and

WHEREAS, the District acknowledges the Landowner's need to have the Improvements constructed in an expeditious and timely manner in order to develop the development; and

WHEREAS, in order to avoid a delay in the commencement of the development of the Work Product and/or the Improvements, the Landowner has previously advance funded, commenced, and/or completed certain of the Work Product and/or Improvements, and Landowner may cause funds to be advanced and/or the Improvements to be completed to the extent that the proceeds of the Future Phase Bonds are insufficient to do so; and

WHEREAS, the District desires to commence the purchase of certain portions of the Work Product and the Improvements, and/or accept assignment of certain agreements regarding the same; and

WHEREAS, the Landowner and the District are entering into this Agreement to set forth the process by which the District may acquire the Work Product, the Improvements, and any related real property interests ("Real Property") from Landowner.

NOW, THEREFORE, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt of which and sufficiency of which are hereby acknowledged, the District and the Landowner agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals stated above are true and correct and by this reference are incorporated as a material part of this Agreement.

2. WORK PRODUCT AND IMPROVEMENTS. The Parties agree to cooperate and use good faith and best efforts to undertake and complete the acquisition process contemplated by this Agreement on such date or dates as the Parties may jointly agree upon ("Acquisition Date"). Subject to any applicable legal requirements (e.g., including, but not limited to, those laws governing the use of proceeds from tax exempt bonds), and the requirements of this Agreement, the District agrees to acquire completed Work Product and Improvements that are part of the Series 2018 Project.

- a. *Request for Conveyance and Supporting Documentation* When Work Product or Improvements are ready for conveyance by or on behalf of the Landowner to the District, the Landowner shall notify the District in writing, describing the nature of the Work Product and/or Improvement and estimated cost. Additionally, Landowner agrees to provide, at or prior to the Acquisition Date, the following: (i) documentation of actual costs paid, or if not available, evidence of value, (ii) instruments of conveyance such as bills of sale or such other instruments as may be requested by the District, and (iii) any other releases, warranties, indemnifications or documentation as may be reasonably requested by the District.
- b. Costs Subject to any applicable legal requirements (e.g., including, but not limited to, those laws governing the use of proceeds from tax exempt bonds), the availability of proceeds from the Series 2018 Bonds, and the requirements of this Agreement, the Districts agree to pay the actual reasonable cost of creation/construction of the Work Product or Improvements incurred by the Developer. The Landowner shall provide copies of any and all invoices, bills, receipts, or other evidence of costs incurred by the Landowner for any Work Product and/or Improvements. The District Engineer shall review all evidence of cost and shall certify to the District the total actual amount of cost, which in each District Engineers' opinion is reasonable for the Work Product and/or Improvements. The District Engineer's opinion as to cost shall be set forth in an Engineer's Certificate which shall accompany the requisition for the funds from the District's trustee for the Series 2018 Bonds ("Trustee").
- c. *Conveyances on "As Is" Basis* Unless otherwise agreed, all conveyances of Work Product and/or Improvements shall be on an "as is" basis. In addition, the Landowner agrees to assign, transfer, and convey to the District any and all rights against any and all firms or entities which may have caused any latent or patent defects, including, but not limited to, any and all warranties and other forms of indemnification.

- d. Right to Rely on Work Product and Releases The Landowner agrees to release to the District all right, title, and interest which the Landowner may have in and to any Work Product conveyed hereunder, as well as all common law, statutory, and other reserved rights, including all copyrights in the Work Product and extensions and renewals thereof under United States law and throughout the world, and all publication rights and all subsidiary rights and other rights in and to the Work Product in all forms, mediums, and media, now known or hereinafter devised. To the extent determined necessary by the District, the Landowner shall reasonably obtain all releases from any professional providing services in connection with the Work Product to enable the District to use and rely upon the Work Product. The District agrees to allow the Landowner access to and use of the Work Product without the payment of any fee by the Landowner. However, to the extent the Landowner's access to and use of the Work Product causes the District to incur any cost or expense, such as copying costs, the Landowner agrees to pay such cost or expense. Notwithstanding the foregoing, the Landowner shall maintain ownership of the copyrights and trademarks associated with marketing and advertising any development within the District but shall grant the District a license to use those copyrights or trademarks for the Improvements.
- e. *Transfers to Third Party Governments* If any item acquired is to be conveyed to a third party governmental body, then the Landowner agrees to cooperate and provide such certifications, documents, bonds, warranties, and/or forms of security as may be required by that governmental body, if any.
- **f.** *Permits* The Landowner agrees to cooperate fully in the transfer of any permits to the District or a governmental entity with maintenance obligations for any Improvements conveyed pursuant to this Agreement, provided that the District or such governmental entity accepts the associated operation and maintenance obligations.
- g. Engineer's Certification The District shall accept any completed Work Product and/or Improvements where the District Engineer (or other consulting engineer reasonably acceptable to the District), in his/her professional opinion, is able to certify that, in addition to any other requirements of law: (i) the Work Product and/or Improvements are part of the Series 2018 Project; (ii) the price for such Work Product and/or Improvements does not exceed the actual reasonable cost of the Work Product and/or Improvements; (iii) as to Work Product, the Work Product is capable of being used for the purposes intended by the District, and, as to any Improvements, the Improvements were installed in accordance with their specifications, and are capable of performing the functions for which they were intended; and (iv) as to any Improvements, all known plans, permits, and specifications necessary for the operation and maintenance of the Improvements are complete and on file with

the District, and have been transferred, or are capable of being transferred, to the District for operations and maintenance responsibilities.

3. ASSIGNMENT OF CONTRACTS. The District accepts the assignment of certain contracts. Such acceptance is predicated upon (i) each contractor providing a bond in the form and manner required by section 255.05, Florida Statutes, (ii) receipt by the District of a release from each general contractor acknowledging each assignment and the validity thereof, acknowledging the furnishing of the bond or other security required by section 255.05, F.S., if any, and waiving any and all claims against the District arising as a result of or connected with such assignment. Developer hereby indemnifies and holds the District harmless from any claims, demands, liabilities, judgments, costs, or other actions which may be brought against or imposed upon the District by any contractors, subcontractors, sub-subcontractors, materialmen, and others providing labor or services in conjunction with each such contract and including claims by members of the public as such claims relate to the period of time prior to the District's acceptance of the assignment.

4. CONVEYANCE OF REAL PROPERTY. The Landowner agrees that it will convey to the District at or prior to the Acquisition Date as determined solely by the District, by a special warranty deed or other instrument acceptable to the District's Board of Supervisors together with a metes and bounds or other description, the Real Property upon which any Improvements are constructed or which are necessary for the operation and maintenance of, and access to, the Improvements. Notwithstanding the above, Landowner conveyed to the District prior to the commencement of any Amenity Project the lands upon which such Amenity Project shall be constructed.

- a. *Cost.* Except as set forth in any other agreement between the Parties, the Parties agree that all Real Property shall be provided to the District at no cost. The Parties agree that the dedication of Real Property shall not negate the District's obligation to pay amounts attributable to the value of Improvements on the Real Property and other Improvements serving the Real Property that have been, or will be, funded by the District.
- **b.** *Fee Title and Other Interests* The District may determine in its reasonable discretion that fee title for Real Property is not necessary and in such cases shall accept such other interest in the lands upon which the Improvements are constructed as the District deems acceptable, such as non-exclusive easement interests.
- c. Landowner Reservation Any conveyance of Real Property hereunder by special warranty deed or other instrument shall be subject to a reservation by Landowner of its right and privilege to use the area conveyed to enable the construction by third parties of any Improvements and any future improvements to such area for any related purposes (including, but not limited to, construction vehicle ingress and egress relating to the Development) not inconsistent with the District's use, occupation, or enjoyment thereof.

- d. *Fees, Taxes, Title Insurance* The Landowner shall pay the cost for recording fees and documentary stamps required, if any, for the conveyance of the Real Property upon which the Improvements are constructed. The Landowner shall be responsible for all taxes and assessments levied on the Real Property upon which the Improvements are constructed until such time as the Landowner conveys all said lands to the District. At the time of conveyance, the Landowner shall provide, at its expense, an owner's title insurance policy or other evidence of title in a form satisfactory to the District.
- e. Boundary Adjustments Landowner and the District agree that future boundary adjustments may be made as deemed reasonably necessary by the Parties in order to accurately describe Real Property conveyed to the District and lands which remain in Landowner's ownership. The Parties agree that any Real Property transfers made to accommodate such adjustments shall be accomplished by donation. However, the party requesting such adjustment shall pay any transaction costs resulting from the adjustment, including but not limited to taxes, title insurance, recording fees, or other costs. Landowner agrees that if a court or other governmental entity determines that a re-platting of the Real Property within the District is necessary, Landowner shall pay or cause a third party to pay all costs and expenses associated with such actions.

5. TAXES, ASSESSMENTS, AND COSTS.

- a. Taxes and Assessments on Property Being Acquired. The District is an exempt governmental unit acquiring property pursuant to this Agreement for use exclusively for public purposes. Accordingly, in accordance with Florida law, the Landowner agrees to place in escrow with the County tax collector an amount equal to the current ad valorem taxes and non-ad valorem assessments (with the exception of those ad valorem taxes and non-ad valorem assessments levied by the District) prorated to the date of transfer of title, based upon the expected assessment and millage rates giving effect to the greatest discount available for early payment.
 - i. If and only to the extent the property acquired by the District is subject to ad valorem taxes or non-ad valorem assessments, the Landowner agrees to reimburse the District for payment, or pay on its behalf, any and all ad valorem taxes and non-ad valorem assessments imposed during the calendar year in which each parcel of property is conveyed.
 - **ii.** Nothing in this Agreement shall prevent the District from asserting any rights to challenge any taxes or assessments imposed, if any, on any property of the District.
- **b.** *Notice.* The Parties agree to provide notice to the other within thirty (30) calendar days of receipt of any notice of potential or actual taxes, assessments, or costs, as a result of any transaction pursuant to this Agreement, or notice of

any other taxes, assessments, or costs imposed on the property acquired by the District as described in subsection a. above. The Landowner covenants to make any payments due hereunder in a timely manner in accordance with Florida law. In the event that the Landowner fails to make timely payment of any such taxes, assessments, or costs, the Landowner acknowledges the District's right to make such payment. If the District makes such payment, the Landowner agrees to reimburse the District within thirty (30) calendar days of receiving notice of such payment, and to include in such reimbursement any fees, costs, penalties, or other expenses which accrued to the District as a result of making such a payment, including interest at the maximum rate allowed by law from the date of the payment made by the District.

c. *Tax liability not created.* Nothing herein is intended to create or shall create any new or additional tax liability on behalf of the Landowner or the District. Furthermore, the Parties reserve all respective rights to challenge, pay under protest, contest or litigate the imposition of any tax, assessment, or cost in good faith they believe is unlawfully or inequitably imposed and agree to cooperate in good faith in the challenge of any such imposition.

ACQUISITION IN ADVANCE OF RECEIPT OF PROCEEDS. The District 6. and Landowner hereby agree that an acquisition by the District may be completed prior to the District obtaining proceeds from the Series 2018 Bonds ("Prior Acquisitions"). The District agrees to pursue the issuance of the Series 2018 Bonds in good faith and may in the future, and in its sole discretion, elect to issue additional bonds ("Future Bonds") that may be used to finance portions of work acquired hereunder that are not financed with the Series 2018 Bonds. In the event that the District issues the Series 2018 Bonds (or any Future Bonds) and has bond proceeds available to pay for any portion of the Series 2018 Project acquired by the District, and subject to the terms of the applicable documents relating to the Series 2018 Bonds (or any Future Bonds, as applicable), then the District shall promptly make payment for any Prior Acquisitions completed pursuant to the terms of this Agreement; provided, however, that in the event the District's bond counsel determines that any such Prior Acquisitions are not properly compensable for any reason, including, but not limited to federal tax restrictions imposed on taxexempt financing, the District shall not be obligated to make payment for such acquisitions. Interest shall not accrue on the amounts owed for any Prior Acquisitions. In the event the District does not or cannot issue the Series 2018 Bonds within six (6) years from the date of this Agreement, and, thus does not make payment to the Landowner for the Prior Acquisitions, then the Parties agree that the District shall have no reimbursement obligation whatsoever. The Landowner acknowledges that the District intends to convey some or all of the District Improvements in the Engineer's Report to the City of Davenport and consents to the District's conveyance of such improvements prior to payment for any Prior Acquisitions.

7. **DEFAULT.** A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of damages and/or specific performance.

8. INDEMNIFICATION. For all actions or activities which occur prior to the date of the acquisition of the relevant Real Property, Improvement or Work Product hereunder, the Landowner agrees to indemnify and hold harmless the District and its officers, staff, agents and employees from any and all liability, claims, actions, suits or demands by any person, corporation or other entity for injuries, death, property damage or claims of any nature arising out of, or in connection with, the use by the Developer, its officers, agents, employees, invitees or affiliates, of the Real Property, Improvement, or Work Product, including litigation or any appellate proceedings with respect thereto, irrespective of the date of the initiation or notice of the claim, suit, etc.; provided, however, that the Landowner shall not indemnify the District for a default by the District under this Agreement or the use of such Real Property, Improvement or Work Product by the District, its engineers, employees, contractors, or such persons' or entities' negligence.

9. ATTORNEYS' FEES AND COSTS. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that the substantially prevailing party shall be entitled to recover from the other all costs incurred, including reasonable attorneys' fees, paralegal fees, and expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by each District and the Landowner.

11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Landowner; both the District and the Landowner have complied with all the requirements of law; and both the District and the Landowner have full power and authority to comply with the terms and provisions of this instrument.

12. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, as follows:

А.	If to the District:	Holly Hill Road East Community Development District 12051 Corporate Boulevard Orlando, Florida 32817 Attn: District Manager
	With a copy to:	Hopping Green & Sams PA 119 S. Monroe Street, Suite 300 Tallahassee, Florida 32301 Attn: District Counsel
В.	If to the Developer:	HHR East, LLC 301 W. Platt Street, Suite 671

	Tampa, Florida 33606 Attn: Scott Shapiro
With a copy to:	Straughn & Turner, P.A. 255 Magnolia Avenue, SW Winter Haven, Florida Attn: Richard Straughn

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a nonbusiness day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Landowner may deliver Notice on behalf of the District and the Landowner, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the Parties and addressees set forth herein.

13. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Landowner as an arm's length transaction. The Parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Landowner.

THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of 14. the District and the Landowner and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Landowner any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Landowner and their respective representatives, successors, and assigns. Notwithstanding anything in this Agreement to the contrary, the Trustee for the Series 2018 Bonds shall be a direct third party beneficiary of the terms and conditions of this Agreement and, acting at the direction of and on behalf of the bondholders owning a majority of the aggregate principal amount of the Series 2018 Bonds outstanding, shall be entitled to cause the District to enforce the Landowner's obligations hereunder. The Trustee shall not be deemed to have assumed any obligations under this Agreement.

15. ASSIGNMENT. This Agreement may be assigned, in whole or in part, by either Parties only upon the written consent of the other, which consent shall not be unreasonably withheld.

16. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Polk County.

17. PUBLIC RECORDS. The Landowner understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and treated as such in accordance with Florida law.

18. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

19. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or by other operation of law.

20. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

21. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original; however, all such counterparts together shall constitute, but one and the same instrument. Signature and acknowledgment pages, if any, may be detached from the counterparts and attached to a single copy of this document to physically form one document.

22. EFFECTIVE DATE. This Agreement shall be effective upon its execution by the District and the Landowner.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year first written above.

ATTEST:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

Secretary/Assistant Secretary

Warren K. (Rennie) Heath, II, Chairperson, Board of Supervisors

HHR EAST, LLC, a Florida limited liability company

Witness

By: Scott H. Shapiro Its: Manager

Comp. Exhibit A: Holly Hill Road East Community Development District Amended and Restated Engineer's Report for Capital Improvements, dated March 21, 2018, as amended in the First Amendment to the Amended and Restated Engineer's Report, dated June 2018

Holly Hill Road East Community Development District

Assignment of Construction Contract for the Amenity Facility

Holly Hill Road East Community Development District

Assignment of Contract

DEVELOPER'S AFFIDAVIT AND AGREEMENT REGARDING ASSIGNMENT OF CONTRACT

STATE OF FLORIDA COUNTY OF _____

BEFORE ME, the undersigned, personally appeared ______ of HHR East, LLC ("**Developer**"), who, after being first duly sworn, deposes and says:

- I, ______, serve as Manager for Developer and am authorized to make this affidavit on its behalf. I make this affidavit pursuant to Section Three (3) of the Second Agreement Between Holly Hill Road East Community Development District ("District"), North Boulevard Community Development District, and Developer, Regarding the Joint Acquisition of Certain Work Product, Improvements and Real Property, dated as of October __, 2018 ("Amenity Acquisition Agreement"), and the Agreement Between the District and Developer Regarding Acquisition of Certain Work Product, Improvements and Real Property, dated as of October 11, 2018 (the "Phase 2 Acquisition Agreement," and together with the Amenity Acquisition Agreement, the "Acquisition Agreement"), and in order to induce the District to accept an assignment of the Improvement Agreement (defined below).
- (ii) The Agreement ("Improvement Agreement") between Developer and Tucker Paving Inc., ("Contractor"), dated September 28, 2018, including all change orders approved to date, and attached hereto as Exhibit A, X was competitively bid prior to its execution or _______ is below the applicable bid thresholds and was not required to be competitively prior to its execution.
- (iii) Developer, in consideration for the District's acceptance of an assignment of the Improvement Agreement agrees to indemnify, hold harmless and defend the District and its successors, assigns, agents, employees, staff, contractors, officers, governing board members, and representatives (together, "Indemnitees"), from any and all liability, loss or damage, whether monetary or otherwise, including reasonable attorneys' fees and costs and all fees and costs of mediation or alternative dispute resolution, as a result of any claims, liabilities, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, or judgments, against Indemnitees and which relate in any way to the assignment of, or bid process for, the Improvement Agreement.
- (iv) Developer has obtained a release from Contractor acknowledging the assignment of the above referenced contract and the validity thereof, the satisfaction of the bonding requirements of Section 255.05, Florida Statutes (if applicable), and waiving any and all claims against the District arising as a result of or connected with this assignment. Such releases are attached as Exhibit B.
- (v) The Contractor has or will \underline{X} furnish and record a performance and payment bond in accordance with Section 255.05, Florida Statutes, which is attached hereto as **Exhibit C**, or _____ was not required to provide such a bond pursuant to Section 255.05, Florida Statutes.
- (vi) Developer \underline{X} represents and warrants that there are no outstanding liens or claims relating to the Improvement Agreement, or _____ has posted a transfer bond in accordance with Section 713.24, Florida Statutes, which is attached hereto as **Exhibit D**.

- (vii) Developer represents and warrants that all payments to Contractor and any subcontractors or materialmen under the Improvement Agreement are current and there are no outstanding disputes under the Improvement Agreement.
- (viii) To the extent the District does not have sufficient funds to complete the Improvement Agreement, Developer agrees that the Improvement Agreement is subject to: (i) in regards to the Phase 2 improvements, the funding obligations set forth in the Construction Funding Agreement, dated October 11, 2018, between the District and Developer; and (ii) in regards to any remaining amenity facility improvements, the funding obligations set forth in the District's Bond Anticipation Note, Series 2018 (Amenity Center Line of Credit) and the Construction Funding Agreement, dated October 2, 2018, between the North Boulevard Community Development District and RCE II, LLC.

Under penalties of perjury, I declare that I have read the foregoing and the facts alleged are true and correct to the best of my knowledge and belief.

Executed this day of , 2018.

HHR East, LLC

By: _____ Its: Manager

[Print Name]

The foregoing instrument was acknowledged before me this _____ day of ______, 2018, by ______, who [] is personally known to me or [] produced ______ as identification.

(NOTARY SEAL)

Notary Public Signature

Holly Hill Road East CDD

Witness_____

Print Name of Witness

Chairman, Governing Board

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, who [] is personally known to me or [] produced ______ as identification.

(NOTARY SEAL)

Notary Public Signature

ACKNOWLEDGMENT AND ACCEPTANCE OF ASSIGNMENT AND RELEASE

For ten dollars and such additional good and valuable consideration received in hand, the receipt and sufficiency of which are hereby acknowledged, Tucker Paving, Inc., ("**Contractor**"), hereby agrees as follows:

- (i) The Agreement ("**Improvement Agreement**") between HHR East, LLC, and Contractor dated ______, 2018, has been assigned to the Holly Hill Road East Community Development District ("**District**"). Contractor acknowledges and accepts such assignment and its validity.
- (ii) Contractor represents and warrants that either:
 - a. <u>X</u> Contractor has or will furnish and record a performance and payment bond in accordance with Section 255.05, Florida Statutes, and has notified any subcontractors, material suppliers or others claiming interest in the work of the existence of the bond; or
 - b. Contractor has not been required to furnish or provide a performance and payment bond under Section 255.05, Florida Statutes, and has notified any subcontractors, materialmen or others claiming interest in the work that (a) no such bond exists; (b) the District, as a local unit of special purpose government, is not an "Owner" as defined in Section 713.01(23), Florida Statutes; and (c) there are no lien rights available to any person providing materials or services for improvements in connection with the Improvement Agreement.
- (iii) Contractor represents and warrants that all payments to Contractor and any subcontractors or materialmen under the Improvement Agreement are current and there are no outstanding disputes under the Improvement Agreement.
- (iv) Contractor hereby releases and waives any claim it may have against the District as a result of or in connection with such assignment.

[CONTINUED ON NEXT PAGE]

Executed this ____ day of _____, 2018.

Tucker Paving, Inc.

By: ______ Its: _____

STATE OF FLORIDA COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, who [] is personally known to me or [] produced ______ as identification.

(NOTARY SEAL)

Notary Public Signature

ADDENDUM ("ADDENDUM") TO CONTRACT ("CONTRACT")

1. ASSIGNMENT. This Addendum applies to that certain contract between the Holly Hill Road East Community Development District ("**District**") and Tucker Paving, Inc., ("**Contractor**"), which Contract was assigned to the District simultaneous with the execution of this Addendum. To the extent the terms of the Contract conflict with this Addendum, the terms of this Addendum shall control.

2. PAYMENT AND PERFORMANCE BONDS; NO LIEN RIGHTS. Before commencing the work, and consistent with the requirements of Section 255.05 of the Florida Statutes, the Contractor shall execute, deliver to the District, and record in the public records of Polk County, Florida, a payment and performance bond with a surety insurer authorized to do business in this state as surety or, to the extent permitted by the District in its sole discretion, provide an alternative form of security as authorized under Section 255.05 of the Florida Statutes. Such bond and/or security shall be for 100% of the project cost and shall be in effect for a full year from the time of completion of the project. Contractor agrees that the District is a local unit of special purpose government and not an "Owner" as defined in Section 713.01(23), Florida Statutes. Therefore, as against the District or the District's property, there are no lien rights available to any person providing materials or services for improvements in connection with the project. Contractor shall notify any subcontractors, material suppliers or others claiming interest in the work of the existence of the payment and performance bond.

3. INSURANCE. The District, its officers, governing board, agents, staff, and representatives, and, HHR East, LLC shall be named as additional insured's under the insurance provided pursuant to the Contract. Contractor shall furnish the District with the Certificate of Insurance evidencing compliance with this requirement. No certificate shall be acceptable unless it provides that any change or termination within the policy periods of the insurance coverage, as certified, shall not be effective within thirty (30) days of prior written notice to the District. Insurance coverage shall be from a reputable insurance carrier, licensed to conduct business in the State of Florida. If Contractor fails to have secured and maintained the required insurance, the District has the right (without any obligation to do so, however), to secure such required insurance in which event, Contractor shall pay the cost for that required insurance and shall furnish, upon demand, all information that may be required in connection with the District's obtaining the required insurance.

4. INDEMNIFICATION. Contractor shall indemnify, hold harmless, and defend the District and its governing board, consultants, agents, staff, and employees from and against claims, costs, losses, and damages as provided in section 7.18 of the Contract.

5. SOVEREIGN IMMUNITY. Nothing in the Contract shall be deemed as a waiver of the District's sovereign immunity or the District's limits of liability as set forth in Section 768.28, Florida Statutes or other statute, and nothing in the Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.

6. NOTICES. Notices provided to the District pursuant to the Contract shall be provided as follows:

District:

Holly Hill Road East Community Development District 12051 Corporate Boulevard Orlando, Florida 32817 Attn: Jane Gaarlandt With a copy to:

Hopping Green & Sams, P.A. 119 South Monroe, Suite 300 (32301) Post Office Box 6526 Tallahassee, Florida 32314 Attn: Roy Van Wyk

7. SCRUTINIZED COMPANIES STATEMENT. Upon the Assignment, Contractor shall properly execute a sworn statement pursuant to section 287.135(5), Florida Statutes, regarding Scrutinized Companies in substantially the form of the attached Exhibit A, and by signing this Addendum represents that Contractor is able to execute such sworn statement. If the Contractor is found to have submitted a false certification as provided in section 287.135(5), Florida Statutes, been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in a boycott of Israel, or been engaged in business operations in Cuba or Syria, the District may immediately terminate the Contract.

8. PUBLIC ENTITY CRIMES STATEMENT. Upon the Assignment, Contractor shall properly execute a sworn statement under section 287.133(3)(a), Florida Statutes, regarding public entity crimes, and by signing this Addendum represents that Contractor is able to execute such sworn statement. The statement shall be substantially in the form of the attached **Exhibit B**.

9. TRENCH SAFETY ACT STATEMENTS. Upon the Assignment, Contractor shall properly execute a Trench Safety Act Compliance Statement and a Trench Safety Act Compliance Cost Statement, and by signing this Addendum represents that Contractor is able to execute such sworn statement. The statements shall be substantially in the form of the attached **Exhibit C**.

10. CONSTRUCTION DEFECTS. PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE <u>NOT</u> SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto hereby acknowledge and agree to this Addendum.

TUCKER PAVING, INC.

Witness

By:
Its:

Print Name of Witness

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

Witness

By:_____ Its:

Print Name of Witness

Exhibit A:Scrutinized Companies StatementExhibit B:Public Entity Crimes StatementExhibit C:Trench Safety Act Statement

EXHIBIT A

SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, REGARDING SCRUTINIZED COMPANIES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to <u>Holly Hill Road East Community Development District</u>

by

(print individual's name and title)

for ____

(print name of entity submitting sworn statement)

whose business address is

- 2. I understand that, subject to limited exemptions, section 287.185, Florida Statutes, declares a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with a local governmental entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company (a) is 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) is 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; or (c) is engaged in business operations in Cuba or Syria.
- 3. Based on information and belief, at the time the entity submitting this sworn statement submits its proposal to the North Boulevard Community Development District, neither the entity, nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or is engaged in business operations in Cuba or Syria.
- 4. If awarded the Contract, the entity will immediately notify the North Boulevard Community Development District in writing if either the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or is engaged in business operations in Cuba or Syria.

Signature by authorized representative of Contractor

STATE OF FLORIDA COUNTY OF _____

Sworn to (or affirmed) and subscribed before me this	s day of	, 2018, by
, of	who is personally known to me or v	who has produced
as identification and who	o did (did not) take an oath.	

Signature of Notary Public taking acknowledgement

EXHIBIT B

SWORN STATEMENT ON PUBLIC ENTITY CRIMES PURSUANT TO SECTION 287.133(3)(A), FLORIDA STATUTES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

- 1. This sworn statement is submitted to the Holly Hill Road East CDD.
- I am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of ______ for _____ ("Contractor"), and am authorized to make this Sworn Statement on behalf of Contractor.
- 3. Contractor's business address is _____
- 4. Contractor's Federal Employer Identification Number (FEIN) is ______

(If the Contractor has no FEIN, include the Social Security Number of the individual signing this sworn statement: ______.)

- 5. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation...
- 6. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudications of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a please of guilty or nolo contendere.
- 7. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
 - a. A predecessor or successor of a person convicted of a public entity crime; or,
 - b. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
- 8. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

9. Based on information and belief, the statement which I have marked below is true in relation to the Contractor submitting this sworn statement. (Please indicate which statement applies.)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order)

IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR/VENDOR EXECUTING THIS PUBLIC ENTITY CRIME AFFIDAVIT TO VERIFY THAT NONE OF THE SUBCONTRACTORS/SUPPLIERS UTILIZED FOR THIS BID/QUOTE HAVE BEEN CONVICTED OF A PUBLIC ENTITY CRIME SUBSEQUENT TO JULY 1, 1989. IN THE EVENT IT IS LATER DISCOVERED THAT A SUBCONTRACTOR/SUPPLIER HAS BEEN CONVICTED OF A PUBLIC ENTITY CRIME, THE CONTRACTOR/VENDOR SHALL SUBSTITUTE THE SUBCONTRACTOR/ SUPPLIER WITH ANOTHER WHO HAS NOT RECEIVED A CONVICTION. ANY COST ASSOCIATED WITH THIS SUBSTITUTION SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR/VENDOR.

Under penalties of perjury under the laws of the State of Florida, I declare that I have read the foregoing Sworn Statement under Section 287.133(3)(a), Florida Statutes, Regarding Public Entity Crimes and all of the information provided is true and correct.

Dated this ______ day of ______, 2018.

By:

Title:______

STATE OF FLORIDA COUNTY OF _____

The foregoing instrument was acknowledged before me this _____day of ______, 2018, by ______ of ______, who is personally known to me or who has produced _______ as identification, and did [] or did not [] take the oath.

Notary Public, State of Florida

EXHIBIT C

TRENCH SAFETY ACT COMPLIANCE STATEMENT

INSTRUCTIONS

Because trench excavations on this project are expected to be in excess of 5 feet, Chapter 90-96 of the Laws of Florida requires that construction on the project comply with Occupational Safety and Health Administration Standard 29 C.F.R.s. 1926.650 Subpart P. The Contractor is required to execute this Compliance Statement and the Compliance Cost Statement. The costs for complying with the Trench Safety Act must be incorporated into the Contract Price.

This form must be certified in the presence of a notary public or other officer authorized to administer oaths.

CERTIFICATION

- 1. I understand that Chapter 90.96 of the Laws of Florida (The Trench Safety Act) requires me to comply with OSHA Standard 29 C.F.R.s. 1926.650 Subpart P. I will comply with The Trench Safety Act, and I will design and provide trench safety systems at all trench excavations in excess of five feet in depth for this project.
- 2. The estimated cost imposed by compliance with The Trench Safety Act will be:

	Dollars \$	
(Written)		(Figures)
	n included within the Contract Price.	
day of	, 2018.	
	Contractor:	
	By: Title:	
		(Written) ed above has been included within the Contract Price. day of, 2018. Contractor: By:

STATE OF FLORIDA COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of ______, 2018, by ______ of ______, who is personally known to me or who has produced _______ as identification.

Notary Public, State of Florida

TRENCH SAFETY ACT COMPLIANCE COST STATEMENT

INSTRUCTIONS

Because trench excavations on this Project are expected to be in excess of 5 feet, Chapter 90-96 of the Laws of Florida requires that the Contractor submit a statement of the costs of complying with the Trench Safety Act. Said costs must also be incorporated into the Contract Price.

This form must be certified in the presence of a notary public or other officer authorized to administer oaths.

By executing this statement, Contractor acknowledges that included in the various items of its Contract Price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The Contractor further identifies the costs as follows:

Type of Trench Safety Mechanism	Quantity	Unit Cost ¹	Item Total Cost
	· · · · · · · · · · · · · · · · · · ·		
	.l	Project Total	

Dated this ______ day of ______, 2018.

Contractor:

By:______ Title:______

STATE OF FLORIDA COUNTY OF _____

The foregoing instrument was	acknowledged	before me this	day of _	
2018, by	of			_who is personally known
to me or who has produced			_ as identif	ication.

Notary Public, State of Florida

¹ Use cost per linear square foot of trench excavation used and cost per square foot of shoring used.

Holly Hill Road East Community Development District

Phase 2 Construction Contract Between Tucker Paving, Inc., and HHR East, LLC This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by



Issued and Published Jointly by









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AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between	HHR East, LLC	("Owner") and
Tucker Paving, Inc.		("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 - WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Citrus Pointe (Holly Hill Road East CDD Ph 2) Mass Clearing, Grading, and Master Infrastructure

ARTICLE 3 – ENGINEER

- 3.01 The part of the Project that pertains to the Work has been designed by Dennis Wood Engineering LLC, located at 1925 Bartow Road, Lakeland, Florida 33801.
- 3.02 The Owner has retained <u>Dennis Wood Engineering LLC</u> ("Engineer") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

- 4.01 *Time of the Essence*
 - A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

A. The Work will be substantially completed on or before ______, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before ______.

[or]

4.02 *Contract Times: Days*

A. The Work will be substantially completed within <u>days after the date when the Contract</u> Times commence to run as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within <u>days after the date when the Contract Times commence to run</u>. <u>*A.</u> Contractor agrees to complete all work described herein within one hundred fifty (150) calendar days of the issuance of a Notice to Proceed and consistent with the attached project schedule.

- B. Parts of the Work shall be substantially completed on or before the following Milestone(s):
 - 1. Milestone 1 [event & date/days]
 - 2. Milestone 2 [event & date/days]
 - 3. Milestone 3 [event & date/days]
- 4.03 Liquidated Damages
 - A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Contractor shall pay Owner \$500 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500 for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 - Milestones: Contractor shall pay Owner \$_______ for each day that expires after the time (as duly adjusted pursuant to the Contract) specified above for achievement of Milestone 1, until Milestone 1 is achieved.
 - B. Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$______ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$______.

ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:

EJCDC® C-520 (Rev. 1), Agreement Between Owner and Contractor for Construction Contract (Stipulated Price). Copyright © 2013 National Society of Professional Engineers, American Council of Engineering Companies, and American Society of Civil Engineers. All rights reserved. A. For all Work other than Unit Price Work, a lump sum of: <u>One Million Nine Hundred Ninety</u> <u>Thousand One Hundred Thirteen and Forty-eight Cents</u> (\$1,990,113.48) (consisting of \$1,727,972.64 for subdivision and \$262,140.83 for Amenity)

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work						
ltem No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price	
	Extended Prices for Unit P ctual quantities)	rice Work (subj	ect to final adju	stment	\$	

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

- C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$______.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

- 6.01 Submittal and Processing of Payments
 - A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.
- 6.02 Progress Payments; Retainage
 - A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based

on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.

- Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. ______ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. ______ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.
- *<u>A.</u> Owner shall make progress payments to Contractor in a manner consistent with the Local Government Prompt Payment Act, sections 218.70 through 218.80 of the Florida Statutes. In accordance with Section 218.735(8), Florida Statutes, ten percent (10%) shall be retained from each payment made to Contractor until the Work is fifty percent (50%) complete; after the Work is fifty percent (50%) complete, five percent (5%) shall be retained from each payment.
- 6.03 Final Payment
 - A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due shall bear interest at the rate of percent per annum. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74(4), Florida Statutes.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.

- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages <u>1</u> to <u>8</u>, inclusive).
 - 2. Performance bond (pages 1 to 2, inclusive).
 - 3. Payment bond (pages 1 to 2, inclusive).
 - 4. Other bonds.

- a. <u>N/A</u> (pages to , inclusive).
- 5. General Conditions (pages <u>1</u> to 80, inclusive).
- 6. Supplementary Conditions (pages <u>1</u> to <u>2</u>, inclusive).
- 7. Specifications as listed in the table of contents of the Project Manual.
- 8. Drawings (not attached but incorporated by reference) consisting of the Drawings listed on the attached sheet index (sheets 1 to 38, inclusive).
- 9. Addenda (N/A).
- 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages 1 to 43, inclusive).
- 11. Addendum to Standard Agreement Regarding Insurance Requirements
- 12. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 - MISCELLANEOUS

- 10.01 Terms
 - A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- 10.02 Assignment of Contract
 - A. It is the intent of the Owner to assign this Contract to a <u>Community Development District</u> (CDD) established over the lands upon which the improvements will be constructed. By executing the Contract, Contractor agrees to such assignment of the Contract, including all rights, interest, duties and responsibilities of the Owner contained herein. Contractor shall not assign all or any portion of this Contract without the express written consent of the Owner or assignee of the Owner. Contractor further agrees to execute any and all documents necessary to effectuate the assignment of the Contract to a community development district.

10.03 Successors and Assigns

A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.04 Severability

A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.06 Other Provisions

A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC[®] C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee[®], and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on $\frac{9/28/18}{2}$ (which is the Effective Date of the Contract).

CONTRACTOR: Tucker Paving, Inc. OWNER: HHR East, LLC By: By: Title: Manager Title: (If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.) Attest: Attest: ect May Title: Title: Address for giving notices: Address for giving notices: Tucker Paving, Inc. HHR East, LLC 3545 Lake Alfred Road 346 East Central Avenue Winter Haven, FL 33881 Winter Haven, FL 33880 Phone: 770-378-9695 Phone:863-299-4444 Fax:

Attn:

License No.:

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.) NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

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PERFORMANCE BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address and Phone Number):

SURETY (Name and Address of Principal Place of Business <u>and Phone Number</u>):

I.E

OWNER: HHR East, LLC Address: 346 East Central Avenue Winter Haven, FL 33880

Phone Number: 863-324-3698

CONTRACT Date: Amount: Description (Name and Location):

BOND Bond Number: Date (Not earlier than Contract Date): Amount: Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Performance Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in section 255.05(2), Florida Statutes.

CONTRACTOR AS PRINCIPAL Company:	SURETY	
Signature: (Seal)		(Seal)
Name and Title:	Surety's Name and Corporate Seal	
	Ву:	
	Signature and Title	
	(Attach Power of Attorney)	
(Space is provided below for signatures of additional parties, if required.)		
······, ···· · · · · · · · · · · · · ·	Attest:	
	Signature and Title	
CONTRACTOR AS PRINCIPAL Company:	SURETY	
Signature: (Seal)		(Seal)
Name and Title:	Surety's Name and Corporate Seal	
	Ву:	
	Signature and Title	
	(Attach Power of Attorney)	
	Attest:	
	Signature and Title:	

EJCDC No. C-610 (2002 Edition)

Originally prepared through the joint efforts of the Surety Association of America, Engineers Joint Contract Documents Committee, the Associated General Contractors of America, and the American Institute of Architects.

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

2. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 3.1.

3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:

- 3.1. Owner has notified Contractor and Surety, at the addresses described in Paragraph 10 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
- 3.2. Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 3.1; and
- 3.3. Owner has agreed to pay the Balance of the Contract Price to:
 - 1. Surety in accordance with the terms of the Contract;
 - 2. Another contractor selected pursuant to Paragraph 4.3 to perform the Contract,

4. When Owner has satisfied the conditions of Paragraph 3, Surety shall promptly and at Surety's expense take one of the following actions:

- 4.1. Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
- 4.2. Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
- 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
- 4.4. Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:
 - After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
 - Deny liability in whole or in part and notify Owner citing reasons therefor.

5. If Surety does not proceed as provided in Paragraph 4 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 4.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner. 6. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 4.1, 4.2, or 4.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To a limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 6.1. The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 6.2. Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions or failure to act of Surety under Paragraph 4; and
- 6.3. Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of Contractor.

7. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

8. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

11. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

- 12. Definitions.
 - 12.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
 - 12.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address and Phone Number):

OWNER: HHR East, LLC

Address:346 East Central Avenue
Winter Haven, FL 33880Phone Number:863-324-3698

CONTRACT Date: Amount: Description (Name and Location):

BOND

Bond Number: Date (Not earlier than Contract Date): Amount: Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms printed on the reverse side hereof, do each cause this Payment Bond to be duly executed on its behalf by its authorized officer, agent, or representative.

Any action instituted by a claimant under this bond for payment must be in accordance with the notice and time limitation provisions in Section 255.05(2), Florida Statutes.

CONTRACTOR AS PRINCIPAL Company:	SURETY	
Signature: (Seal) Name and Title:	Surety's Name and Corporate Seal	(Seal)
	By: Signature and Title (Attach Power of Attorney)	
(Space is provided below for signatures of additional parties, if required.)	Attest:	
CONTRACTOR AS PRINCIPAL Company:	SURETY	
Signature: (Seal) Name and Title:	Surety's Name and Corporate Seal	(Seal)
	By: Signature and Title (Attach Power of Attorney)	
	Attest:	

SURETY (Name and Address of Principal Place of Business and Phone Number):

I.E

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to promptly pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.

2. With respect to Owner, this obligation shall be null and void if Contractor:

- 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and
- 2.2. Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.

3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.

- 4. Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the addresses described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with Contractor:
 - Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
 - Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
 - 3. Not having been paid within the above 30 days, have sent a written notice to Surety and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.

5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.

6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:

- 6.1. Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2. Pay or arrange for payment of any undisputed amounts.

7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.

8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related Subcontracts, purchase orders and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. DEFINITIONS

- 15.1. Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor's Subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.
- 15.2. Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 15.3. Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or comply with the other terms thereof.

FOR INFORMATION ONLY – Name, Address and Telephone Surety Agency or Broker: Owner's Representative (engineer or other party): This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by



Issued and Published Jointly by









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These General Conditions have been prepared for use with the Agreement Between Owner and Contractor for Construction Contract (EJCDC[®] C-520, Stipulated Sum, or C-525, Cost-Plus, 2013 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other.

To prepare supplementary conditions that are coordinated with the General Conditions, use EJCDC's Guide to the Preparation of Supplementary Conditions (EJCDC[®] C-800, 2013 Edition). The full EJCDC Construction series of documents is discussed in the Commentary on the 2013 EJCDC Construction Documents (EJCDC[®] C-001, 2013 Edition).

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American Council of Engineering Companies 1015 15th Street N.W., Washington, DC 20005 (202) 347-7474

www.acec.org

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STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 Defined Terms

- A. Wherever used in the Bidding Requirements or Contract Documents, a term printed with initial capital letters, including the term's singular and plural forms, will have the meaning indicated in the definitions below. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
 - 1. Addenda—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 - 2. Agreement—The written instrument, executed by Owner and Contractor, that sets forth the Contract Price and Contract Times, identifies the parties and the Engineer, and designates the specific items that are Contract Documents.
 - 3. Application for Payment—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 - 4. *Bid*—The offer of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 - 5. Bidder—An individual or entity that submits a Bid to Owner.
 - 6. *Bidding Documents*—The Bidding Requirements, the proposed Contract Documents, and all Addenda.
 - 7. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid Bond or other Bid security, if any, the Bid Form, and the Bid with any attachments.
 - 8. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, or other revision to the Contract, issued on or after the Effective Date of the Contract.
 - 9. Change Proposal—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth herein, seeking an adjustment in Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Contract.
 - 10. *Claim*—(a) A demand or assertion by Owner directly to Contractor, duly submitted in compliance with the procedural requirements set forth herein: seeking an adjustment of Contract Price or Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Contract Documents or the acceptability of Work under the Contract Documents; contesting Engineer's decision regarding a Change Proposal; seeking resolution of a contractual issue that Engineer has declined to

address; or seeking other relief with respect to the terms of the Contract; or (b) a demand or assertion by Contractor directly to Owner, duly submitted in compliance with the procedural requirements set forth herein, contesting Engineer's decision regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

- 11. Constituent of Concern—Asbestos, petroleum, radioactive materials, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- 12. Contract—The entire and integrated written contract between the Owner and Contractor concerning the Work.
- 13. Contract Documents—Those items so designated in the Agreement, and which together comprise the Contract.
- 14. *Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Contract Documents.
- 15. *Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve Milestones, if any; (b) achieve Substantial Completion; and (c) complete the Work.
- 16. *Contractor*—The individual or entity with which Owner has contracted for performance of the Work.
- 17. Cost of the Work—See Paragraph 13.01 for definition.
- 18. Drawings—The part of the Contract that graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- 19. *Effective Date of the Contract*—The date, indicated in the Agreement, on which the Contract becomes effective.
- 20. Engineer—The individual or entity named as such in the Agreement.
- 21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Contract Price or the Contract Times.
- 22. Hazardous Environmental Condition—The presence at the Site of Constituents of Concern in such quantities or circumstances that may present a danger to persons or property exposed thereto. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated in the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, does not establish a Hazardous Environmental Condition.

- 23. Laws and Regulations; Laws or Regulations—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction. Such definitions shall further include, where the context reasonably allows, compliance with any applicable permits and/or other similar approvals issued by governmental bodies, agencies, and authorities.
- 24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
- 25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
- 26. *Notice of Award*—The written notice by Owner to a Bidder of Owner's acceptance of the Bid.
- 27. *Notice to Proceed*—A written notice by Owner<u>or Engineer</u> to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
- 28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
- 29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
- 30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
- 31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
- 32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative.
- 33. Samples—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
- 34. Schedule of Submittals—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals and the performance of related construction activities.

- 35. Schedule of Values—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
- 36. Shop Drawings—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
- 37. Site—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
- 38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- 39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
- 40. Substantial Completion—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
- 42. Supplementary Conditions—The part of the Contract that amends or supplements these General Conditions.
- 43. Supplier—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
- 44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
- 45. Underground Facilities—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey

electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

- 46. Unit Price Work—Work to be paid for on the basis of unit prices.
- 47. Work—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- 48. Work Change Directive—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. Intent of Certain Terms or Adjectives:
 - 1. The Contract Documents include the terms "as allowed," "as approved," "as ordered," "as directed" or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.
- C. Day:
 - 1. The word "day" means a calendar day of 24 hours measured from midnight to the next midnight.
- D. Defective:
 - 1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or

- c. has been damaged prior to Engineer's recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).
- E. Furnish, Install, Perform, Provide:
 - 1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 - 2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 - 3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 - 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words "furnish," "install," "perform," or "provide," then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

- 2.01 Delivery of Bonds and Evidence of Insurance
 - A. *Bonds*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
 - B. *Evidence of Contractor's Insurance*: When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.
 - C. Evidence of Owner's Insurance: After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.
- 2.02 *Copies of Documents*
 - A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.

B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 Before Starting Construction

- A. *Preliminary Schedules*: Within 10 days after the Effective Date of the Contract (or as otherwise specifically required by the Contract Documents), Contractor shall submit to Engineer for timely review:
 - 1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract;
 - 2. a preliminary Schedule of Submittals; and
 - 3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

Such schedules shall be consistent with the documents provided to the Owner as part of the Contractor's bid.

2.04 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.03.A, procedures for handling Shop Drawings, Samples, and other submittals, processing Applications for Payment, electronic or digital transmittals, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit and receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.05 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
 - 1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

- 2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
- 3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

<u>All such schedules shall be consistent with the documents provided to the Owner as part of the Contractor's bid.</u>

- 2.06 *Electronic Transmittals*
 - A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may transmit, and shall accept, Project-related correspondence, text, data, documents, drawings, information, and graphics, including but not limited to Shop Drawings and other submittals, in electronic media or digital format, either directly, or through access to a secure Project website.
 - B. If the Contract does not establish protocols for electronic or digital transmittals, then Owner, Engineer, and Contractor shall jointly develop such protocols.
 - C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.
- 3.02 Reference Standards
 - A. Standards Specifications, Codes, Laws and Regulations
 - 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the

standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 Reporting and Resolving Discrepancies

- A. Reporting Discrepancies:
 - 1. Contractor's Verification of Figures and Field Measurements: Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
 - 2. Contractor's Review of Contract Documents: If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
 - 3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.
- B. Resolving Discrepancies:
 - 1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

- a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Requirements of the Contract Documents

- A. During the performance of the Work and until final payment, Contractor and Owner shall submit to the Engineer all matters in question concerning the requirements of the Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Contract Documents, as soon as possible after such matters arise. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- B. Engineer will, with reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Contract Documents. Engineer's written clarification, interpretation, or decision will be final and binding on Contractor, unless it appeals by submitting a Change Proposal, and on Owner, unless it appeals by filing a Claim.
- C. If a submitted matter in question concerns terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work under the Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer is unable to provide a decision or interpretation. If Owner and Contractor are unable to agree on resolution of such a matter in question, either party may pursue resolution as provided in Article 12.

3.05 Reuse of Documents

- A. Contractor and its Subcontractors and Suppliers shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 - 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Contract. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Contract, whichever date is earlier.

4.02 Starting the Work

A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to such date.

4.03 Reference Points

A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.05) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 Delays in Contractor's Progress

A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. <u>The Landowner, in its sole and absolute discretion, may additionally direct that the Project be delivered in multiple</u>

phases rather than all at once. Such option, if exercised, shall in no way impact the pricing of the Project, nor constitute a delay.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor. Delay, disruption, and interference attributable to and within the control of a Subcontractor or Supplier shall be deemed to be within the control of Contractor.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include but are not limited toonly the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. abnormal-weather conditions;
 - 3. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 4. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.
- H. Where Contractor is prevented from completing any part of the Work within the Contract Time (or Milestones) due to delay beyond the control of both Owner and Contractor, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be Contractor's sole and exclusive remedy for such delay. In no event shall Owner or Engineer be liable to Contractor, any subcontractor, any supplier, or any other person or organization, or to any surety or employee or any agent of them, for damages, including but not limited to all fees and charges of Engineers, architects, attorneys, and other

professionals and all court or arbitration or other dispute resolution costs, arising out of or resulting from:

- 1. delays caused by or within the control of Contractor (or Subcontractor or Supplier);
- 2. <u>delays beyond the control of both Owner and Contractor, including, but not limited to,</u> <u>fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by</u> <u>utility owners or other contractors performing other work;</u>
- 3. <u>Nor shall Owner or Engineer of each of them be liable to Contractor for any claims, costs,</u> <u>losses or damages sustained by Contractor on or in connection with any other project</u> <u>or anticipated project.</u>

Nothing in this paragraph bars a change in Contract Price to compensate Contractor due to delay, interference, or disruption directly attributable to actions or inactions of Owner or anyone for whom Owner is responsible. Except for an adjustment to the Contract Times and Contract Price, the Contractor shall not be entitled to and hereby waives any and all damages that it may suffer by reason of delay or for any Act of God, and waives all damages that it may suffer by reason of such delay including but not limited to lost profits, overhead, and other consequential damages. No payment of any claim for damages shall be made to the Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, whether such delay is avoidable or unavoidable.

ARTICLE 5 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.
- 5.02 Use of Site and Other Areas
 - A. Limitation on Use of Site and Other Areas:
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas;

provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible.

- If a damage or injury claim is made by the owner or occupant of any such land or area 2. because of the performance of the Work, or because of other actions or conduct of the Contractor or those for which Contractor is responsible, Contractor shall (a) take immediate corrective or remedial action as required by Paragraph 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify, defend and hold harmless Indemnitees (defined in Paragraph 7.18) Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all liabilities, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's negligent, reckless or intentionally wrongful performance of the Work, or because of other negligent, reckless or intentionally wrongful actions or conduct of the Contractor or those for which Contractor is responsible.
- B. Removal of Debris During Performance of the Work: During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning*: Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. Loading of Structures: Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.
- 5.03 Subsurface and Physical Conditions
 - A. *Reports and Drawings*: The Supplementary Conditions identify:
 - <u>*Those reports known to Owner of explorations and tests of subsurface conditions at or</u> adjacent to the Site and from which the Engineer prepared the Contract Drawings and <u>Specifications</u>;
 - <u>*Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities);), and from which the Engineer prepared the Contract Drawings and Specifications; and
 </u>
 - 3. Technical Data contained in such reports and drawings.

- B. <u>No_Reliance by Contractor on Technical Data Authorized</u>: Contractor may <u>not</u> rely upon the accuracy of the Technical Data expressly identified in this Agreement or Supplementary Conditions with respect to such reports and drawings. <u>Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Landowner's benefit by third parties and accordingly, the Landowner cannot guarantee the quantity, quality, completeness or accuracy of that information., but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:</u>
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.

Contractor expressly acknowledges that soil conditions may vary widely across the Site, and Contractor takes responsibility for any and all issues arising from unsuitable soils, including but not limited to, varying soil conditions, etc. that may make it more difficult to install the repairs or otherwise conduct the Work. Furthermore, no additional costs will be charged by Contractor for matters associated with unsuitable and/or varying soils, except that the Contractor may apply for a change order where authorized by the and with respect to "templating."

Contractor warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the prosecuting of the Work. Contractor further warrants that the Contract Price is just and reasonable compensation for all the Work, including all foreseen and unforeseen risks, hazards, and difficulties in connection therewith, including any concealed conditions encountered in the performance of the Work below the surface of the ground at variance with conditions indicated by the Contract Documents or other Bidding Documents and Bidding Requirements furnished to the Contractor for its information.

5.04 Differing Subsurface or Physical Conditions

- A. *Notice by Contractor*: If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
 - 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely as provided in Paragraph 5.03 is materially inaccurate; or
 - 2. is of such a nature as to require a change in the Drawings or Specifications; or

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- 3. differs materially from that shown or indicated in the Contract Documents; or
- 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.

- B. Engineer's Review: After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. Owner's Statement to Contractor Regarding Site Condition: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. Possible Price and Times Adjustments:
 - Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03; and,
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
 - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the

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submission of a Bid or becoming bound under a negotiated contract, or otherwise; or

- b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
- c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
- 3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
- Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 Underground Facilities

- A. *Contractor's Responsibilities*: The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site, if any, is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:
 - 1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 - 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. Notice by Contractor: If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.

- C. Engineer's Review: Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. Owner's Statement to Contractor Regarding Underground Facility: After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. Possible Price and Times Adjustments:
 - 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 - 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
 - 3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

- 5.06 Hazardous Environmental Conditions at Site
 - A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 - 2. Technical Data contained in such reports and drawings.
 - B. *Reliance by Contractor on Technical Data Authorized*: Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
 - C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
 - D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
 - E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous

Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- 1. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.8, or identified in the Contract Documents to be included within the scope of the Work, and (2) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.I shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless <u>Indemnitees</u> Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, <u>liabilities</u>, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the <u>negligent</u>, <u>reckless</u>, or <u>intentionally wrongful</u> failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, or to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 Performance, Payment, and Other Bonds

- A. Contractor shall furnish a performance bond and a payment bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect until one two years (for the performance bond) and one year (for the payment bond) after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment bond shall contain the following language: "This Bond is hereby amended so that the provisions and limitations of Section 255.05, Florida Statutes, are incorporated by reference herein."
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 Insurance—General Provisions

A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.

- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
- G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
- H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
- I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
- J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

K. <u>The fact that an entity or individual is named as an additional insured on a particular insurance</u> policy required under this Contract is not intended to constitute a waiver of any rights of any kind, including subrogation rights, claims for indemnification or any other rights or claims.

6.03 Contractor's Insurance

- A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).

4. Foreign voluntary worker compensation (if applicable).

- B. Commercial General Liability—Claims Covered: Contractor shall purchase and maintain <u>a</u> <u>minimum of \$2 million in</u> commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content*: Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
 - 1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for three years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and three years thereafter.
 - 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 - 3. Broad form property damage coverage.
 - 4. Severability of interest.
 - 5. Underground, explosion, and collapse coverage.
 - 6. Personal injury coverage.
 - 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG

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20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.

- For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.
- D. Automobile liability: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. Umbrella or excess liability: Contractor shall purchase and maintain <u>a minimum of \$3 million</u> umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. Contractor's pollution liability insurance: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than three years after final completion.
- G. Additional insureds: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner and Engineer, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, <u>staff</u>, <u>supervisors</u>, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. Contractor's professional liability insurance: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of two years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
 - 1. include at least the specific coverages provided in this Article.
 - 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 - 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least 10 days prior written notice has

been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.

- 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
- 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 Owner's Liability Insurance

- A. In addition to the insurance required to be provided by Contractor under Paragraph 6.03, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.
- B. Owner's liability policies, if any, operate separately and independently from policies required to be provided by Contractor, and Contractor cannot rely upon Owner's liability policies for any of Contractor's obligations to the Owner, Engineer, or third parties.

6.05 Property Insurance

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 - 1. include the Owner, Engineer, and Contractor as named insureds, and their respective members, partners, partners, subsidiaries, affiliates, officers, directors, supervisors, staff, consultants, agents, subcontractors and employees, and any individuals or entities required by the Supplementary Conditions to be insured under such builder's risk policy, as insureds or named insureds. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 - 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition

occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

- 3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
- 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
- 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
- 6. extend to cover damage or loss to insured property while in transit.
- 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
- 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
- 10. not include a co-insurance clause.
- 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
- 12. include performance/hot testing and start-up.
- 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. Notice of Cancellation or Change: All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.

- C. *Deductibles*: The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. Partial Occupancy or Use by Owner: If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. Insurance of Other Property: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 Waiver of Rights

- All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk A. policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under-such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party-making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:
 - 1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 - 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial

occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of insurance required by Paragraph 6.05 will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds, and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by Paragraph 6.05 shall distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Contract or applicable Laws and Regulations.
- C. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the money so received applied on account thereof, and the Work and the cost thereof covered by Change Order, if needed.

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

7.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.
 - 1. The Contractor shall be responsible, whether previously scheduled or not, for the payment of Owner's cost of overtime inspection outside of the working hours described above. The Contractor will be required to pay for overtime inspection services on unscheduled work, work which is delayed by the Contractor's suppliers or subcontractors and any other work performed for the convenience of the Contractor as he deems necessary to meet the schedule.
- 7.03 Services, Materials, and Equipment
 - A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
 - B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
 - C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.
- 7.04 "Or Equals"
 - A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 - If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal"

item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole:
 - 3) it has a proven record of performance and availability of responsive service; and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. Contractor's Expense: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. Engineer's Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer considered the proposed item as a substitute pursuant to Paragraph 7.05.
- 7.05 Substitutes
 - A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.

- 1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
- 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
- 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. Engineer's Evaluation and Determination: Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related

impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.

- C. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. Reimbursement of Engineer's Cost: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.
- 7.06 Concerning Subcontractors, Suppliers, and Others
 - A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
 - B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
 - C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
 - D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
 - E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.
- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

7.07 Patent Fees and Royalties

A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design,

process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, <u>defend</u>, and hold harmless <u>Indemnitees</u> <u>Owner and Engineer</u>, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, <u>liabilities</u>, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents, <u>provided however that such infringement is caused by the negligent</u>, reckless, or intentionally wrongful actions of the Contractor or those for which <u>Contractor is responsible</u>.

7.08 Permits

A. Unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of the submission of Contractor's Bid (or when Contractor became bound under a negotiated contract). Owner <u>Contractor</u> shall pay all charges of utility owners for connections for providing permanent service to the Work.

7.09 Taxes

A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

7.10 Laws and Regulations

A. Contractor shall give all notices required by and shall comply with all Laws and Regulations, applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.

- B. If Contractor or those for which Contractor is responsible negligently, recklessly, or intentionally and wrongfully performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all resulting costs and losses, and shall indemnify, defend, and hold harmless <u>Indemnitees</u> Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 Record Documents

A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - 1. all persons on the Site or who may be affected by the Work;
 - 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 - 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. <u>Among other requirements, the Contractor or subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards.</u>
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- 7.14 Hazard Communication Programs
 - A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury,

or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 Shop Drawings, Samples, and Other Submittals

- A. Shop Drawing and Sample Submittal Requirements:
 - 1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
 - 2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
 - 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.
- B. Submittal Procedures for Shop Drawings and Samples: Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
 - 1. Shop Drawings:
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
 - 2. Samples:
 - a. Contractor shall submit the number of Samples required in the Specifications.

- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
- 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals*: Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. Engineer's Review:
 - 1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 - 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 - 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 - 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 - 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 - 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 - 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
 - 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

- E. Resubmittal Procedures:
 - 1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 - 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 - 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by Engineer (or other similar acceptance by Owner);
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.

- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- E. Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier or subcontractor to consent to same, then Contractor shall secure the material supplier's or subcontractor's consent to assign said warranties to Owner.
- F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.
- 7.18 Indemnification
 - A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract- or otherwise, Contractor shall indemnify and hold harmless. Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify, hold harmless, and defend Owner, Engineer, WYN Investors, LLC, and their respective members, parents, partners, subsidiaries, affiliates, officers, directors, supervisors, staff, consultants, agents, subcontractors and employees of each and any of all of the foregoing entities and individuals (together, "Indemnitees") from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in part or in whole, by the negligence, recklessness, or intentionally wrongful misconduct of the Contractor, or any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed or used by any of them to perform any of the Work. To the extent required by Florida law to make the provisions of any indemnification, defense or hold harmless provision of this Contract enforceable (and otherwise this sentence does not apply), such indemnification, hold harmless and defense obligation shall not exceed \$10,000,000.00, the amount of which bears a reasonable commercial relationship to the Contract and was part of the project specifications or bid documents. In the event that any indemnification, defense or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees. The Contractor shall ensure that any and all Subcontractors, and Suppliers, include this express paragraph for the benefit of the Indemnitees.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

7.19 Delegation of Professional Design Services

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 Other Work

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.
- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 Coordination

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:
 - 1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
 - 2. an itemization of the specific matters to be covered by such authority and responsibility; and
 - 3. the extent of such authority and responsibilities.
- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

8.03 Legal Relationships

- If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's Α. employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, <u>defend</u>, and hold harmless <u>Indemnitees</u> <u>Owner and Engineer</u>, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claims, and against all costs, <u>liabilities</u>, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference, <u>provided however that the</u>

damage, delay, disruption or interference is caused in part or in whole by the negligent, reckless or intentionally wrongful misconduct of Contractor, or those for which Contractor is responsible.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

- 9.01 *Communications to Contractor*
 - A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.
- 9.02 Replacement of Engineer
 - A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.
- 9.03 Furnish Data
 - A. Owner shall promptly furnish the data required of Owner under the Contract Documents.
- 9.04 Pay When Due
 - A. Owner shall make payments to Contractor when they are due as provided in the Agreement.
- 9.05 Lands and Easements; Reports, Tests, and Drawings
 - A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
 - B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
 - C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.
- 9.06 Insurance
 - A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.
- 9.07 Change Orders
 - A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.
- 9.08 Inspections, Tests, and Approvals
 - A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.
- 9.09 Limitations on Owner's Responsibilities
 - A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- 9.10 Undisclosed Hazardous Environmental Condition
 - A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.
- 9.11 Evidence of Financial Arrangements
 - A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).
- 9.12 Safety Programs
 - A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
 - B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

- 10.01 Owner's Representative
 - A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.
- 10.02 Visits to Site
 - A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer to guard Owner against defective Work.
 - B. Engineer's visits and observations are subject to all the limitations on Engineer's authority and responsibility set forth in Paragraph 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.
- 10.03 Project Representative
 - A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the

responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

- 10.04 Rejecting Defective Work
 - A. Engineer has the authority to reject Work in accordance with Article 14.
- 10.05 Shop Drawings, Change Orders and Payments
 - A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
 - B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
 - C. Engineer's authority as to Change Orders is set forth in Article 11.
 - D. Engineer's authority as to Applications for Payment is set forth in Article 15.
- 10.06 Determinations for Unit Price Work
 - A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.
- 10.07 Decisions on Requirements of Contract Documents and Acceptability of Work
 - A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- 10.08 Limitations on Engineer's Authority and Responsibilities
 - A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
 - B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
 - C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.
- 10.09 Compliance with Safety Program
 - A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

ARTICLE 11 – AMENDING THE CONTRACT DOCUMENTS; CHANGES IN THE WORK

11.01 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. Change Orders:
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. Work Change Directives: A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.
 - 3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible

with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 Owner-Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.
- 11.03 Unauthorized Changes in the Work
 - A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.
- 11.04 Change of Contract Price
 - A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
 - B. An adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

- C. *Contractor's Fee*: When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;
 - e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
 - f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Times shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment in the Contract Times shall comply with the provisions of Article 12.
- B. An adjustment of the Contract Times shall be subject to the limitations set forth in Paragraph 4.05, concerning delays in Contractor's progress.

11.06 Change Proposals

A. Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; appeal an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; contest a set-off against payment due; or seek other relief under the Contract. The Change Proposal shall specify any proposed change in Contract Times or

Contract Price, or both, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents.

- 1. *Procedures*: Contractor shall submit each Change Proposal to Engineer promptly (but in no event later than 30 days) after the start of the event giving rise thereto, or after such initial decision. The Contractor shall submit supporting data, including the proposed change in Contract Price or Contract Time (if any), to the Engineer and Owner within 15 days after the submittal of the Change Proposal. The supporting data shall be accompanied by a written statement that the supporting data are accurate and complete, and that any requested time or price adjustment is the entire adjustment to which Contractor believes it is entitled as a result of said event. Engineer will advise Owner regarding the Change Proposal.
- 2. Engineer's Action: Engineer will review each Change Proposal and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If Engineer does not take action on the Change Proposal within 30 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of Engineer's inaction the Change Proposal is deemed denied, thereby commencing the time for appeal of the denial under Article 12.
- 3. *Binding Decision*: Engineer's decision will be final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- B. *Resolution of Certain Change Proposals*: If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and

- 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 Notification to Surety

A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

ARTICLE 12 - CLAIMS

12.01 Claims

- A. *Claims Process*: The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. Submittal of Claim: The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution*: The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. Mediation:
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.

- 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the conclusion of the mediation, as determined by the mediator.
- 3. Owner and Contractor shall each pay one-half of the mediator's fees and costs.
- E. *Partial Approval*: If the party receiving a Claim approves the Claim in part and denies it in part, such action shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. Denial of Claim: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. Final and Binding Results: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

ARTICLE 13 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

- 13.01 Cost of the Work
 - A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. The provisions of this Paragraph 13.01 are used for two distinct purposes:
 - 1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or
 - 2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.
 - B. Costs Included: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 - 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor.

Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

- 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
- 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
- 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
- 5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.

- e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- g. The cost of utilities, fuel, and sanitary facilities at the Site.
- h. Minor expenses such as communication service at the Site, express and courier services, and similar petty cash items in connection with the Work.
- i. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. Costs Excluded: The term Cost of the Work shall not include any of the following items:
 - 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 - 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 - 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. Contractor's Fee: When the Work as a whole is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in

Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.

- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.
- 13.02 Allowances
 - A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
 - B. Cash Allowances: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
 - C. Contingency Allowance: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
 - D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.
- 13.03 Unit Price Work
 - A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
 - B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
 - C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
 - D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.

- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 14 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 14.01 Access to Work
 - A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.
- 14.02 Tests, Inspections, and Approvals
 - A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
 - B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
 - C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
 - D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;

- 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
- 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

Such inspections and tests shall be performed by independent inspectors, testing laboratories, or other qualified individuals or entities acceptable to Owner and Engineer.

- E. If the Contract Documents require the Work (or part thereof) to be approved by Owner, Engineer, or another designated individual or entity, then Contractor shall assume full responsibility for arranging and obtaining such approvals.
- F. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense unless Contractor had given Engineer timely notice of Contractor's intention to cover the same and Engineer had not acted with reasonable promptness in response to such notice.

14.03 Defective Work

- A. *Contractor's Obligation*: It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority*: Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects*: Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. *Correction, or Removal and Replacement*: Promptly after receipt of written notice of defective Work, Contractor shall correct all such defective Work, whether or not fabricated, installed, or completed, or, if Engineer has rejected the defective Work, remove it from the Project and replace it with Work that is not defective.
- E. Preservation of Warranties: When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. *Costs and Damages*: In addition to its correction, removal, and replacement obligations with respect to defective Work, Contractor shall pay all claims, costs, losses, and damages arising out of or relating to defective Work, including but not limited to the cost of the inspection, testing, correction, removal, replacement, or reconstruction of such defective Work, fines levied against Owner by governmental authorities because the Work is defective, and the costs of repair or replacement of work of others resulting from defective Work. Prior to final payment, if Owner and Contractor are unable to agree as to the measure of such claims, costs, losses, and damages resulting from defective Work, then Owner may impose a reasonable set-off against payments due under Article 15.

14.04 Acceptance of Defective Work

A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor

shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 Uncovering Work

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - If it is found that the uncovered Work is defective, Contractor shall be responsible for all claims, costs, losses, and damages arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and pending Contractor's full discharge of this responsibility the Owner shall be entitled to impose a reasonable set-off against payments due under Article 15.
 - 2. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.
- 14.07 Owner May Correct Defective Work
 - A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if

Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, after seven days written notice to Contractor, correct or remedy any such deficiency.

- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

ARTICLE 15 – PAYMENTS TO CONTRACTOR; SET-OFFS; COMPLETION; CORRECTION PERIOD

- 15.01 Progress Payments
 - A. Basis for Progress Payments: The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
 - B. Applications for Payments:
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment are covered by appropriate property insurance, a warehouse bond, or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner. Progress payments are to be made only on installed material, no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.

- 2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
- 3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. Review of Applications:
 - 1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
 - 2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
 - 3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
 - 4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or

- c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
- d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
- e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
- 5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
- 6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.
- D. Payment Becomes Due:
 - Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor. Owner shall make payment to the Contractor in the amount recommended (subject to the provisions of this Contract) in accordance with the prompt payment provisions contained in Sections 218.735 and 218.74, Florida Statutes. Contractor shall make payments due to subcontractors and suppliers within ten (10) days in accordance with the prompt payment provisions contained in Section 218.735(6), 218.735(7), and 218.74, Florida Statutes. Invoices from the Contractor should be directed to the Landowner.
- E. Reductions in Payment by Owner:
 - 1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from workplace injuries, adjacent property damage, non-compliance with Laws and Regulations, and patent infringement;

- b. Contractor has failed to take reasonable and customary measures to avoid damage, delay, disruption, and interference with other work at or adjacent to the Site;
- c. Contractor has failed to provide and maintain required bonds or insurance;
- d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible;
- e. Owner has incurred extra charges or engineering costs related to submittal reviews, evaluations of proposed substitutes, tests and inspections, or return visits to manufacturing or assembly facilities;
- f. the Work is defective, requiring correction or replacement;
- g. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
- h. the Contract Price has been reduced by Change Orders;
- i. an event that would constitute a default by Contractor and therefore justify a termination for cause has occurred;
- j. liquidated damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work;
- k. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
- I. there are other items entitling Owner to a set off against the amount recommended.
- 2. If Owner imposes any set-off against payment, whether based on its own knowledge or on the written recommendations of Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and the specific amount of the reduction, and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, if Contractor remedies the reasons for such action. The reduction imposed shall be binding on Contractor unless it duly submits a Change Proposal contesting the reduction.
- 3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 Contractor's Warranty of Title

A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all Liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

15.03 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete and request that Engineer issue a certificate of Substantial Completion. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- If Engineer considers the Work substantially complete, Engineer will deliver to Owner a C. preliminary certificate of Substantial Completion which shall fix the date of Substantial Completion. Engineer shall attach to the certificate a punch list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the preliminary certificate during which to make written objection to Engineer as to any provisions of the certificate or attached punch list. If, after considering the objections to the provisions of the preliminary certificate, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the preliminary certificate to Owner, notify Contractor in writing that the Work is not substantially complete, stating the reasons therefor. If Owner does not object to the provisions of the certificate, or if despite consideration of Owner's objections Engineer concludes that the Work is substantially complete, then Engineer will, within said 14 days, execute and deliver to Owner and Contractor a final certificate of Substantial Completion (with a revised punch list of items to be completed or corrected) reflecting such changes from the preliminary certificate as Engineer believes justified after consideration of any objections from Owner.
- D. At the time of receipt of the preliminary certificate of Substantial Completion, Owner and Contractor will confer regarding Owner's use or occupancy of the Work following Substantial Completion, review the builder's risk insurance policy with respect to the end of the builder's risk coverage, and confirm the transition to coverage of the Work under a permanent property insurance policy held by Owner. Unless Owner and Contractor agree otherwise in writing, Owner shall bear responsibility for security, operation, protection of the Work, property insurance, maintenance, heat, and utilities upon Owner's use or occupancy of the Work.
- E. After Substantial Completion the Contractor shall promptly begin work on the punch list of items to be completed or corrected prior to final payment. In appropriate cases Contractor may submit monthly Applications for Payment for completed punch list items, following the progress payment procedures set forth above.
- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.
- G. To the extent this paragraph 15.03 is inconsistent in any way with Florida's Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes, such Act shall control, and this Contract shall be construed to allow for the maximum amount of time allowable under the Act in order to review any punch lists and make payment.

15.04 Partial Use or Occupancy

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. At any time Owner may request in writing that Contractor permit Owner to use or occupy any such part of the Work that Owner believes to be substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 15.03.A through E for that part of the Work.
 - 2. At any time Contractor may notify Owner and Engineer in writing that Contractor considers any such part of the Work substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of the Work to be substantially complete, the provisions of Paragraph 15.03 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.
 - 4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 6.05 regarding builder's risk or other property insurance.

15.05 Final Inspection

A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

15.06 Final Payment

- A. Application for Payment:
 - 1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.
 - 2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents;

- b. consent of the surety, if any, to final payment;
- c. satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.
- d. a list of all disputes that Contractor believes are unsettled; and
- e. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.
- 3. In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.
- B. Engineer's Review of Application and Acceptance:
 - If, on the basis of Engineer's observation of the Work during construction and final 1. inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.
- C. *Completion of Work*: The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.
- D. Payment Becomes Due: Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 Correction Period

- A. If within onetwo years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 Owner May Suspend Work

A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension. Any Change Proposal seeking such adjustments shall be submitted no later than 30 days after the date fixed for resumption of Work.

16.02 Owner May Terminate for Cause

- A. The occurrence of any one or more of the following events will constitute a default by Contractor and justify termination for cause:
 - 1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
 - 2. Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
 - 3. Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
 - 4. Contractor's repeated disregard of the authority of Owner or Engineer.
- B. If one or more of the events identified in Paragraph 16.02.A occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:
 - 1. declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
 - 2. enforce the rights available to Owner under any applicable performance bond.
- C. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- E. If Owner proceeds as provided in Paragraph 16.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys,

and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

16.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
 - 1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
 - 3. other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.

In such case, Owner will pay to Contractor all amounts due and not previously paid to Contractor for Work completed in accordance with the Contract prior to such notice, as well as the cost of reasonably protecting Work in place, and for Work thereafter completed as specified in such notice, as well as release and payment to Contractor of all retainage held by Owner related to the portion of the Work completed. No payments will be made for any potential costs of settling or paying claims arising out of termination of the Work under subcontracts, equipment leases, orders or other related arrangements. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss, <u>or any other consequential damages of any kind</u>, arising out of or resulting from such termination.

Upon any such termination, Contractor shall:

1. <u>Immediately discontinue Work on the date and to the extent specified in the notice</u> except to the extent necessary to protect Work in place;

- 2. <u>Place no further orders for materials, services, or facilities, other than as may be</u> <u>necessary or required for completion of such portion of Work under the Contract that</u> <u>is not terminated;</u>
- 3. <u>Promptly make every reasonable effort to obtain cancellation upon terms reasonably</u> <u>satisfactory to Landowner of all purchase orders and Subcontracts to the extent they</u> <u>relate to the performance of Work terminated or assign to Landowner those orders</u> <u>and Subcontracts and revoke agreements specified in such notice;</u>
- 4. <u>Reasonably assist Landowner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Landowner under the Contract, as may be necessary;</u>
- 5. Complete performance of any Work which is not terminated; and
- 6. <u>Deliver to Landowner an affidavit regarding the identity of unpaid potential lienors</u> and the amounts due to each.

16.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (3) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 Methods and Procedures

- A. *Disputes Subject to Final Resolution*: The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.

- B. *Final Resolution of Disputes*: For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.
- C. <u>In the event Owner or Contractor is required to enforce this Agreement by court proceedings</u> or otherwise, then the prevailing party shall be entitled to recover from the other party all fees and costs incurred, including reasonable attorney's fees and costs.

ARTICLE 18 – MISCELLANEOUS

18.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person, by a commercial courier service or otherwise, to the individual or to a member of the firm or to an officer of the corporation for which it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the sender of the notice.

18.02 Computation of Times

A. When any period of time is referred to in the Contract by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

18.03 Cumulative Remedies

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

18.04 Limitation of Damages

A. With respect to any and all Change Proposals, Claims, disputes subject to final resolution, and other matters at issue, neither Owner nor Engineer, nor any of their <u>supervisors, staff</u>, officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

18.05 No Waiver

A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

18.06 Survival of Obligations

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

18.07 Controlling Law

A. This Contract is to be governed by the law of the state in which the Project is located.

18.08 Headings

A. Article and paragraph headings are inserted for convenience only and do not constitute parts of these General Conditions.

18.09 <u>Sovereign Immunity</u>

A. <u>Contractor and Owner agree that nothing in this Contract shall be deemed as a waiver of the Owner's sovereign immunity or the Owner's limits of liability as set forth in Section 768.28, Florida Statutes or other statute or law, and nothing in this Contract shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under such limitations of liability or by operation of law.</u>

18.10 Public Records

A. Contractor understands and agrees that after assignment to the CDD all documents of any kind provided to the Landowner in connection with this Agreement may be considered public records in accordance with Chapter 119, Florida Statutes, and other Florida law.

18.11 Construction Defects

A. Pursuant to Section 558.005, Florida Statutes, any claims for Construction Defects are NOT subject to the Notice and Cure Provisions of Chapter 558, Florida Statutes.

SUPPLEMENTARY CONDITIONS RELATING TO INSURANCE REQUIREMENTS, SUBSURFACE CONDITIONS, AND HAZARDOUS CONDITIONS

The following supplements establish insurance limits and other requirements relating to Article 6 of the *Standard General Conditions of the Construction Contract*, EJCDC Document No. C-700 (Rev. 1), 2013 Edition (the "General Conditions"). Other changes have been marked directly in underlined and strike-through on the Standard Form of Agreement and the General Conditions. The terms used in these Supplementary Conditions have the meanings stated in the General Conditions. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

ARTICLE 6 – BONDS AND INSURANCE

6.03 Contractor's Liability Insurance

Add the following new paragraphs after Paragraph 6.03.J. of the General Conditions:

- K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:
 - 1. Workers' Compensation under Paragraph 6.03.A. of the General Conditions:
 - a. State Worker's Compensation Greater of statutorily required amount or \$1,000,000 per occurrence / \$1,000,000 aggregate / \$1,000,000 per disease
 - b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, etc.) – Greater of statutorily required amount or \$1,000,000
 - c. Employer's Liability <u>\$1,000,000</u>
 - 2. Commercial General Liability Insurance under Paragraph 6.03.B. of the General Conditions:
 - a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence -\$2,000,000
 - b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate -\$2,000,000
 - c. Products-Completed Operations <u>\$2,000,000</u>
 - d. Personal and Advertising Injury \$2,000,000
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
 - 3. Automobile Liability under paragraph 6.03.D. of the General Conditions:
 - a. Bodily Injury:

bouny mjury.				
Each Person	<u>\$1,000,000</u>			
Each Accident	<u>\$1,000,000</u>			
Property Damage:				
Each Occurrence	<u>\$1,000,000</u>			

- 4. Pollution Insurance (covering third-party injury and property damage claims, including clean-up costs) <u>\$1,000,000</u>
- 5. Protection and Indemnity Insurance \$1,000,000

6. The Contractual Liability coverage required by paragraph 6.03.C. of the General Conditions shall provide coverage for not less than the following amounts:

a.	General Aggregate	<u>\$2,000,000</u>
b.	Bodily Injury and Property Damage	
	Combined Each Occurrence	<u>\$2,000,000</u>

7. Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)

а.	General Aggregate (Per Project)	<u>\$3,000,000</u>
b.	Each Occurrence	<u>\$3,000,000</u>

- L. The Contractor's commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: Owner, Engineer, and Holly Hill Road East CDD, and their respective members, parents, partners, subsidiaries, affiliates, officers, directors, supervisors, staff, consultants, agents, subcontractors and employees.
- M. Such insurance as listed above is in addition to all other insurance required under the Contract.
- N. In the event of a conflict between this Agreement and the Addendum to Standard Agreement Regarding Insurance Requirements, this Agreement shall control to the extent necessary to resolve such conflict.
- O. The Contractor agrees to coordinate with the retaining wall contractor the timing and construction of the retaining walls and to ensure that the initial cut and any fill material needed to be backfilled is provided on-site. The retaining wall company will be hired directly by the owner or the CDD. The Contractor will also supply the contact information for their geotechnical engineer so that the owner can hire directly for compaction tests on the retaining wall.

OFFICIAL PROPOSAL FORM HHR EAST, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

TO BE SUBMITTED TO:

HHR EAST, LLC Dennis Wood Engineering, LLC Attn: Dennis L. Wood 1925 Bartow Road Lakeland, Florida 33801

Due by 5:00 PM EST, Monday, August 13, 2018

TO:	HHR EAST, LLC

FROM: TUCKET Paving, INC.

In accordance with the Request for Proposals inviting proposals for <u>HHR East, LLC – Construction</u> <u>Services for Citrus Pointe and Amenity Center Infrastructure Improvements</u> the undersigned proposes to provide all work necessary to install and construct the improvements including but not limited to site work, earthwork, grading, installation of utilities, roadway construction, and installation of stormwater management improvements as shown on the Plans, and described in the Specifications, as prepared by: Dennis Wood Engineering LLC, dated July 24, 2018.

All Proposals shall be for complete Work in accordance with the Plans. Qualified or partial Proposals will be considered non-responsive.

PRICE

Proposer submits that it can perform the work described Price of	in this Project Manual for a Total Lump Sum (\$) as more specifically
described in the Proposal Summary.	

The undersigned Proposer, having a thorough understanding of the Work required by the Contract Documents, the site and conditions where the Work is to be performed, local labor conditions and all laws, regulations and other factors affecting performance of the Work, and having knowledge of the expense and difficulties attending performance of the Work, and having fully inspected the site in all particulars, hereby proposes and agrees, if this Proposal is accepted, to enter into the Construction Contract with the Owner to fully perform all Work in strict compliance with the Contract Documents, including the assumption of all obligations, duties and responsibilities necessary to the successful completion of the Project and the furnishing of all materials and equipment required to be incorporated in and form a permanent part of the Work; tools, equipment, supplies, transportation facilities, labor, superintendence and services required to perform the Work; and bonds, insurance, submittals; and all fees including without limitation permits, timber taxes, inspection fees, maintenance bonds, as-builts and plats as needed for dedication, etc., as indicated or specified in the Contract Documents to be performed or furnished by Proposer for the LUMP SUM PRICES as indicated in the Proposal Summary.

Тіме

Proposer submits that it can reach Substantial Completion of the work described in this Project Manual within () days of the issuance of a Notice to Proceed.

The undersigned Proposer agrees to commence work within thirty (30) days after the date of a written Notice to Proceed. The undersigned Proposer agrees that this Proposal shall be valid for a period of one hundred twenty (120) days from the date proposals are due. Proposer hereby acknowledges that any work provided and any cost incurred by Proposer prior to receiving both the Notice of Award and the Notice to Proceed will be at Proposer's risk unless specifically agreed to in writing by the Landowner.

DOCUMENTS AND ADDENDA

The Proposer submits that he has carefully examined the site of the proposed Work and the existing conditions, as well as the drawings and specifications. Also, Proposer has thoroughly reviewed the Request for Proposal, Instructions to Proposers, Evaluation Criteria, Standard Form of Agreement, Amendments, General Conditions, Supplementary Conditions, the Plans, the Specifications and all other components of the Contract Documents and acknowledges that the following addenda covering revisions to thereto, and the cost, if any, of such revisions has been included in the enclosed Pricing Amount(s).

Addendum No. <u>1</u>	Dated: <u>7 / 27 / 18</u>
Addendum No	Dated: 8 1.3 118
Addendum No.	Dated:/ /
Addendum No	Dated://
	(Signed) Larry D. Tucker II (Print Name of Signatory)
This 3th day of August	, 2018. (Corporate Seal)
Sworn to before me this 13^{th} d	ay of August, 2018.
(Notary Seal) Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021	Notary Public/ Expiration Date

	ORGANIZATION INFORMATION OF PROPOSER
	HHR EAST, LLC Citrus Pointe and Amenity Center Infrastructure Improvements
	CITY OF DAVENPORT, FLORIDA
DAT	E SUBMITTED: AUGUST 13, 2018
1.	Proposer Tucker Paving, INC. // A Individual (Company Name) // A Partnership // A Limited Liability Company / A Corporation // A Subsidiary Corporation
2.	Proposer's Parent Company Name (if applicable) NA
3.	Proposer's Parent Company Address (if applicable)
	Street Address
	P.O. Box (if any)
	City State Zip Code
	Telephone Fax No
	1 st Contact Name Title
	2 nd Contact Name Title
4.	Proposer Company Address (if different)
	Street Address 3545 Lake Alfred Rd.
	P.O. Box (if any)
	City WINTER HOVEN State FL Zip Code 33681
	Telephone (813) 299-2262 Fax No. (813) 299-1007
	Telephone Fax No
	1st Contact Name Larry D. TUCKER IT Title President
	2nd Contact Name Ritual Brauted Title Executive VP
5.	Is the Proposer incorporated in the State of Florida? Yes 🖌 No (_)
	 5.1 If yes, provide the following: Is the Company in good standing with the Florida Department of State, Division of Corporations? Yes () No ()
	If no, please explain NH

II.B.

		Date Incorporated 5995 Charter No.
	5.2	If no, provide the following:
		The state in which the Proposer company is incorporated
		Is the company in good standing with the state? Yes (_) No (_)
		If no, please explain
		Date incorporated Charter No
6.	Is the	Proposer company a registered or licensed contractor with the State of Florida? Yes () No ()
	6.1	If yes, provide the following:
		Type of registration (i.e. certified general contractor, certified electrical contractor, etc.)
		Cortified Contractor, Cortified Undergrain 1 Utility
		License No. CGC DUBA3 CUCI225142 Expiration Date 8/31/18
		Qualifying Individual TEREDI TUCKET Title Director of Scherty
		List company(ies) currently qualified under this license TUCKER BUILDE, INC.
	6.2	Is the Proposer company a registered or licensed Contractor with Polk County? Yes (v) No ()
	6.3	Has the Proposer company performed work for a community development previously? Yes (V) No (_)
7.	Nam	ne of Proposer's Bonding Company US. Specialty Insurance Company
	Add	ress
	Арр	roved Bonding Capacities: Aggregate Limit Single Project Limit Total Current Contracts Bonded
8.	Nan	ne of Proposer's Bonding Agency NG GOET BOOLING 3 INDUGACE, INC.
	Add	Iress 48719 Island Shores Lane Lakerund, FL 33809
	Con	tact Name Dan Wagner Telephone (203) 854 9823
9.	the	the Proper's total annual dollar value of work completed for each of the last three (3) years starting with latest year and ending with the most current year (2015) 27,000,000 16,35,000,000, (2017) 45,000,000

2

- 10. What are the Proposers' company's current insurance limits?

 General Liability
 \$ 1000,000

 Automobile Liability
 \$ 1,000,000

 Workers Compensation
 \$ 1,000,000

 Expiration Date
 \$ 1,000,000
- 11. Has the Proposer company been cited by OSHA for any job site or company office/shop safety violations in the past two years? Yes (_) No (y)

If yes, please describe each violation fine, and resolution

What is the Proposer's current worker compensation rating? <u>.59</u>

Has the Proposer experienced any worker injuries resulting in a worker losing more than ten (10) working days as a result of the injury in the past two (2) years? Yes () No (2)

If yes, please describe the incident:

12. Please state whether or not your company or any of its affiliates are presently barred or suspended from bidding or contracting on any state, local, or federal-aid contracts in any state(s)? Yes (_) No ()

If so, state the name(s) of the company(ies)

The state, local or federal entity(ies) with whom barred or suspended ______

State the period(s) of debarment or suspension

13. What is the construction experience of the proposed superintendent and project manager?

INDIVIDUAL'S NAME	PRESENT POSITION OR OFFICE	MAGNITUDE AND TYPE OF WORK	YEARS OF CONSTRUCTION EXPERIENCE	YEARS WITH FIRM	IN WHAT CAPACITY?
Mike Felix	MORUGLT	s,00,000	18	<u> </u>	Piojcet Menget
Star Duwson	Ealthmork	Subdivisions	20	6	Super
Jose Lopez	P.PC Super	Subaivisions Public Private	18	14	Super

- 14. Have you ever failed to complete any work awarded to you? Yes (_) No (/) If so, where and why?
- 15. Has any officer or partner of your organization ever been an officer, partner, or owner of some other organization that has failed to complete a construction contract? Yes () No ()

16.	List any and all litigation to which the organization has been a party in the last five (5) years.
	In 2010, paving subcontractor failed to installs
	of work. properly. Tucker Paving ned to correct iss
	Such contractor for corrective repairs. We were
	abe to settle case in modicition.
17.	Has organization or any of its affiliates ever been either disqualified or denied prequalification st governmental entity? Yes (_) No ()
	If so, discuss the circumstances surrounding such denial or disqualification as well as the date thereof
18.	Within the past five (5) years, has organization failed to complete a project within the scheduled cont Yes (_) No ()
	If so, discuss the circumstances surrounding such failure to complete a project on time as well a thereof.
19.	List all projects currently under contract, with a remaining contract amount of over \$100,000.00 (
	retainage) and with an expected remaining contract duration in excess of 120 days (to substantial con
	Nath Disney Coronado Springs, Normandy Heights

The undersigned hereby authorize(s) and request(s) any person, firm or corporation to furnish any pertinent information requested by the HHR East, LLC or their authorized agents, deemed necessary to verify the statements made in this application or attachments hereto, or necessary to determine whether the HHR East, LLC should qualify the Proposer for providing a Proposal for its construction projects, including such matters as the Proposer's ability, standing integrity, quality of performance, efficiency and general reputation.

By: ______ (Type Name and Title of Person Signing) This 13th day of August, 2018. (Corporate Seal) Sworn to before me this 13th day of August, 2018. Notary Public/ Expiration Date (Seal)

Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021 CORPORATE OFFICERS

Company Name <u>Tucker Riving</u>, INC Provide the following information for Officers of the Proposer and parent company, if any.

Date 8 13 18

NAME OF PROPOSER	POSITION OR TITLE	CORPORATE RESPONSIBILITIES	INDIVIDUAL'S RESIDENCE CITY, STATE
lary D. Ticker "en:?"	Resident	President	Winter Huven, FL
Patrick Braisted	Executive, VP	VP	Dundee, FL
Terrell TUCKET	Director of Sufery	VP	Winter Haven, FL
	1		
		htt://complex.blab	
	FOR PARENT COMPA	NY (if applicable)	

SUPERVISORY PERSONNEL

··· <u>4. Juny</u> - 1000

INC.

Date 8/13/18

Company Name TUCKOF PUNIAG, What is the experience of the key management and supervisory personnel of the Proposer company for both administration as well as operations? (Attach resumes of key personnel here)

INDIVIDUAL'S NAME	PRESENT TIFLE	DESCRIPTION OF DIRECT JOB RESPONSIBILITIES	YEARS OF EXPERIENCE IN PRESENT POSITION	TOTAL YEARS OF RELATED EXPERIENCE
Mike Felix	Royect Marych	L Project Manager	8	18
Store Danson	Farthwork Super	Earthwork	ل	210
Store Danasm Store Lapez	POLECT Marial Farthwork Super P. R. Super	Pije	14	18
		*		



Mike has moved up the ranks within the construction industry and began his career in 1999 working in residential construction. He started with Tucker Paving in 2009 as a project manager and has had the opportunity to oversee numerous projects. His responsibilities include managing day-to-day operational aspects of projects and scopes. He plans, directs and manages designated projects while ensuring that the set objectives of the Tucker Paving team are accomplished in accordance with the outlined priorities. He coordinates the successful simultaneous development of several projects within the project management department. Mike delegates the project responsibilities and completion schedules, while also reviewing project status reports and submittal packages.

EDUCATION

Basic First Aid/ CPR

B.S. Construction Management

CERTIFICATION/TRAINING

RECENT SUBDIVISION EXPERIENCE

Highland Meadows 2B Cassidy

Highland Meadows 3 Cassidy

Highland Meadows 5 and 5A Cassidy

Highland Meadows 6 and 6A Cassidy

> Hallam Preserve Southern Homes



JOSE LOPEZ PIPE SUPERINTENDENT

Jose began working for Tucker Paving over 14 years ago and has been a valuable asset to the company. Prior to coming to Tucker Paving he already had 4 years' experience in the civil construction industry. Jose has excelled through the company with his knowledge and expertise and is now our pipe superintendent for the company. He supports the crews on a daily basis with each of the projects and coordinates with other trades on the projects. Jose is responsible for the pipe crews and maintains the schedule for each project. He works closely with the project managers to meet the schedule needs and coordinates deliveries of material from suppliers and vendors. He focuses on maintaining a positive work environment and ensuring successful project outcomes from his teams. He builds strong relationships between the superintendents and the general contractor by keeping the lines of communication open and maintaining proper documentation for each project.

CERTIFICATION/TRAINING

Trench Safety

OSHA 30 Hour Excavation Training

Basic First Aid/ CPR

Confined Space Training

RECENT SUBDIVISION EXPERIENCE

Highland Meadows 2B Cassidy

Highland Meadows 3 Cassidy

Highland Meadows 5 and 5A Cassidy

Highland Meadows 6 and 6A Cassidy

> Hallam Preserve Southern Homes



STEVE DAWSON EARTHWORK SUPERINTENDENT

Steve has over 26 years' experience within the site construction industry. He coordinates scheduling of Tucker Paving manpower and equipment to meet the needs of the project as it relates to the earthwork scope.

CERTIFICATION/TRAINING

Trench Safety Basic First Aid/ CPR OSHA 30 Hour Excavation Training Confined Space Training Heavy Equipment Operator

RECENT SUBDIVISION EXPERIENCE

Highland Meadows 2B Cassidy

Highland Meadows 3 Cassidy

Highland Meadows 5 and 5A Cassidy

Highland Meadows 6 and 6A Cassidy

> Hallam Preserve Southern Homes

Company Name	COMPANY OWNEE (Attach additions TUCKET PUVING, INC.	Date_8/13/18			
			No. LOCATED IN		
QUANTITY	DESCRIPTION	CAPACITY	FLORIDA	OTHER	
see attuche	d				
	<u> </u>				
		· · · ·			
· · · · · · · · · · · · · · · · · · ·					
1					

	1		Equipment Log	
Tucker #	Make	Model	ID#	Serial #
Excavator				
CTH-1	Cat	329FLT4	ERL00697	0ERL00697
CTH-2	Cat	329FLT4	ERL00842	0ERL00842
TH-3	Komatsu	PC-490LC-11	E0003537	A41095
TH-4	Komatsu	PC-228USLC-10	E00036804	1845
TH-5	Komatsu	PC-360LC-11	E00035474	A35111
TH-6	John Deere	JD-50		276646
CTH-7	Cat	329FLT4	ERL00698	0ERL00698
TH-8	Komatsu	PC490		35037
TH-9	Komatsu	PC-35		
TH-10	Cat	305.5	E00033473	FLZ01453
TH-11	Cat	305.5	E00035944	FLZ00345
TH-13	Komatsu	PC-360LC-11	E00035277	A35090
TH-14	Cat	311FLRRT4	KCW00219	0KCW00219
TH-15	Cat	311FLRRT4	KCW00197	0KCW00197
TH-16	Cat	320ELRRT4	TFX01275	0TFX01275

TH-17	Komatsu	PC-360LC-11	E00037786	A35470
CTH-18	Cat	329FLT4	ERL00672	0ERL00672
TH-19	Komatsu	PC-360LC-11	E00033765	K64011
TH-20	Cat	336ELHT4	RZA00346	0RZA00346
TH-21	Cat	336ELHT4	RZA00441	0RZA00441
Tucker #	Make	Model	ID#	Serial #
Dozer				
D-1	Komatsu	D51-PXI-22	E00035721	B14234
D-2	Komatsu	D61PXi-23	E00037059	31594
D-3	Komatsu	D61PXi-23	E00037822	31802
D-4	Komatsu	D39PX-24	E00039541	DM6513
D-5	John Deere	650K	89826	1T0650KXCEE256818
D-6	John Deere	650K	89047	1T0650KXPDE253864
D-7	Komatsu	D39	E00039543	DM6608
Tucker #	Make	Model	ID#	Serial #
V. Roller				
VR-1	Hamm	H7I-VIO	E00038945	H2220760

VR-2	Hamm	H7I-VIO	E00037285	H2220447
VR-3	Hamm	H7I-VIO	E00037103	H2220443
VR-4	IR (Flagler)	SD-45D-TF	E0002442	188042
VR-5	Hamm	H7I-VIO	E00037899	H2220126
VR-6	Hamm	H7I-VIO	E00039310	H2220775
VR-8	IR (Flagler)	SD-45D-TF	E00024418	187639
Tucker #	Make	Model	ID#	Serial #
W. Truck				
WT-1	Kenworth	WT2450	M362779	M362779
WT-2	Peterbilt	330B	E00033864	8M759150
WT-3	Kenworth			3539
WT-4	Kenworth			157735
WT-5	Kenworth	WT5000	GJ480852	GJ480852
WT-6	Freightline	WT2450	HHJB3092	HHJB3092
WT-7	Cat	725CWW	TFB00206	0TFB00206
WT-8	Freightline	WT2300	HHHX6044	1FVACXDT0HHHX6044
Tucker #	Make	Model	ID#	Serial #
Loader				

CL-1	Volvo	L110H	EQ0129278	L110H631215	
CL-2	Volvo	L110H	EQ0129300	L110H631173	
CL-3	Volvo	L110H	EQ0129276	L110H631211	
L-4	Komatsu	WA270-7 (Pipe)		A27438	
L-5	Komatsu	WA270-7 (Pipe)			83159
L-6	Komatsu	WA250 (Base)	E00029600		76369
L-7	Komatsu	WA250 (Base)	E00029813		76918
L-8	John Deere	524K	1DW524KZJDE65		85242
L-9	Komatsu	WA380-7 (Pipe)	E00031120	A64428	
L-10	Komatsu	WA270-7 (Pipe)		A27502	
L-11	Komatsu	WA270-8 (Pipe)	E00039228		83161
L-12	Cat	926MQCT4	LTE00292	0LTE00292	
L-13	Komatsu	WA270-7 (Pipe)	E00036515	A27524	
L-14	John Deere	524K	E00034419		47025
L-15	Komatsu	WA270-8	E00039179		83098
L-16	Komatsu	WA270-8	E00040650		83296
L-17	Komatsu	WA270-8			40288

Tucker #	Make	Model	ID#	Serial #
Skid Steer				
SK-2	Cat	279C-2	E00031976	KWB00167
SK-3	Cat	289C2	E00033471	rtd00967
SK-4	Cat	289C-2	E00033474	CMP02179
SK-5	Cat	289C2	E000355562	JMP02813
SK-6	Cat	289D	TAW04966	0TAW04966
SK-7	Cat	289D	TAW04989	0TAW04989
Tucker #	Make	Model	ID#	Serial #
B. Tractor				
BT-1	Ford	3230	E00032618	BD38800
BT-2	Cat	MT335B	E00033771	CR35017
BT-3	Massey			FW662695
BT-4	Laymor (Ca	SM300	34692	34692
BT-5	Laymor (Ca	SM300	35380	35380
BT-6	Laymor (Ca	SM300	35313	35313

BT-7	Kubota	MX5200HST		59323
Tucker #	Make	Model	ID#	Serial #
M. Graders				
GR-1	John Deere	672GP	108048	1DW672GPPGF678524
GR-4	Cat	120H	CAF00661	
GR-5	John Deere	672GP	E00033561	TA0632118
Tucker #	Make	Model	ID#	Serial #
Pavers				
PM-1	Volvo	Mach PF-150		197731
PM-2	Volvo	PF2181		
PM-3	Cat	AP500F	44900127	CATAP500E44900127
Tucker #	Make	Model	ID#	Serial #
DD Roller				
DD-1	Нурас	C330B	E00034094	109B15803668
DD-2	Bomag	BW9AS		11043

DD-3	Hamm	HD+70I-VO	E00038236	H1860122	
DD-4	Hamm	HD+70I-VO	E00039029	H1860292	
DD-5	WEILER	C310-SPLIT DRU	W1101	W1101	
Tucker #	Make	Model	ID#	Serial #	
R.Tire Roll	er				
RT-1	Blawknox	PTC15	E00033564	PTC15KUB-73319	
RT-2	Rosco	TRUPAC 915		41235	
RT-4	Rosco	TRUPAC 915		44640	
Tucker #	Make	Model	ID#	Serial #	
Crushing					
C-1	Kolber-Pior	FT4240CC		412889	
C-2	Pegson	4242SR		420182DDSR	
SC-1	Aztec	GT205S			
SC-2					
S-1				413142	
S-2	MGL	5030		5030249	
Tucker #	Make	Model	ID#	Serial #	

Off Road				
ED-1	Volvo	A25F		80058
ED-2	Volvo	A25F		80059
ED-3	Komatsu	HM400-3	E00030508	3396
ED-4	Komatsu	HM300-3	E00032112	3577
Tucker #	Make	Model	ID#	Serial #
Backhoe				
BH-1	Cat	420F	JWJ01462	0JWJ462
Tucker #	Make	Model	ID#	Serial #
Misc.				
M-1	Terex			190
BB-2	Polaris	Ranger		
GT-1	Kubota			31219
Disc				
TW-2	DR500HT			1R9BE1503FI574731
H-1	AA	H55DSHMR		0BWM02365
501	VACCON	VACCON PD	7157263	GHGZ3452
G-1	CAT	100KW	D4D02557	0E5A01111

STATUS OF CONTRACTS ON HAND (Attach additional sheets if necessary)

Company Name TUCKEY RIVING 81318 INC Date

Company Name <u>WCKY</u> CAVING INC. Date <u>Date</u> contracts which individually do not exceed 3% of total active contracts and in total do not exceed 20% of the active total contracts.

					COMPLETED AMOUNT THIS DATE	со	MPLETION DA	ГЕ
OWNER, LOCATION AND DESCRIPTION OF PROJECT	CURRENT CONTRACT AMOUNT AS PRIME	CURRENT CONTRACT AMOUNT AS SUBCONTRACTOR	CURRENT AMOUNT SUBJECT TO OTHERS	AS PRIME CONTRACTOR	AS SUBCONTRACTOR	ORIGINAL CONTRACT DATE	APPROVED REVISED DATE	CURRENT ESTIMATE DATE
What Disney	\$	\$15,000,000	\$	\$	cc0,003,122	2018		Jan. 2019
Nut Osney	S	5,190,000	\$	S	s 2,000,000	ZOIT		2019
assidy-thylord 4834C	COUPEI'S	s	s	s279,700.00	\$	June 2017 Feb 2017		004 2018 00+ 2018
Bud strung Arians ystate	5895,0W	S	5	\$379,000.00	S	2018		2018
Cossidy Normandy Heights	\$	S	\$	5965,000.	S	2018		2018
10	S	\$	\$	\$	s			
	s	S	\$	S	S			
	\$	S	\$	5	\$			
s.	\$	\$	\$	\$	\$			
	5	\$	\$	\$	S			
	S	\$	\$	\$	s			
		Subtotal Unco	mpleted Work	s1,623,700	CC0 608, W2			
		Total Un	completed Work	on Hand \$ 8	,423,700			

PROJECTS COMPLETED BY PROPOSER IN THE LAST TWO YEARS

Company Name TUCKLY RUVING, INC.

8/13/18 Date_

List all projects completed in the last two years for which the contract value individually exceeded 3% of the Proposer's annual total work completed for the year the project was started. Include in the list projects that were started earlier than two years but were completed within the last two years.

	FINAL CONTRACT	PRIME OR	CLASSIFICATION OF WORK	YEAR STARTED/	OWNER NAME/	NAME & PHONE NUMBER OF OWNER'S REPRESENTATIVE ON THIS
PROJECT NAME LOCATION	AMOUNT 2:14,75.0	<u></u> 5	PERFORMED Site NO L	2015	BYCC	William Harman (407)
Driardo, FL	1,183,605		utilitics she nork utilitics	20151	PCL	Change Barnes (407)303-0059
Perry Horvey full	1,172,908		SiteNUIL	20151	Associates	Durry 1 Salusto
Hollywood Studios Blackbox Griands	1,080,097	3	SHEWDONK- 1Hiltics	2010	Hour Construction	
	673,845	Ð	Stews/L UtilHits	20151	Reed Builders	Bill Reed (3) 201-0525
BVC Corriclor Earhwork	-3711,2820	5	SHEWSIN'LL UNINTES	20151	Brgutvicus	409/296-7105
	51,421	5	Stawork Whilthics	20151	HOASTURION	Tim Melaugulin (407) 244-89 76
Highland Mecdows III Davenpolt, FL	,934,304	4	Stevork.	2014	Cassidy Homes	Renniz Hently (803) 324-3698
Race Trac	3371, 278	S	SHELDORLI Utilities	20101	CO.H. BUSS	Klan Boyking (TTO) 248-2353
Craylord Palms Sitewill	50,004	5	Sitesor Ll Utilitics	20141	D.F. Chase	Justin Singleton
Universal Studios Data	203,416	5	Site or LI Utilities	20141	Hensel phelps	Chris Turohig HOT/856-24000

Prime or Sub' should indicate whether Proposer performed the work as a prime contractor or as a subcontractor. 'Owner Name/Location' should indicate the Owner of the project if the Proposer performed the work as a prime contractor or the general contractor if the Proposer 2

performed the work as a subcontractor. "Name & Phone Number of Owner's Representative on this Project' should list a reference from the business entity listed in the previous column familiar with Proposer's contract performance.

END OF ORGANIZATIONAL INFORMATION FORM

PROJECTS COMPLETED BY PROPOSER IN THE LAST TWO YEARS

Company Name

Tucker Puring, INC.

Date 813118

List all projects completed in the last two years for which the contract value individually exceeded 3% of the Proposer's annual total work completed for the year the project was started. Include in the list projects that were started earlier than two years but were completed within the last two years.

PROJECT NAME/ LOCATION	FINAL CONTRACT AMOUNT	PRIME OR SUB ¹	CLASSIFICATION OF WORK PERFORMED	YFAR STARTED/ COMPLETED	OWNER NAME/ LOCATION ²	NAME & PHONE NUMBER OF OWNER'S REPRESENTATIVE ON THIS PROJECT ³
Tunspot Expansion	1,225,95	5	SHEWWY LI UHINICS	20141	Construction	Kichard Cooney
Tunspot Expansion Orlandos Hallam Preserve Phase	6041581	F	Site Sork	20191	southern Hones	Kije Cluber Grad 1687-2700
And]			
				[
		1				
· · · · · · · · · · · · · · · · · · ·						

⁴Prime or Sub' should indicate whether Proposer performed the work as a prime contractor or as a subcontractor, ⁴Owner Name/Location' should indicate the Owner of the project if the Proposer performed the work as a prime contractor or the general contractor if the Proposer 2

performed the work as a subcontractor. 'Name & Phone Number of Owner's Representative on this Project' should list a reference from the business entity listed in the pravious column familiar with Proposer's contract performance.

END OF ORGANIZATIONAL INFORMATION FORM

LIST OF PROPOSED SUBCONTRACTORS AND MAJOR MATERIALS SUPPLIERS

NAME OF SUBCONTRACTOR	ADDRESS	PROPOSED PROJECT RESPONSIBILITIES	PERCENTAGE OF CONTRACT PRICE	SUBCONTRACTOR'S AUTHORIZED REPRESENTATIVE
WBE Environmental	7.0 BOX 740210 Orung Bity 327179	Erosion Cantrol	204	Chays Cruziuna
	Orlando 32809	construction layout and As-bilt-s	1.5	Jason Jern
Leniversal Engineering	2527 LIGGIC BLVCL.	CMT	1. (Steve Screevic
Resmond o Sod	P.O. BOX 964 Dundee 33038	500	j.]	Delbut Mcgher
Hydrograss .	ISSI GIODAI Ct. Surasota 34240	SEED 3 Mulch	Z.4	Brad Ward
	42000 James L. Renal Plant City 33567	Concrete SUB sidewalk	- 5.6	RODDIC Haywar
Orange Industrial	1925 Hugy 17 92 N. Devenselt 33837	Pipe video 3 deuniny	.08	BOD Barker
Fausnight	910 Charles St.	Pavement Markings	3.29	Mike Bonacci
Nock Concrete	PO JBOX 157 Astatula 34705	Accest Structures	2.1	Brett Claflind
Ferguson	2439 TT St. S.W. Widel Haven 3380	latility Materials	п.З	TOM Smith
Lane construction	3600 CL 547 XXX 12027 33837	Asphelt Materials	4.9	Jack Lovely

II.C

AFFIDAVIT FOR CORPORATION HHR EAST, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

SS

Florida) STATE OF) COUNTY OF)

ann VCCOL (title) Presicient of the TUCKer PUNIAR

INC.

(a corporation described herein) being duly sworn, deposes and says that the statements and answers to the questions of the foregoing experience questionnaire are correct and true as of the date of this affidavit; and, that he/ she understands that intentional inclusion of false, deceptive or fraudulent statements on this application constitutes fraud; and, that the Landowner considers such action on the part of the Proposer to constitute good cause for rejecting Proposer's proposal.

(Officer must also sign here)

CORPORATE SEAL

Sworn to before me this 10 day of ALGINSE, 2018. Notary Public / Expiration Date: Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA

Comm# GG147674 Expires 10/23/2021

(SEAL)

II.D.

SWORN STATEMENT PURSUANT TO SECTION 287.134(2)(a) <u>FLORIDA STATUTES</u>, ON DISCRIMINATION

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1.	This sworn statement is submitted to <u>HHR East, LLC</u>		
		0.1	• • • · · · · · ·

(print name of the public entity)
by Larry D. Tucker 11 President
(print individual's name and title)
for TUCKET PUVILS, INC.
(print name of entity submitting sworn statement)
whose business address is
3545 Lake Alfred Rd Wister Heven, FL 33681

		\sim	-22 CVM
and (if applicable) its Feder	ral Employer Identification 1	Number (FEIN) is	1010101

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement)

- 2. I understand that a "discrimination" or "discriminated" as defined in section 287.134(1)(b), Florida Statutes, means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the determination of liability does not occur until the completion of any appeals to a higher tribunal.
- 3. I understand that "discriminatory vendor list" as defined in section 287.134(1)(c), *Florida Statutes*, means the list required to be kept by the Florida Department of Management Services pursuant to section 287.134(3)(d), *Florida Statutes*.
- 4. I understand that "entity" as defined in section 287.134(1)(e), *Florida Statutes*, means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity.
- 5. I understand that an "affiliate" as defined in Paragraph 287.134(1)(a), Florida Statutes, means:
 - 1. A predecessor or successor of an entity that discriminated; or
 - 2. An entity under the control of any natural person or entity that is active in the management of the entity that discriminated. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one entity of shares constituting a controlling interest in another entity, or a pooling of equipment or income among entities when not for fair market value under an arm's length agreement, shall be a prima facie case that one entity controls another entity
- 6. I understand that, pursuant to section 287.134(2)(a), *Florida Statutes*, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity

II.E.

for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)



Neither the entity submitting this sworn statement, nor any affiliate of the entity, has been placed on the discriminatory vendor list.

·____

The entity submitting this sworn statement, or an affiliate of the entity, appears on the discriminatory vendor list.

IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR/VENDOR EXECUTING THIS AFFIDAVIT TO VERIFY THAT NONE OF THE SUBCONTRACTORS/SUPPLIERS UTILIZED FOR THIS BID/QUOTE HAVE BEEN PLACED ON THE DISCRIMINATORY VENDOR LIST. IN THE EVENT IT IS LATER DISCOVERED THAT A SUBCONTRACTOR/SUPPLIER HAS BEEN PLACED ON THE DISCRIMINATORY VENDOR LIST, THE CONTRACTOR/VENDOR SHALL SUBSTITUTE THE SUBCONTRACTOR/ SUPPLIER WITH ANOTHER WHO HAS NOT PLACED ON THE DISCRIMINATORY VENDOR LIST. ANY COST ASSOCIATED WITH THIS SUBSTITUTION SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR/VENDOR.

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY.

	1.27
	Signature by authorized representative of Proposer
<u> </u>	\bigcirc
State of Horida)
) SS
County of POIL)
The foregoing instrument was a <u>QANU.D. TUCKOC 11</u> , of the to me or who has produced	cknowledged before me this 3 th day of <u>AUGUS</u> , 2018, by ne <u>IUCKER TUNIAG</u> , <u>IUNC</u> , who is personally known as identification.
(SEAL)	Signature of Notary taking acknowledgement
Melissa Woolmer NOTARY PUBLIC	

STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021

SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES, REGARDING SCRUTINIZED COMPANIES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

whose business address is

1.

Pd. Winter Haven Alfred aro

- 2. I understand that, subject to limited exemptions, section 287.185, <u>Florida Statutes</u>, declares a company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with a local governmental entity for goods or services of \$1 million or more if at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, the company (a) is on the Scrutinized Companies that Boycott Israel List, created pursuant to Section 215.4725, <u>Florida Statutes</u>, or is engaged in a boycott of Israel; (b) is 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, <u>Florida Statutes</u>; or (c) is engaged in business operations in Cuba or Syria.
- 3. Based on information and belief, at the time the entity submitting this sworn statement submits its proposal to the HHR East, LLC, neither the entity, nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or is engaged in business operations in Cuba or Syria.
- 4. If awarded the Contract, the entity will immediately notify the HHR East, LLC in writing if either the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on either the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, or is engaged in business operations in Cuba or Syria.

	2
	Signature by authorized representative of Proposer
STATE OF FLORIDA COUNTY OF	
Sworn to (or affirmed) and subscribed before	e me this 3 th day of <u>AlCUS</u> , 2018, by <u>fuline</u> , <u>INC</u> who is personally known to me or
Larry D. Tucker II, of the Tucker who has produced Known	the identification and who did (did not) take an oath.
	Signature of Notary Public taking acknowledgement
My Commission Expires: 102321 (SEAL)	Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021

SWORN STATEMENT ON PUBLIC ENTITY CRIMES PURSUANT TO SECTION 287.133(3)(A), FLORIDA STATUTES HHR EAST, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1.

ьу	Larry	(print individ	er 11	Presid	tent		
for .	Tuckey	faring	INC	_ *			
		(print name of	f entity sul	omitting sworn	statement)		
whose busir	ess address is						
35US		Attred	Rd.	Wixter	Haven,	fL	3388)

(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement

- 2. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), <u>Florida Statutes</u>, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with any agency or political subdivision of any other state or of the United States, including, but not limited to, any bid, proposal, reply, or contract for goods or services, any lease for real property, or any contract for the construction or repair of a public building or public work, involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
- 3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), <u>Florida Statutes</u>, means a finding of guilt or a conviction of a public entity crime, with or without an adjudications of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, nonjury trial, or entry of a please of guilty or nolo contendere.
- 4. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
 - 1. A predecessor or successor of a person convicted of a public entity crime; or
 - 2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

II.G.

5. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

Based on information and belief, the statement which 1 have marked below is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

- V Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.
- The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (attach a copy of the final order)

IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR/VENDOR EXECUTING THIS PUBLIC ENTITY CRIME AFFIDAVIT TO VERIFY THAT NONE OF THE SUBCONTRACTORS/SUPPLIERS UTILIZED FOR THIS BID/QUOTE HAVE BEEN CONVICTED OF A PUBLIC ENTITY CRIME SUBSEQUENT TO JULY 1, 1989. IN THE EVENT IT IS LATER DISCOVERED THAT A SUBCONTRACTOR/SUPPLIER HAS BEEN CONVICTED OF A PUBLIC ENTITY CRIME, THE CONTRACTOR/VENDOR SHALL SUBSTITUTE THE SUBCONTRACTOR/ SUPPLIER WITH ANOTHER WHO HAS NOT RECEIVED A CONVICTION. ANY COST ASSOCIATED WITH THIS SUBSTITUTION SHALL BE THE SOLE RESPONSIBILITY OF THE CONTRACTOR/VENDOR. I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. 1 ALSO UNDERSTAND THAT 1 AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES, FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

	(Signature)
STATE <u>Floridle</u> COUNTY OF <u>POIL</u> The foregoing instrument was signed and acknowledged before me August 2018, by Carty D. Tucker 11	this <u>13tu</u> day of
August 2018, by Carry D. Tucker II who produced <u>Person cally</u> CADAN (Type of Identification and Number) take an oath.	as identification, and who (did) (did not)
Notary Public Signature	
Maissa WOOlmer Printed Name of Notary	Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021
Notary Commission Number/Expiration	

TRENCH SAFETY ACT COMPLIANCE STATEMENT HHR EAST, LLC **CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA**

INSTRUCTIONS

Because trench excavations on this Project are expected to be in excess of 5 feet, Chapter 90-96 of the Laws of Florida requires that construction on the Project comply with Occupational Safety and Health Administration Standard 29 C.F.R.s. 1926.650 Subpart P. All Proposers are required to execute this Compliance Statement and the Compliance Cost Statement. The costs for complying with the Trench Safety Act must be incorporated into the Project's Proposal.

This form must be certified in the presence of a notary public or other officer authorized to administer oaths.

CERTIFICATION

- 1. I understand that Chapter 90.96 of the Laws of Florida (The Trench Safety Act) requires me to comply with OSHA Standard 29 C.F.R.s. 1926.650 Subpart P. I will comply with The Trench Safety Act, and I will design and provide trench safety systems at all trench excavations in excess of five feet in depth for this project.
- 2. The estimated cost imposed by compliance with The Trench Safety Act will be: Twelve thousand two hundred eighty two Dollars (Written) \$<u>17,282</u> (Figures).
- 3. The amount listed above has been included within the Proposal.

Expires 10/23/2021

Dated this 13^{th} day of Au	<u>1945</u> , 2018.
Proposer: TJCKEV Rivile	INC
U	By: Title: PrrSideut
STATE OF <u>Florida</u> COUNTY OF <u>POIL</u>	
The foregoing instrument was acknowledge 2018, by <u>GWNJD: TLOKEV II</u> of <u>TUNEO</u> produced KOODN	d before me this 3 th day of <u>August</u> , <u>kul Aq</u> , who is personally known to me or who has as identification, and did [] or did not [] take
the oath.	Nalesiure
Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021	Notary Public, State of Florida Print Name: <u>UPLSA WDDMCT</u> Commission No.: <u>GG147070</u> My Commission Expires: <u>102321</u>

TRENCH SAFETY ACT COMPLIANCE COST STATEMENT HHR East, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

INSTRUCTIONS

Because trench excavations on this Project are expected to be in excess of 5 feet, Chapter 90-96 of the Laws of Florida requires that all Proposers submit a statement of the costs of complying with the Trench Safety Act. Said costs must also be incorporated into the Proposal.

This form must be certified in the presence of a notary public or other officer authorized to administer oaths.

By executing this statement, proposer acknowledges that included in the various items of its Proposal and in the total Proposal price are costs for complying with the Florida Trench Safety Act (90-96, Laws of Florida) effective October 1, 1990. The Proposer further identifies the costs as follows:

Type of Trench Safety Mechanism	Quantity	Unit Cost ¹	Item Total Cost
Proper benching / sloping	12,282	1.00	12,28z. 2
<u> </u>			
		Project Total	
		Troject Total	
Dated this 13th day of <u>Au</u> Proposer: <u>Tucker Puring</u>	Igust	, 2018.	
Proposer: Tucker Purly,	INC.		
J	By:	DI	
STATE OF <u>Flyida</u>	Title: <u>Prési</u>	<u>nunt</u>	
	12	th 1	i
The foregoing instrument was acknowledged	before me this K	day of <u>Au</u>	gust ,
2018, by Carry O. TUCKEN Not TUCKEN	(100, re, who is	personally know	n to me or who has
produced <u>SENDERS</u>	as_identifica	tion, and did []	or did not [] take
the oath. Melissa Woolmer NOTARY PUBLIC STATE OF FLORIDA Comm# GG147674 Expires 10/23/2021	Notary Public, Print Name: <u>N</u> Commission N My Commissio	0. GG1471	01Mer 074 23121

¹ Use cost per linear square foot of trench excavation used and cost per square foot of shoring used.

AFFIDAVIT OF NON-COLLUSION HHR EAST, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

STATE OF FLORIDA COUNTY OF <u>POIL</u>

1, <u>Lawy D. Tweef</u> <u>11</u>, do hereby certify that I have not, either directly or indirectly, participated in collusion or proposal rigging. Affiant is a <u>RTSCCCut</u> (officer or principal) in the firm of <u>TCUC</u> <u>100</u>, and authorized to make this affidavit on behalf of the same. I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated this 13th day of AUCUSE, 2018.

Signature by authorized representative of Proposer

STATE OF FLORIDA COUNTY OF POIL

Sworn to (or affirmed) and subscribed	before me this	13th day	y of <u>Au</u>	gu st Who i	, 2018, by s personally
known to me or who has produced <u>Known</u> take an oath.					did (did not)
	Allele	sin	ler		

Signature of Notary Public taking acknowledgement

My Commission Expires: 102321

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(SEAL)

OSMY AD.	Melissa Woolmer
	NOTARY PUBLIC
	STATE OF FLORIDA
	Comm# GG147674
WALE ISTO	Expires 10/23/2021

MINIMUM CONTRACTOR QUALIFICATIONS STATEMENT HHR EAST, LLC CITRUS POINTE AND AMENITY CENTER INFRASTRUCTURE IMPROVEMENTS CITY OF DAVENPORT, FLORIDA

TUCKER KWING, INC. Contractor: Tickles Contact: ake AH el Harran. Address: 🤇 DZ Fax (10)294-1007 Email: Chipatucker Paving. am Phones &

Typical Work Description: Construction Services will include site work, earthwork, utilities, stormwater, and roadways, and all work associated with these types of activities.

Owner: HHR East, LLC

<u>Minimum Qualifications:</u> Proposers for the HHR East, LLC projects shall have the following minimum qualifications:

- (1) Applicant will have constructed three (3) projects similar in quality and scope a minimum of \$1,000,000 in total volume construction cost over the last five (5) years.
- (2) Applicant shall be required to provide evidence of \$1,000,000 minimum bonding capacity from a Surety Company acceptable to the Landowner.
- (3) Applicant is authorized to do business in the State of Florida.
- (4) Applicant is a licensed general contractor in the State of Florida and registered in Polk County.

The Landowner reserves the right to waive any of the minimum qualifications or to waive any informalities or irregularities in the qualifications as deemed to be in the best interests of the Landowner.

<u>Certification:</u> I hereby certify that the applicant meets or exceeds the minimum qualifications identified above. I further acknowledges that despite meeting the minimum qualifications above, the HHR East, LLC has the right to deny, suspend or revoke a prospective bidder's qualification for bidding on the HHR East, LLC projects based upon the Determination of Qualified Prospective Bidder information contained herein.

Gaul

II.J.

SECTION II(K)

SUMMARY OF COSTS AND SCHEDULE

II.K



3545 Lake Alfred Road Winter Haven, FL 33881 Phone: 863-299-2262 Fax: 863-294-1007 www.tuckerpaving.com

To: Address:	Cassidy Homes Winter Haven, FL	Contact: Rennie Heath Phone: Fax:
Project Name:	Citrus Pointe Subdivision - CONTRACT PROPOSAL	Bid Number: 18 - 785
Project Location:	Holly Hill Road, Davenport, FL	Bid Date: 9/10/2018

Item Description	Estimated Quantity	Unit	Unit Price	Total Price
GENERAL CONDITIONS				
NPDES Compliance	1.00	LS	\$5,573.53	\$5,573.53
Mobilization	1.00	LS	\$13,219.44	\$13,219.44
Payment & Performance Bond	1.00	LS	\$33,301.69	\$33,301.69
Maintenance Of Traffic	1.00	LS	\$1,255.87	\$1,255.87
Construction Entrance	1.00	EACH	\$3,961.56	\$3,961.56
Type III Silt Fence	4,566.00	LF	\$1.27	\$5,798.82
4' Sidewalk - 4" 3000 PSI Concrete	300.00	LF	\$19.19	\$5,757.00
ADA Curb Ramp	12.00	EACH	\$846.66	\$10,159.92
Construction Layout	1.00	LS	\$23,699.36	\$23,699.36
Construction As-Builts	1.00	LS	\$14,696.57	\$14,696.57
Geotect (CMT)	1.00	LS	\$29,491.91	\$29,491.91
	Total Price for above GENERAL CO	NDITIONS	Items:	\$146,915.67
EARTHWORK				
Excavation & Grading	1.00	LS	\$131,234.18	\$131,234.18
Import Fill	9,648.00	CY	\$9.07	\$87,507.36
Bahia Sod @ 2' Back Of Curb	1,538.00		\$2.54	\$3,906.52
Bahia Sod @ Pond Slopes & Swales	7,713.00		\$2.54	\$19,591.02
Bahia Sod (MISC.)	930.00		\$2.54	\$2,362.20
Seed & Mulch Pond Bottoms	205.00	SY	\$0.51	\$104.55
Seed & Mulch @ ROW	6,920.00	SY	\$0.51	\$3,529.20
Seed & Mulch Lots	76,602.00		\$0.51	\$39,067.02
Site Final Grading	1.00		\$30,480.88	\$30,480.88
Site (individually	Total Price for above EA	RTHWORK	Items:	\$317,782.93
PAVING				
1.5" Type S-1 Recycled Asphalt Pavement	10,177.00	SY	\$10.71	\$108,995.67
6" Crushed Concrete Base (LBR 125)	10,177.00		\$10.42	\$106,044.34
10" Stabilized Subgrade (LBR 40)	12,591.00		\$5.14	\$64,717.74
	320.00		\$21.17	\$6,774.40
Valley Curb	6,921.00		\$12.00	\$83,052.00
Miami Curb) LS	\$9,649.07	\$9,649.07
Traffic Signage & Striping	Total Price for abo			\$379,233.22
				The second second
STORM SEWER			422.60	\$14,841.26
18" HDPE Pipe	454.00	JLF	\$32.69	\$14,041.20
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Item Description	Estimated Quantity	Unit	Unit Price	Total Price
24" HDPE Pipe	211.00	LF	\$47.11	\$9,940.21
Type P-5 Curb Inlet	8.00	EACH	\$3,456.21	\$27,649.68
Type P-6 Curb Inlet	5.00	EACH	\$4,281.07	\$21,405.35
Type P Storm Manhole	2.00	EACH	\$4,079.12	\$8,158.24
Type C Inlet	2.00	EACH	\$1,650.65	\$3,301.30
Type V Inlet	1.00	EACH	\$3,645.95	\$3,645.95
18" HDPE MES	1.00	EACH	\$804.85	\$804.85
24" HDPE MES	2.00	EACH	\$825.24	\$1,650.48
Rip Rap Area @ MES (5'x10')	3.00	EACH	\$676.04	\$2,028.12
18" RCP Pipe	1,410.00	LF	\$41.39	\$58,359.90
24" RCP Pipe	137.00	LF	\$55.22	\$7,565.14
Clean And Video Storm Line Per Polk County Specs	1.00	LS	\$12,778.89	\$12,778.89
	Total Price for above STOR	M SEWER	Items:	\$172,129.37
				
SANITARY SEWER				174 040
8" DR26 Sanitary Pipe	3,847.00		\$19.85	\$76,362.95
4' Ø Sanitary Manhole 0-6'		EACH	\$2,589.11	\$15,534.66
4' Ø Sanitary Manhole 6-8'		EACH	\$2,987.72	\$8,963.16
4' Ø Sanitary Manhole 8-10'		EACH	\$3,241.08	\$6,482.16
Single Sanitary Service (Polk County)		EACH	\$682.72	\$16,385.28
Double Sanitary Service (Polk County)	33.00		\$1,085.32	\$35,815.56
Private Lift Staion	1.00		\$169,669.10	\$169,669.10
4" DR18 Forcemain Green Pipe	1,426.00		\$14.35	\$20,463.10
TV And Air Testing - Gravity Line/Manholes	1.00		\$23,882.81	\$23,882.81
Forcemain Connection		EACH	\$5,278.41	\$5,278.41
Pressure Testing - Forcemain	1.00		\$970.13	\$970.13
5' Ø Sanitary Manhole 10-12' Lined		EACH	\$9,409.88	\$9,409.88
8" MJ Gate Valve W/Box/Tag		EACH	\$1,489.79	\$1,489.79
4" MJ 45 Bend - P401 Lined		EACH	\$377.47	\$2,642.29
Air Release Valve		EACH	\$5,940.72	\$5,940.72
Т	otal Price for above SANITA	RY SEWER	Items:	\$399,290.00
WATER AND FIRE DISTIBUTION				
12" X 6" Wet Tap W/Valve/Box/Tag	1.00	EACH	\$3,993.64	\$3,993.64
6" DR18 Water Pipe	4,416.00	LF	\$17.41	\$76,882.56
6" MJ Gate Valve W/Box/Tag	13.00	EACH	\$1,134.37	\$14,746.81
6" MJ 45 Bend	14.00	EACH	\$352.08	\$4,929.12
6" MJ 90 Bend	1.00	EACH	\$368.35	\$368.35
6" MJ Long Sleeve	1.00	EACH	\$360.50	\$360.50
6" MJ Tee	9.00	EACH	\$479.18	\$4,312.62
Fire Hydrant Assembly	4.00	EACH	\$4,479.35	\$17,917.40
Single Water Short Service (Polk County)	11.00	EACH	\$570.99	\$6,280.89
Single Water Long Service (Polk County)		EACH	\$601.32	\$4,810.56
Double Water Short Service (Polk County)	22.00	EACH	\$1,166.35	\$25,659.70
		EACH	\$1,227.78	\$17,188.92
Double Water Long Service (Polk County)		15	\$2,179.27	\$2,179.27
	1.00	LJ		
1" Lift Station Service W/Backflow & Hose Bib		EACH	\$419.93	\$3,359.44
1" Lift Station Service W/Backflow & Hose Bib Sample Point		EACH	\$419.93 \$1,693.32	
1" Lift Station Service W/Backflow & Hose Bib	8.00	each Ls	•	\$3,359.44 \$1,693.32 \$7,690.48
1" Lift Station Service W/Backflow & Hose Bib Sample Point Poly Pig Water Main	8.00 1.00	EACH LS LS	\$1,693.32	\$1,693.32

OFFSITE - HOLLY HILL WIDENING

Item Description	Estimated Quantity	Unit	Unit Price	Total Price
Demolition & Sawcut Existing Asphalt	1.00	LS	\$8,999.97	\$8,999.97
1" Type SP 9.5 Recycled Asphalt Pavement	2,058.00	SY	\$7.90	\$16,258.20
1.5" Type SP 12.5 Recycled Asphalt Pavement	850.00	SY	\$10.71	\$9,103.50
13" Crushed Concrete Base (LBR 100)	935.00	SY	\$26.73	\$24,992.55
8" Stabilized Shoulder (LBR 40)	180.00	SY	\$10.89	\$1,960.20
5' Sidewalk - 4" 3000 PSI Concrete	580.00	LF	\$23.29	\$13,508.20
ADA Curb Ramp	4.00	EACH	\$846.66	\$3,386.64
Bahia Sod	1,429.00	SY	\$2.41	\$3,443.89
Traffic Signage & Striping	1.00	LS	\$7,518.70	\$7,518.70
Earthwork	1.00	LS	\$12,417.65	\$12,417.65
Maintenance Of Traffic - Offsite	1.00	LS	\$19,812.00	\$19,812.00
Mobilization	1.00	LS	\$352.77	\$352.77
F-Curb	246.00	LF	\$18.35	\$4,514.10
18" RCP Pipe	94.00	LF	\$41.39	\$3,890.66
Type D Iniet	2.00	EACH	\$2,159.78	\$4,319.56
Total Price for above OF	FSITE - HOLLY HILL V	VIDENIN	IG Items:	\$134,478.59
PROJECT DISCOUNT				
PROJECT DISCOUNT	1.00	LS	(\$19,000.00)	(\$19,000.00)
Total Pric	e for above PROJECT I	DISCOU	NT Items:	(\$19,000.00)
	Το	tal Bid	Price:	\$1,727,972.64
Notes: • BID NOTES: **We have included Video Inspection of Storm Pipe per Pol-	County Specs.			
Not Included in Proposal:				

- Permits
- Landscaping & Irrigation
- Retaining Walls, Masonry Walls, Footers, And Excavation/Backfill Of Footers
- Asbestos Removal .
- .
- .
- .
- .
- Asbestos Removal Installation/Relocation/Repair Of Fence & Gates Relocation/Removal/Repair Of Existing Or Unknown Utilities Utility Sleeves/Conduits Relocation/Removal/Repair Of Power Poles Or Guy Wires Excavation/Backfill Of Building Foundation And/Or Footers Removal Of Muck/Contaminated/Unsuitable Soils Or Materials .
- Over Excavation .
- Materials/Work/Services not indicated or listed. .

ACCEPTED: The above prices, specifications and conditions are satisfactory and hereby accepted.	CONFIRMED: Tucker Paving, Inc.		
Buyer:			
Signature:	Authorized Signature:		
Date of Acceptance:	Estimator: Rick Allen (863) 299-2262 rick@tuckerpaving.com		



3545 Lake Alfred Road Winter Haven, FL 33881 Phone: 863-299-2262 Fax: 863-294-1007 www.tuckerpaving.com

То:	Cassidy Homes	Contact: Rennie Heath
Address:	Winter Haven, FL	Phone:
		Fax:
Project Name:	Citrus Pointe Amenity Center - CONTRACT PROPOSAL	Bid Number: 18 - 817
Project Location:	Holly Hill Road, Davenport, FL	Bid Date: 9/10/2018

Item Description	Estimated Quantity	Unit	Unit Price	Total Price
GENERAL CONDITIONS				
NPDES Compliance	1.00	LS	\$847.37	\$847.37
Mobilization	1.00	LS	\$2,351.18	\$2,351.18
Payment & Performance Bond	1.00	LS	\$7,213.33	\$7,213.33
5' Sidewalk - 4" 3000 PSI Concrete	495.00	LF	\$24.01	\$11,884.95
ADA Curb Ramp	2.00	EACH	\$847.37	\$1,694.74
Construction Layout	1.00	LS	\$8,304.16	\$8,304.16
Construction As-Builts	1.00	LS	\$3,763.70	\$3,763.70
Geotect (CMT)	1.00	LS	\$6,913.07	\$6,913.07
8' Sidewalk - 4" 3000 PSI Concrete	79.00	LF	\$38,41	\$3,034.39
8' Sidewalk - 4" 3000 PSI Concrete W/Thickened Edge	61,00	LF	\$53.24	\$3,247.64
	Total Price for above GENERAL CO	NDITIONS	Items:	\$49,254.53
EARTHWORK				
Excavation & Grading	1.00	LS	\$15,534.99	\$15,534.99
Bahia Sod @ 2' Back Of Curb	286.00		\$2.54	\$726.44
Bahia Sod @ Pond Slopes & Swales	1,476.00	SY	\$2.54	\$3,749.04
Seed & Mulch Pond Bottoms	475.00		\$0.51	\$242.25
Seed & Mulch @ ROW	1,286.00		\$0.51	\$655.86
Seed & Mulch Disturbed Areas	9,680.00	SY	\$0.51	\$4,936.80
Site Final Grading	1.00	LS	\$4,607.82	\$4,607.82
	Total Price for above EA	RTHWORK	Items:	\$30,453.20
PAVING				
1.5" Type S-1 Recycled Asphalt Pavement	2,559.00		\$10.72	\$27,432.48
6" Crushed Concrete Base (LBR 125)	2,559.00	SY	\$10.42	\$26,664.78
10" Stabilized Subgrade (LBR 40)	2,991.00		\$5.14	\$15,373.74
Miami Curb	915.00		\$12.00	\$10,980.00
2' Drop Curb	60.00	LF	\$21.18	\$1,270.80
Vertical Curb	372.00	LF	\$16.95	\$6,305.40
Traffic Signage & Striping	1.00) LS	\$2,006.36	\$2,006.36
	Total Price for abo	ve PAVING	i Items:	\$90,033.56
STORM SEWER				
18" HDPE Pipe	120.00) LF	\$31.72	\$3,806.40
24" N-12 Storm Pipe	35.00) LF	\$50.95	\$1,783.25
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Item Description	Estimated Quantity	Unit	Unit Price	Total Price
18" N-12 Storm Pipe	336.00	LF	\$36.09	\$12,126.24
Type P-5 Curb Inlet	2.00	EACH	\$3,452.38	\$6,904.76
Type C Inlet	4.00	EACH	\$1,733.43	\$6,933.72
18" HDPE MES	1.00	EACH	\$805.53	\$805.53
24" HDPE MES	1.00	EACH	\$825.93	\$825.93
Rip Rap Area @ MES (5'x10')	2.00	EACH	\$676.60	\$1,353.20
2' X 3' Concrete Storm Pad	1.00	EACH	\$635.52	\$635.52
Clean And Video Storm Line Per Polk County Specs	1,00	LS	\$2,665.66	\$2,665.66
	Total Price for above STOF	RM SEWER	Items:	\$37,840.21
SANITARY SEWER				
8" DR26 Sanitary Pipe	380.00	LF	\$19.86	\$7,546.80
4' Ø Sanitary Manhole 0-6'	2.00	EACH	\$2,591.27	\$5,182.54
Single Sanitary Service (Polk County)	5.00	EACH	\$683.29	\$3,416.45
Double Sanitary Service (Polk County)	3.00	EACH	\$1,086.22	\$3,258.66
TV And Air Testing - Gravity Line/Manholes	1.00	LS	\$4,921.06	\$4,921.06
	Total Price for above SANITA	RY SEWER	Items:	\$24,325.51
WATER AND FIRE DISTIBUTION				
8" X 6" Wet Tap W/Valve/Box/Tag	1.00	EACH	\$3,690.91	\$3,690.91
6" DR18 Water Pipe	502.00	LF	\$17.60	\$8,835.20
6" MJ Gate Valve W/Box/Tag	2.00	EACH	\$1,135.31	\$2,270.62
6" MJ 45 Bend	2.00	EACH	\$352.37	\$704.74
6" X 2" Saddle Tee	1.00	EACH	\$274.76	\$274.76
6" MJ Tee	1.00	EACH	\$479.58	\$479.58
Fire Hydrant Assembly	1.00	EACH	\$4,483.09	\$4,483.09
Single Water Long Service (Polk County)	2.00	EACH	\$601.81	\$1,203.62
Double Water Short Service (Polk County)	4.00	EACH	\$1,167.32	\$4,669.28
Testing And Bactees	1.00	LS	\$2,383.21	\$2,383.21
2" SCH 40 Pipe/Fittings	66.00) LF	\$18.77	\$1,238.82
Total Price for	above WATER AND FIRE DIS	TIBUTION	Items:	\$30,233.83

Total Bid Price: \$262,140.84

Notes:

• BID NOTES:

**We have included Video Inspection of Storm Pipe per Polk County Specs.

Not Included in Proposal:

- . Permits
- . Landscaping & Irrigation
- Retaining Walls, Masonry Walls, Footers, And Excavation/Backfill Of Footers
- Asbestos Removal .
- .
- Installation/Relocation/Repair Of Fence & Gates Relocation/Removal/Repair Of Existing Or Unknown Utilities .
- Utility Sleeves/Conduits
- .
- •
- Relocation/Removal/Repair Of Power Poles Or Guy Wires Excavation/Backfill Of Building Foundation And/Or Footers Removal Of Muck/Contaminated/Unsuitable Soils Or Materials •
- Over Excavation .
- Materials/Work/Services not indicated or listed. .

Holly Hill Road East Community Development District

Resolution 2019-02

RESOLUTION 2019-02

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE HOLLY DEVELOPMENT DISTRICT EAST COMMUNITY HILL ROAD DISTRICT ENGINEER, OR ANOTHER AUTHORIZING THE INDIVIDUAL DESIGNATED BY THE BOARD OF SUPERVISORS, TO ACT AS THE DISTRICT'S PURCHASING AGENT FOR THE PURPOSE OF PROCURING, ACCEPTING, AND MAINTAINING ANY AND ALL THE **NECESSARY** FOR CONSTRUCTION MATERIALS MAINTENANCE OR CONSTRUCTION, INSTALLATION, **DISTRICT'S INFRASTRUCTURE COMPLETION** OF THE IMPROVEMENTS AS PROVIDED IN THE DISTRICT'S ADOPTED IMPROVEMENT PLAN; PROVIDING FOR THE APPROVAL OF A PROVIDING FOR PROCEDURAL **AUTHORIZATION;** WORK OF **MATERIALS**; REQUIREMENTS FOR THE PURCHASE APPROVING THE FORM OF A PURCHASE REQUISITION REQUEST; APPROVING THE FORM OF A PURCHASE ORDER; APPROVING THE FORM OF A CERTIFICATE OF ENTITLEMENT; AUTHORIZING THE PROVIDING Α SEVERABILITY INSURANCE; PURCHASE OF CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Holly Hill Road East Community Development District (the "District") is a local unit of special-purpose government created and existing pursuant to Chapter 190, *Florida Statutes*; and

WHEREAS, Chapter 190, *Florida Statutes*, authorizes the District to construct, install, operate and/or maintain systems and facilities for certain basic infrastructure; and

WHEREAS, the District Board of Supervisors, upon recommendation of the District Engineer, has adopted an improvement plan for the construction and installation of certain infrastructure improvements within the District (the "Improvements"); and

WHEREAS, the District has or will enter into various construction contracts for the construction and installation of the Improvements (the "Construction Contracts"); and

WHEREAS, the Construction Contracts allow, or will be amended to allow, for the direct purchase by the District of certain construction materials necessary for those contracts; and

WHEREAS, the District has determined that such direct purchase of construction materials will provide a significant construction cost reduction that is in the best interest of the District; and

WHEREAS, the District desires to have a District representative who is familiar with the project and who is knowledgeable in the area of procuring and handling construction materials act as its representative.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT:

SECTION 1. The District Engineer, the District Manager or another individual as shall be appointed by the Board ("Purchasing Agent") shall have the full authority of the District to issue purchase orders or enter into purchase agreements on behalf of the District at such times and intervals as it determines necessary for the timely receipt of construction materials required by the Contractor for the prosecution of the construction project.

SECTION 2. The Purchasing Agent shall purchase on behalf of the District only those materials identified in the Construction Contracts and in amounts not to exceed the cost amount contained therein and as included in the Construction Contracts.

SECTION 3. The Purchasing Agent shall be authorized to purchase on behalf of the District any additional construction materials that are identified in a schedule of values associated with any change order(s) to the Construction Contracts or that of any subcontractor to the Contractor which is approved by the District.

SECTION 4. Should the District Engineer act as the Purchasing Agent for any given Construction Contract, a work authorization of the District Engineer, a form of which is attached hereto as **Exhibit A**, is hereby approved and the District Engineer shall be paid such reasonable fees, costs and expenses, related to its actions as the District's Purchasing Agent as provided for in the District Engineer's agreement with the District.

SECTION 5. The Purchasing Agent is further authorized to take any other administrative actions that are consistent with his/her duties as the District's Purchasing Agent, including but not limited to, negotiating for lower prices on materials from other suppliers, arranging for the storage, delivery, and protection of purchased materials, and sending and receiving notices and releases as are required by law.

SECTION 6. The District Manager is hereby authorized to purchase Builders All Risk Insurance on behalf of the District and with the District as the named insured in such amounts as are necessary to cover the estimated costs of the construction materials pursuant to the Construction Contract.

SECTION 7. The procurement procedures and its exhibits, attached hereto as **Composite Exhibit B** and incorporated herein by reference, are hereby approved and shall be used by the Purchasing Agent for the purchase of construction materials on behalf of the District.

SECTION 8. If any provision of this Resolution is held to be illegal or invalid, the other provisions shall remain in full force and effect.

SECTION 9. This Resolution shall become effective upon its passage and shall remain in effect unless rescinded or repealed.

PASSED AND ADOPTED this _____ day of ______, 2018.

ATTEST:

HOLLY HILL ROAD EAST COMMUNITY DEVELOPMENT DISTRICT

By:_____ Secretary/Assistant Secretary

By:_____ Chairman / Vice Chairman

EXHIBIT A

Work Authorization

______, _____

Board of Supervisors Holly Hill Road East Community Development District

Subject: Work Authorization Number _____ Holly Hill Road East Community Development District

Dear ____:

Dennis Wood Engineering, LLC ("Engineer") is pleased to submit this work authorization to provide engineering services for the Holly Hill Road East Community Development District. We will provide these services pursuant to our current agreement dated _____, 2018 ("Engineering Agreement") as follows:

I. Scope of Work

Engineer will act as Purchasing Agent for the District with respect to the direct purchase of construction materials for the District's Improvements in accordance with the procurement procedures adopted by the Board of Supervisors.

II. Compensation

Engineer will be compensated for this work at the hourly rates established pursuant to the Engineering Agreement.

III. Other Direct Costs

Other direct costs include items such as printing, drawings, travel, deliveries, etc., pursuant to the Engineering Agreement.

Work Authorization Page 2

Engineer hereby represents it understands and will abide by all terms of the District's Procurement Procedures for Owner Purchased Material. In preparing and executing any documentation for purposes of ordering or purchasing materials in the name of and on behalf of the District, the Engineer will affirm that the vendor supplying the Owner Purchased Materials is not also the installer of the Owner Purchased Materials, and further, will affirm that the installer of the Owner Purchased Materials did not manufacture, fabricate or furnish the Owner Purchased Materials.

This proposal, together with the Engineering Agreement, represents the entire understanding between the Holly Hill Road East Community Development District and GPI with regard to the referenced work authorization. If you wish to accept this work authorization, please sign both copies where indicated, and return one complete copy to our office. Upon receipt, we will promptly schedule our services.

Sincerely,

Dennis Wood, P.E. Dennis Wood Engineering, LLC, President

APPROVED AND ACCEPTED

By:

Authorized Representative of Holly Hill Road East Community Development District

Date:

Composite Exhibit B

PROCUREMENT PROCEDURES FOR OWNER PURCHASED MATERIAL

1. <u>Purchase Requisition Request Forms</u>. At least ten calendar days prior to CONTRACTOR ordering construction materials, CONTRACTOR shall prepare and forward to OWNER a separate Purchasing Requisition Request Form for each supplier in the form attached hereto as **Attachment** 1, specifically identifying the construction materials which CONTRACTOR plans to order from each supplier so that OWNER may, in its sole discretion, elect to purchase directly such construction materials.

2. <u>Purchase Orders</u>. After receipt of the Purchasing Requisition Request Form, the OWNER shall prepare Purchase Orders in the form attached hereto as **Attachment 2**, for construction materials which the OWNER wishes to purchase directly.

Purchase Orders shall require that the supplier provide required shipping and handling insurance. Purchase Orders shall also require the delivery of the Owner Purchased Materials on the delivery dates provided by the CONTRACTOR in the Purchasing Requisition Request Form. Pursuant to the Purchase Order, the supplier will provide the CONTRACTOR the required quantities of construction material at the price established in the supplier's quote less any associated sales tax.

3. <u>Certificate of Entitlement</u>. The OWNER shall execute a separate Certificate of Entitlement for each Purchase Order in the form attached hereto as **Attachment 3**, and furnish a copy of same to the supplier and to the CONTRACTOR in accordance with section 4. Each Certificate of Entitlement must have attached thereto the corresponding Purchase Order.

Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties and interest determined to be due.

Each Certificate of Entitlement shall affirm that (1) the attached Purchase Order is being issued directly to the vendor supplying the tangible personal property the CONTRACTOR will use in the identified public works; (2) the vendor's invoice will be issued directly to the governmental entity; (3) payment of the vendor's invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

4. <u>Transmission of Certificate of Entitlement and Attached Purchase Order</u>. At least two calendar days prior to CONTRACTOR placing OWNER'S order for the construction materials, OWNER shall forward each Certificate of Entitlement, together with the attached Purchase Order, to CONTRACTOR and to supplier. Promptly upon receipt of the Owner Purchased Materials specified in each Purchase Order, CONTRACTOR shall verify the purchase of the Owner

Purchased Materials in accordance with the terms of the Purchase Order and in a manner to assure timely delivery of the Owner Purchased Materials.

5. <u>Notice of Reduction in Contract Price</u>. On or about the last business day of each month, OWNER shall deliver to the CONTRACTOR a Notice of Reduction in Contract Price (hereinafter "Notice"). Each Notice shall list all Owner Purchased Materials for the respective month and the total price for all such construction materials, plus all sales taxes which would have been associated with such construction materials had the CONTRACTOR purchased the construction materials. Each Notice may also include the total price and sales tax (had CONTRACTOR purchased) for any previously purchased Owner Purchased Materials which for any reason were not previously deducted from the contract price. The contract price will be reduced automatically and as a ministerial task by the amount set forth in each Notice. Each Notice will also reflect the amended contract balance reflecting the deductions taken in said Notice.

The intent of this provision is to cause the contract price to be reduced automatically by the amount OWNER pays for Owner Purchased Materials plus the amount of applicable sales tax that would have been paid for such construction materials, had the CONTRACTOR or any other non-tax exempt entity purchased the construction materials. All savings of sales taxes shall accrue solely to the benefit of OWNER, and CONTRACTOR shall not benefit whatsoever from savings of any such taxes.

6. <u>Payment for Owner Purchased Materials</u>. In order to arrange for the prompt payment to suppliers, the CONTRACTOR shall provide to the OWNER a list indicating on behalf of the owner of the Owner Purchased Materials within 15 days of receipt of said Owner Purchased Materials. The list shall include a copy of the applicable Purchase Orders, invoices, delivery tickets, written acceptance of the delivered items, and such other documentation as may be reasonably required by the OWNER. Upon receipt of the appropriate documentation, the OWNER shall prepare a check drawn to the supplier based upon the receipt of data provided. OWNER will make payment to each supplier. The CONTRACTOR agrees to assist the OWNER to immediately obtain appropriate partial or final release of waivers.

OWNER shall be responsible for the full payment of all valid and due invoices for Owner Purchased Materials and shall not be entitled to retain the standard ten percent amount of the progress payment due to the CONTRACTOR as is otherwise provided for in the contract documents.

<u>CONTRACTOR</u> SHALL AFFIRM THAT THE VENDOR SUPPLYING THE OWNER PURCHASED MATERIALS IS NOT ALSO THE INSTALLER OF THE OWNER PURCHASED MATERIALS. <u>CONTRACTOR</u> SHALL FURTHER AFFIRM THAT THE INSTALLER OF THE OWNER PURCHASED MATERIALS DID NOT MANUFACTURE, FABRICATE OR FURNISH THE OWNER PURCHASED MATERIALS.

7. <u>CONTRACTOR Responsibilities</u>. CONTRACTOR shall be fully responsible for all matters relating to ordering, storing, protecting, receipt, and handling for all construction materials including Owner Purchased Materials, in accordance with these procedures including, but not limited to, verifying correct quantities, verifying documents of orders in a timely manner,

coordinating purchases, providing and obtaining all warranties and guarantees required by the contract documents, inspection and acceptance on behalf of the owner of the construction materials at the time of delivery, and loss or damage to the construction materials following acceptance of construction materials, due to the negligence of the CONTRACTOR. CONTRACTOR shall serve as bailee with respect to such Owner Purchased Materials. The CONTRACTOR shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the CONTRACTOR for the construction materials furnished including Owner Purchased Materials. The CONTRACTOR shall provide all services required for the unloading, handling and storage of construction materials through installation including Owner Purchased Materials. The CONTRACTOR agrees to indemnify and hold harmless the OWNER from any and all claims of whatever nature resulting from non-payment for Owner Purchased Materials arising from CONTRACTOR actions.

7.1 Inspection and Documentation. As Owner Purchased Materials are delivered to the job site, CONTRACTOR shall visually inspect all shipments from the suppliers, and approve the vendor's invoice for construction materials delivered. The CONTRACTOR shall assure that each delivery of Owner Purchased Material is accompanied by documentation adequate to identify the Purchase Order against which the purchase is made. This documentation may consist of a delivery ticket and an invoice from the supplier conforming to the Purchase Order together with such additional information as the OWNER may require. All invoices for Owner Purchase Materials shall include the Owner's consumer certificate of exemption number. The CONTRACTOR will then forward all such invoices to the OWNER. On or about the 15th and last day of each month (or the next succeeding business day), CONTRACTOR shall review all invoices submitted by all suppliers of Owner Purchased Materials delivered to the project sites during that month and either concur or object to the OWNER's issuance of payment to the suppliers, based upon CONTRACTOR's records of Owner Purchased Materials delivered to the site and whether any defects or non-conformities exist in such Owner Purchased Materials.

7.2 <u>Warranties, Guarantees, Repairs and Maintenance</u>. The CONTRACTOR shall be responsible for obtaining and managing on behalf of the Owner all warranties and guarantees for all construction materials as required by the contract documents and shall fully warrant all construction materials including all Owner Purchased Materials. OWNER's purchase of various construction materials shall not in any manner impact or reduce CONTRACTOR's duty to warrant said construction materials. The OWNER may forward all repair, maintenance, non-conforming construction materials calls, or any other issues relating to the construction materials to the CONTRACTOR for resolution with the appropriate supplier, vendor, or subcontractor. The CONTRACTOR shall resolve all such calls or issues.

7.3 <u>Records and Accountings</u>. The CONTRACTOR shall maintain records of all Owner Purchased Materials it incorporates into the work from the stock of Owner Purchased Materials in its possession as bailee. The CONTRACTOR shall account monthly to the OWNER for any Owner Purchased Materials delivered into the CONTRACTOR's possession, indicating portions of all such construction materials which have been incorporated into the work.

7.4 <u>Defective or Non-conforming Construction Materials</u>. The CONTRACTOR shall insure that Owner Purchased Materials conform to specifications, and determine prior to

incorporation into the work if such construction materials are defective or non-conforming, whether such construction materials are identical to the construction materials ordered, and match the description on the bill of lading. If the CONTRACTOR discovers defective or non-conforming Owner Purchased Material upon such visual inspection, the CONTRACTOR shall not utilize such non-conforming or defective construction materials in the work and instead shall promptly notify the OWNER of the defective or non-conforming conditions so repair or replacement of such construction materials can occur without any undue delay or interruption to the Project. If the CONTRACTOR fails to adequately and properly perform such inspection or otherwise incorporates into the Project defective or non-conforming Owner Purchased Materials, the condition of which it either knew or should have known by performance of an inspection, CONTRACTOR shall be responsible for all damages to OWNER resulting from CONTRACTOR's incorporation of such construction materials into the project, including liquidated or delay damages.

8. <u>Title</u>. Notwithstanding the transfer of Owner Purchased Materials by the OWNER to the CONTRACTOR's possession as bailee for the OWNER, the OWNER shall retain legal and equitable title to any and all Owner Purchased Materials.

9. <u>Insurance and Risk of Loss</u>. The OWNER shall purchase and maintain Builder's Risk Insurance sufficient to protect against any loss or damage to Owner Purchased Materials. Owner shall be the named insured and such insurance shall cover the full value of any Owner Purchased Materials not yet incorporated into the Project during the period between the time the OWNER first takes title to any such Owner Purchased Materials and the time when the last of such Owner Purchased Materials is incorporated into the project or consumed in the process of completing the Project.

10. <u>No Damages for Delay</u>. The OWNER shall in no way be liable for, and CONTRACTOR waives all claims for, any damages relating to or caused by alleged interruption or delay due to ordering or arrival of Owner Purchased Materials, defects, or other problems of any nature with such construction materials, late payment for such construction materials, or any other circumstance associated with Owner Purchased Materials, regardless of whether OWNER's conduct caused, in whole or in part, such alleged damages. The foregoing waiver by CONTRACTOR includes damages for acceleration and inefficiencies. CONTRACTOR accepts from OWNER as further and specific consideration for the foregoing waivers, OWNER's undertaking to pay for and finance all Owner Purchased Materials.

Attachment 1

PURCHASE REQUISITION REQUEST FORM

1.	Contact Person for the material supplier.	
NAM	1E:	
ADD	DRESS:	
TELI	EPHONE NUMBER:	
2.	Manufacturer or brand, model or specification n	umber of the item.
3.	Quantity needed as estimated by CONTRACTC	
4.	The price quoted by the supplier for the construct \$	ction materials identified above.
5.	The sales tax associated with the price quote.	
6.	Shipping and handling insurance cost. \$	
7.	Delivery dates as established by CONTRACTO	PR
	OWNER:	
	Authorized Signature (Title)	Date
	CONTRACTOR:	
	Authorized Signature (Title)	Date

Attachment 2

PURCHASE ORDER

1. SEE ATTACHED PURCHASE REQUISITION REQUEST FORM DATED_____.

2. Holly Hill Road East Community Development District State of Florida sales tax exemption certificate number: _____.

Holly Hill Road East Community Development District is the Purchaser of the construction materials purchased pursuant to this Purchase Order. Supplier shall provide for the required shipping and handling insurance cost for delivery of the construction materials by the delivery date specified in this Purchase Order.

OWNER: ______Authorized Signature (Title) Date ______ Authorized Signature (Title) Date ______

Attachment 3

CERTIFICATE OF ENTITLEMENT

The undersigned authorized representative of Holly Hill Road East Community Development District (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number ______, affirms that the tangible personal property purchased pursuant to Purchase Order Number ______ from ______ (Vendor) on or after ______ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract dated ______ with ______ (Contractor) for the construction of public infrastructure associated with

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.

2. The vendor's invoice will be issued directly to Governmental Entity.

3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.

4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.

5. Governmental Entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony. Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative Title

Purchaser's Name (Print or Type)

Date

Federal Employer Identification Number:

Telephone Number:

You must attach a copy of the Purchase Order to this Certificate of Entitlement. Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records. This form supplements and supersedes (to the extent of any conflict) any prior certificates addressing the same purchase.

Holly Hill Road East Community Development District

Uniform Collection Agreement between Polk County Tax Collector and the District

UNIFORM COLLECTION <u>AGREEMENT</u> <u>DISTRICT</u>

 THIS AGREEMENT made and entered into this
 24th
 day of,
 September
 2018

 by and between
 Holly Hill Community Development District
 ("District"),

 whose address is
 12051 Corporate Blvd., Orlando, FL 32817

 and the Honorable Joe G. Tedder, State Constitutional Tax Collector in and for the Polk County

 Political Subdivision, whose address is Polk County Tax Collectors Office, P.O. Box 1189,

 Bartow, Florida 33831-1189 ("Tax Collector").

SECTION I

Findings and Determinations

The parties find and determine:

1. District is authorized to impose and levy, and by appropriate Resolution has expressed its intent to use the statutory uniform methodology of collection for, certain non-ad valorem special assessments for <u>Holly Hill Community Development District</u> as authorized by constitutional and statutory municipal home rule and by section 197.3632, Florida Statutes (2012) and Rule 12D-18, Florida Administrative Code.

2. The term "Assessments" means those certain levies by the District which purport to constitute non-ad valorem special assessments for <u>Holly Hill CDD</u> improvements and related systems, facilities and services pursuant to <u>Ordinance 2017-814</u> a non-ad valorem special assessment is lienable under Section 4, Article X, Florida Constitution, if it results in a special benefit peculiar to the parcels of property involved, over and above general community benefit, as a result of a logical connection to the property involved from the system, facility and service provided by the District and if it is apportioned to the property fairly and reasonably.

3. The uniform statutory collection methodology is provided in section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code ("uniform methodology"), with its enforcement provisions, including the use of tax certificates and tax deeds for enforcing against any delinquencies; and

4. The uniform methodology is more fair to the delinquent property owner than traditional lien foreclosure methodology.

5. The uniform methodology provides for more efficiency of collection by virtue of the Assessment being on the official tax notice issued by the Tax Collector which will produce positive economic benefits to the District and its citizens; and

6. The uniform methodology, through use of the official tax notice, will tend to eliminate confusion.

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7. The Tax Collector, as the State Constitutional Officer for the county political subdivision, charged by general law in Chapter 197, Florida Statutes, and related rules and regulations, to function as the agent of the Florida Department of Revenue for purposes of the uniform methodology for the Assessments.

8. The sole and exclusive responsibility to determine, impose and levy the Assessments and to determine that it is a legal, constitutional and lienable non-ad valorem special assessment for Holly Hill CDD and related systems, facilities and services is that of the District and no other person, entity or officer.

SECTION II

Applicable Law and Regulations

1. Section 2, Article VIII, Florida Constitution; Chapter 170, Florida Statutes; sections 197.3631, 3632 and 3635, Florida Statutes; Rule 12D-18, Florida Administrative Code; and all other applicable provisions of constitutional and statutory law, govern the exercise by the District of its local self-government power to render and pay for municipal services.

2. Section 1(d), Article VIII, Florida Constitution; Chapter 197, Florida and other applicable provisions of constitutional and statutory law apply to Tax Collector in his capacity as a state constitutional county officer and agent of the Florida Department of Revenue for purpose the of collecting and enforcing the collection of non-ad valorem special assessments levied by District.

3. Section 197.3631, Florida Statutes, constitutes supplemental authority for District to levy non-ad valorem assessments including such non-ad valorem special assessments as the "Assessments" for Holly Hill CDD and related systems, facilities and services.

4. Section 197.3632, Florida Statutes, and Rule 12D-18, Florida Administrative Code, have provisions that apply both to District and to Tax Collector, as well as, to the Department of Revenue and the Property Appraiser in and for the county.

SECTION III

Purpose

The purpose of this Agreement under Rule 12D-18, Florida Administrative Code, is to establish the terms and conditions under which the Tax Collector shall collect and enforce the collection of those certain non-ad valorem special assessments, the "Assessments," levied by District to include compensation by District to the Tax Collector for actual costs of collection pursuant to section 197.3632(8)(c), Florida Statutes; payment by District of any costs involved in separate mailings because of non-merger of any non-ad valorem special assessment roll as certified by the Chair of the Board of Holly Hill Community Development District

or his or her designee, pursuant to section 197.3632(7), Florida Statutes; and reimbursement by District for necessary administrative costs, including, but not limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming which attend all of the collection and enforcement duties imposed upon the Tax Collector by the uniform methodology, as provided in section 197.3632(2), Florida Statutes.

SECTION IV

<u>Term</u>

The term of this Agreement shall commence upon execution, effective for 2018 tax notice purposes, and shall continue and extend uninterrupted from year-to-year, automatically renewed for successive periods not to exceed one (1) year each, unless District shall inform the Tax Collector, as well as Property Appraiser and the Department of Revenue, by 10 January of each calendar year, if District intends to discontinue to use the uniform methodology for such Assessments pursuant to section 197.3632(6), Florida Statutes (2012) and Rule 12D-18.006(3), Florida Administrative Code, using form DR-412 promulgated by the Florida Department of Revenue.

SECTION V

Duties and Responsibilities of District

District agrees, covenants and contracts to:

1. Compensate the Tax Collector for actual collection costs incurred pursuant to section 197.3632(8)(c), Florida Statutes and 12D-18.004(2), Florida Administrative Code.

2. Reimburse Tax Collector for necessary administrative costs for the collection and enforcement of the Assessment by the Tax Collector under the uniform methodology, pursuant to section 197.3632(2), Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code, to include, but not be limited to, those costs associated with personnel, forms, supplies, data processing, computer equipment, postage and programming.

3. To pay for or alternatively to reimburse the Tax Collector for any separate tax notice necessitated by the inability of the Tax Collector to merge the non-ad valorem special assessment roll certified by District pursuant to section 197.3632(7), Florida Statutes and Rule 12D-18.004(2) Florida Administrative Code.

4. District upon being timely billed shall pay directly for necessary advertising relating to implementation of the uniform non-ad valorem special assessment law pursuant to sections 197.3632 and 197.3635, Florida Statutes, and Rule 12D-18.004(2), Florida Administrative Code.

5. By 15 September of each calendar year, the Chair of the Board of the Holly Hill Community Development District, or his or her designee, shall certify,

using DR Form 408 to the Tax Collector the non-ad valorem assessment ("Assessment") roll on compatible electronic medium, tied to the property parcel identification number, and otherwise in conformance with the ad valorem tax rolls submitted by the Property Appraiser in July to the Department of Revenue. District or its agent on behalf of District shall post the non-ad valorem special assessment for each parcel on the said non-ad valorem assessment roll and shall exercise its responsibility that such non-ad valorem assessment roll be free of errors and omissions. Section 197.3632(10), Florida Statutes, and Rule 12D-18.006, Florida Administrative Code.

6. District agrees to abide by and implement its duties under the uniform law pursuant to all the provisions of sections 197.3632 and 197.3635, Florida Statutes, or its successor of statutory provisions and all applicable rules promulgated by the Department of Revenue and their successor rules.

7. District acknowledges that the Tax Collector has no duty, authority or responsibility in the imposition and levy of any non-ad valorem special assessments, including the District's "Assessment" and that it is the sole responsibility and duty of District to follow all procedural and substantive requirements for the levy and imposition of constitutionally lienable non-ad valorem special assessments, including the Assessments.

8. District shall indemnify and hold harmless Tax Collector to the extent of any legal action which may be filed in local, state or federal courts against Tax Collector regarding the imposition, levy, roll preparation and certification of the Assessments; District shall pay for or reimburse Tax Collector for fees for legal services rendered to Tax Collector with regard to any such legal action. Nothing herein shall be deemed or construed as a waiver of sovereign immunity by the Tax Collector or the District, and the parties shall have and maintain at all times and for all purposes any and all rights, immunities and protections available under controlling legal precedent as provided under Section 768.28, Florida Statute, or its successor and as provided under other applicable law.

SECTION VI

Duties of the Tax Collector

1. The Tax Collector shall merge timely the legally certified "Assessment" roll of the District with all non-ad valorem assessment rolls, merge said rolls with the tax roll, prepare a collection roll and prepare a combined notice (the tax notice) for both ad valorem taxes and non-ad valorem special assessments for all levying authorities within the county political subdivision, pursuant to sections 197.3632 and 197.3635, Florida Statutes, and its successor provisions, and any applicable rules, and their successor rules, promulgated by the Department of Revenue, and in accordance with any specific ordinances or resolutions adopted by district, so long as said ordinances and resolutions shall themselves each and every one clearly state intent to use the uniform method for collecting such assessments and so long as they are further not inconsistent with, or contrary to, the provisions of sections 197.3632 and 197.3635, Florida Statutes, and their successor provisions, and any applicable rules.

2. Tax Collector shall collect the Assessments of District as certified by the Chair of the <u>Holly Hill Community Development District</u> or his or her designee, to the Tax Collector no later than 15 September of each calendar year on compatible electronic medium, tied to the property identification number for each parcel, and in the format used in July by the Property Appraiser for the ad valorem rolls submitted to the Department of Revenue, using, DR Form 408, and free of errors or omissions.

3. The Tax Collector agrees to cooperate with District in implementation of the uniform methodology for collecting Assessments pursuant to sections 197.3632 and 197.3635, Florida Statutes, and any successor provisions and applicable rules. The Tax Collector shall not accept any non-ad valorem assessment roll for the Assessments of District that is not officially, timely and legally certified to the Tax Collector pursuant to Chapter 197, Florida Statutes, and Rule 12D-18, Florida Administrative Code.

4. If the Tax Collector discovers errors or omissions on such roll, Tax Collector may request District to file a corrected roll or a correction of the amount of any assessment and District shall bear the cost of any such error or omission.

5. If Tax Collector determines that a separate mailing is authorized pursuant to section 197.3632(7), Florida Statutes, and any applicable rules promulgated by the Department of Revenue, and any successor provision to said law or rules, the Tax Collector shall either mail a separate notice of the particular non-ad valorem special assessment ("Assessment") or shall direct District to mail such a separate notice. In making this decision, the Tax Collector shall consider all costs to District and to the taxpayers of such a separate mailing as well as the adverse effect to the taxpayers of delay in multiple notices. If such a separate mailing is effected, District shall bear all costs associated with the separate notice for the non-ad valorem special assessment that could not be merged, upon timely billing by the Tax Collector.

SECTION VII

Entire Agreement

1. The parties shall perform all their obligations under this agreement in accordance with good faith and prudent practice.

2. This agreement constitutes the entire agreement between the parties with respect to the subject matter contained herein and may not be amended, modified or rescinded, unless otherwise provided in this Agreement, except in writing and signed by all the parties hereto. Should any provision of this Agreement be declared to be invalid, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision found to be invalid alter substantially the benefits of the Agreement for either of the parties or renders the statutory and regulatory obligations unperformable.

3. This Agreement shall be governed by the laws of the State of Florida.

4. Written notice shall be given to the parties at the following addresses, or such other place or person as each of the parties shall designate by similar notice:

As to Tax Collector:	Address	Joe G. Tedder P.O. Box 1189
		Bartow, FL 33831-1189
As to District:	Address	Holly Hill Community Development District Jane Glasgow of Fishkind & Associates 12051 Corporate Blvd Orlando, FL 32817

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and such of them as are corporations have caused these presents to be signed by their duly authorized officers.

<u> </u>	- C	24	5	🧾 Ву:	Joe G. Tedder	the base
	. Tedder, T	ax Collect	or	Date:	Printed Name	1
ATTEST:				By:		
				Dy.	Printed Nan	ne
						17 D.C
ATTEST:						
ATTEST:				By:	Printed Nat	