

*Willowbrook  
Community Development District*

*Meeting Agenda*

*March 26, 2024*

# AGENDA

# *Willowbrook*

## *Community Development District*

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219 E. Livingston St., Orlando, Florida 32801

Phone: 407-841-5524 – Fax: 407-839-1526

March 19, 2024

### **Board of Supervisors Willowbrook Community Development District**

Dear Board Members:

A meeting of the Board of Supervisors of the **Willowbrook Community Development District** will be held on **Tuesday, March 26, 2024 at 11:00 AM** at the **Lake Alfred Public Library, 245 N Seminole Ave, Lake Alfred, FL 33850**

**Zoom Video Link:** <https://us06web.zoom.us/j/87407069011>

**Call-In Information:** 1-646-876-9923

**Meeting ID:** 874 0706 9011

Following is the advance agenda for the meeting:

### **Board of Supervisors Meeting**

1. Roll Call
2. Public Comment Period (<sup>1</sup>Speakers will fill out a card and submit it to the District Manager prior to the beginning of the meeting)
3. Approval of Minutes of the February 27, 2024 Board of Supervisors Meeting
4. Presentation of Engineer's Report for Capital Improvement dated November 16, 2023
5. Presentation of Master Assessment Methodology Report dated November 16, 2023
6. Consideration of Resolution 2024-42 Declaring Special Assessments and Approval of Assessment Methodology and Setting Public Hearing for Special Assessments
7. Presentation and Approval of Supplemental Engineer's Report dated March 2024
8. Presentation and Approval of Supplemental Assessment Methodology—Assessment Area One dated March 26, 2024
9. Consideration of Resolution 2024-41 Delegation Resolution (Series 2024 Bonds)
10. Consideration of Developer Ancillary Documents for Series 2024 Bonds:
  - A. True-Up Agreement
  - B. Acquisition Agreement
  - C. Completion Agreement

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<sup>1</sup> Comments will be limited to three (3) minutes

- D. Collateral Assignment Agreement
- E. Declaration of Consent
- F. Notice of Special Assessments
- 11. Consideration of Construction Contract Assignment Packages
  - A. Willowbrook North
  - B. Willowbrook South
- 12. Staff Reports
  - A. Attorney
  - B. Engineer
  - C. District Manager's Report
    - i. Ratification of Funding Request #4
    - ii. Balance Sheet & Income Statement
- 13. Other Business
- 14. Supervisors Requests and Audience Comments
- 15. Adjournment

# MINUTES

**MINUTES OF MEETING  
WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT**

The regular meeting of the Board of Supervisors of the Willowbrook Community Development District was held Tuesday, **February 27, 2024** at 11:00 a.m. at the Lake Alfred Public Library, 245 N. Seminole Avenue, Lake Alfred, Florida.

Present and constituting a quorum:

McKinzie Terrill	Chairman
Steve Rosser	Vice Chairman
Hyzens Marc	Assistant Secretary

Also present were:

Jill Burns	District Manager, GMS
Jennifer Kilinski <i>via Zoom</i>	District Counsel, Kilinski Van Wyk Law
Savannah Hancock <i>via Zoom</i>	District Counsel, Kilinski Van Wyk Law
Scott Shapiro <i>via Zoom</i>	

**FIRST ORDER OF BUSINESS**

**Roll Call**

Ms. Burns called the meeting to order and called roll. Three Supervisors were present constituting a quorum.

**SECOND ORDER OF BUSINESS**

**Public Comment Period**

There were no members of the public present for the meeting.

**THIRD ORDER OF BUSINESS**

**Approval of Minutes of the January 9, 2024 Landowners' and Board of Supervisors Meetings**

Ms. Burns presented the minutes of the January 9, 2024 Landowners' and Board of Supervisors meetings. She asked for any questions, comments, or corrections. The Board had no changes to the minutes.

On MOTION by Mr. Marc, seconded by Mr. Rosser, with all in favor, the Minutes of the January 9, 2024 Landowners' and Board of Supervisors Meetings, were approved.
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**FOURTH ORDER OF BUSINESS**

**Public Hearings**

**A. Public Hearing on the Adoption of the Fiscal Year 2024 Budget**

Ms. Burns noted next is the public hearing on adoption of the Fiscal Year 2024 budget. This public hearing has been advertised in the paper as required. She asked for a motion to open the public hearing.

On MOTION by Mr. Terrill, seconded by Mr. Marc, with all in favor, Opening the Public Hearing, was approved.

Ms. Burns noted there were no members of the public present and asked for a motion to close the public hearing.

On MOTION by Mr. Terrill seconded by Mr. Marc, with all in favor, Closing the Public Hearing, was approved.

**i. Consideration of Resolution 2024-40 Adopting the District's Fiscal Year 2024 Budget and Appropriating Funds**

Mr. Burns noted this is included in the agenda package for review and has not changed since the Board saw it at the previous meeting. It is for the current fiscal year which ends September 30<sup>th</sup>. No field expenses are anticipated. This will be developer funded as incurred so anticipating only admin expenses for the current year. A small field contingency is included in the event it is necessary. A Board member asked Scott if all looks normal to him. Mr. Shapiro noted yes, it is all just admin because there will be no maintenance of development improvements through 09/30/24.

Ms. Burns asked for the budget for Fiscal Year 2025 if there is an estimate of when construction will start and bond issuance. Mr. Terrill stated April for construction. Mr. Shapiro noted April to May timeframe to issue bonds. Mr. Shapiro asked when plans are to start the amenity. Mr. Terrill noted they are not anticipating the amenity to be complete and open prior to 10/01/2025. Ms. Burns stated a small amenity contingency will be added into the budget. She asked when the common areas for Phase 1 will be completed and turned over to the CDD for maintenance. Mr. Terrill noted he is not sure. Mr. Shapiro stated second quarter of 2025. She asked for a layout or map of the landscaping once it is finished. For the 2025 budget, they will calculate

the estimated costs on a full year and approve that so its at a higher cap level to send the notice on. Once the final budget is adopted, they can prorate it and bring it down for what they want to assess.

On MOTION by Mr. Rosser, seconded by Mr. Terrill, with all in favor, Resolution 2024-40 Adopting the District’s Fiscal Year 2024 Budget and Appropriating Funds, was approved.

**FIFTH ORDER OF BUSINESS**

**Consideration of 2024 Non-Ad Valorem Contract Agreement with Polk County Property Appraiser**

Ms. Burns noted this is the agreement that allows the District to collect their assessments on roll.

On MOTION by Mr. Terrill, seconded by Mr. Marc, with all in favor, the 2024 Non-Ad Valorem Contract Agreement with Polk County Property Appraiser, was approved.

**SIXTH ORDER OF BUSINESS**

**Staff Reports**

**A. Attorney**

Ms. Hancock confirmed the intent for the March 26<sup>th</sup> Board meeting is to have their delegation and ancillary financing agreements approved.

**B. Engineer**

There being no comments, the next item followed.

**C. District Manager’s Report**

**i. Ratification of Funding Requests #2 and #3**

Ms. Burns asked for ratification of funding requests #2 and #3 which have already been funded.

On MOTION by Mr. Rosser, seconded by Mr. Terrill, with all in favor, Funding Requests #2 and #3, were ratified.

**ii. Balance Sheet & Income Statement**



Ms. Burns stated financial statements are included for the Boards review. There is no action necessary. She would be happy to answer any questions.

**SEVENTH ORDER OF BUSINESS                      Other Business**

There being no comments, the next item followed.

**EIGHTH ORDER OF BUSINESS                      Supervisors Requests and Audience Comments**

Board discussion regarding members seated on the Board ensued. Ms. Burns noted if the Board wants to replace someone, they will need that person to submit an email stating they wish to resign from the Board at Willowbrook CDD. They could then replace that person with who ever at the next meeting.

**NINTH ORDER OF BUSINESS                      Adjournment**

Ms. Burns asked for a motion to adjourn the meeting.

On MOTION by Mr. Marc, seconded by Mr. Rosser, with all in favor, the meeting was adjourned.

\_\_\_\_\_  
Secretary/Assistant Secretary

\_\_\_\_\_  
Chairman/Vice Chairman

# SECTION IV

ENGINEER'S REPORT

PREPARED FOR:

BOARD OF SUPERVISORS  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT

ENGINEER:

SLOAN ENGINEERING GROUP

November 16, 2023

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
ENGINEER'S REPORT**

**1. INTRODUCTION**

The purpose of this report is to provide a description of the capital improvement plan (“CIP”), and estimated costs of the CIP, for the Willowbrook Community Development District.

**2. GENERAL SITE DESCRIPTION**

The proposed District is located entirely within the City of Winter Haven, and covers approximately 284.905 acres of land, more or less. The site is generally located south of Lucerne Park Road and north of Martin Luther King Jr. Boulevard between Lake Fannie and Lake Smart.

**3. PROPOSED CAPITAL IMPROVEMENT PLAN**

The CIP is intended to provide public infrastructure improvements for the lands within the District, which are planned for 667 residential units. The following table shows the planned product types and land uses for the District:

**PRODUCT TYPES**

<b>Product Type</b>	<b>Total Units</b>
40 Ft Lots	50
50 Ft Lots	617
<b>TOTAL</b>	<b>667</b>

The CIP infrastructure includes:

**Roadway Improvements:**

The CIP includes subdivision roads within the District. All internal neighborhood roads will be 2-lane un-divided roads. Such roads include the roadway asphalt, base, and subgrade, roadway curb and gutter, striping and signage and sidewalks within rights-of-way abutting non-lot lands. Sidewalks abutting lots will be constructed by the homebuilders. All roads will be designed in accordance with applicable City and governmental standards.

All internal roadways may be financed by the District. Alternatively, the developer may elect to finance the internal roads, gate them, and turn them over to a homeowner’s association for ownership, operation and maintenance (in such an event, the District would be limited to financing only utilities, conservation/mitigation and stormwater improvements behind such gated areas).

**Stormwater Management System:**

The stormwater collection and outfall system are a combination of roadway curbs, curb inlets, pipe, control structures and stormwater ponds designed to treat and attenuate stormwater runoff from District lands. The stormwater system will be designed consistent with the criteria established by the SWFWMD

and the City for stormwater/floodplain management systems. The District will finance, own, operate and maintain the stormwater system including the storm sewer inlets and piping within the right-of-way.

#### **Water, Wastewater and Reclaim Utilities:**

As part of the CIP, the District intends to construct and/or acquire water, wastewater and reclaim infrastructure. In particular, the on-site water supply improvements include water mains that will be located within rights-of-way and used for potable water service and fire protection.

Wastewater improvements for the project will include an onsite gravity collection system, offsite and onsite force main and onsite lift stations.

Similarly, the reclaim water distribution system will be constructed to provide service for irrigation throughout the community.

The water and reclaim distribution and wastewater collection systems for all phases will be completed by the District and then dedicated to the City for operation and maintenance.

#### **Hardscape, Landscape, and Irrigation:**

The District will construct and/or install landscaping, irrigation and hardscaping within District common areas and rights-of-way. The City has distinct design criteria requirements for planting and irrigation design. Therefore, this project will at a minimum meet those requirements but, in most cases, exceed the requirements with enhancements for the benefit of the community. All such landscaping, irrigation and hardscaping will be owned, maintained and funded by the District.

#### **Streetlights / Undergrounding of Electrical Utility Lines**

The District intends to lease streetlights through an agreement with the local utility provider in which case the District would fund the streetlights through an annual operations and maintenance assessment. As such, streetlights are not included as part of the CIP.

The CIP does however include the incremental cost of undergrounding electrical utility lines within right-of-way utility easements throughout the community. Any lines and transformers located in such areas would be owned by the local utility provider and not paid for by the District as part of the CIP.

#### **Recreational Amenities:**

In conjunction with the construction of the CIP, the District intends to construct amenity facilities, parks, trails and other passive amenities. These improvements, if financed through the District, will be funded, owned and maintained by the District. All such improvements will be open to the general public, subject to a reasonable fee adopted by the District pursuant to Florida law.

The developer may also privately construct and finance all or a portion of the amenity facilities. All such improvements will be considered common elements for the exclusive benefit of the District landowners.

## **Environmental Conservation/Mitigation**

The District will be responsible for the design, permitting, construction, maintenance, and government reporting of any on-site environmental conservation areas. The initial installation costs are minimal, but the improvements are included within the CIP.

## **Professional Services**

The CIP also includes various professional services. These include: (i) engineering, surveying and architectural fees, (ii) permitting and plan review costs, and (iii) development/construction management services fees that are required for the design, permitting, construction, and maintenance acceptance of the public improvements and community facilities.

## **Off-Site Improvements**

Offsite improvements will consist of roadway and utility extension to serve the community. The following offsite improvements are proposed:

- Turnlanes on Lucerne Park Road
- Turnlanes on Martin Luther King Jr Blvd.

NOTE: In the event that impact fee credits are generated from any roadway, utilities or other improvements funded by the District, any such credits, if any, will be the subject of a separate agreement between the applicable developer and the District. Pursuant to such an agreement, and without intending to alter the terms of such an agreement, the applicable developer may elect to retain such credits if the developer provides consideration equal to the market value of the credits in the form of work product, improvements and/or land (based on the lesser of appraised value or the developer's cost basis as it relates to land), or in the form of a cash paydown of certain debt assessments or a reduction in the acquisition cost to the District equal to the value of the credits.

## **4. PERMITTING/CONSTRUCTION COMMENCEMENT**

All necessary permits for the construction of the CIP have either been obtained or are currently under review by respective governmental authorities, and include the following:

Agency	Permit Description	Permit Status
City of Winter Haven	Site Construction Plans	Obtained
Polk County	Level 2 Review for Roadway Improvements	Obtained
Southwest Florida Water Management District	Environmental Resource Permit	Obtained
FDEP	Potable Water Permit	Obtained
FDEP	Sanitary Sewer Permit	Obtained
FDOT	Driveway Connection	In Progress

## 5. OPINION OF PROBABLE CONSTRUCTION COSTS

The table below presents, among other things, the cost estimate for the CIP. It is our professional opinion that the costs set forth below are reasonable and consistent with market pricing.

### COST ESTIMATE

<b>Improvement</b>	<b>TOTAL CIP Estimated Cost</b>	<b>O&amp;M Entity</b>
Potable Water	\$4,233,800.00	City of Winter Haven
Sanitary Sewer	\$5,786,300.00	City of Winter Haven
Reclaim Water System	\$2,496,800.00	City of Winter Haven
Internal Roadway/Curbing <sup>1</sup>	\$5,865,400.00	CDD
Undergrounding of Conduit	\$297,000.00	CDD
Stormwater Improvements	\$3,035,900.00	CDD
Earthwork (Stormwater Ponds)	\$1,431,300.00	CDD
Landscape/Hardscape/Irrigation/ Entry Features	\$1,000,000.00	CDD
Amenity	\$2,640,000.00	CDD
Professional Services & Permitting Fees	\$1,353,900.00	CDD
Contingency (15%)	\$4,221,060.00	As above
<b>TOTAL</b>	<b>\$32,361,460.00</b>	

1. Any offsite roadways currently owned and maintained by the City will remain owned and maintained by the City.
2. Roadway, landscape/hardscape/irrigation, and amenities improvements, if behind hard gates, will not be part of the CIP.
3. The developer reserves the right to finance any of the improvements outlined above, and have such improvements owned and maintained by a property owner's or homeowner's association (in which case such items would not be part of the CIP), the District or a third-party.
4. A third party, or an applicable property owner's or homeowner's association may elect to maintain any District-owned improvements, subject to the terms of an agreement with the District.

## 6. CONCLUSIONS

The CIP will be designed in accordance with current governmental regulations and requirements. The CIP will serve its intended function so long as the construction is in substantial compliance with the design.

It is further our opinion that:

- the estimated cost to the CIP as set forth herein is reasonable based on prices currently being experienced in the area in which the District is located, and is not greater than the lesser of the actual cost of construction or the fair market value of such infrastructure;
- All of the improvements comprising the CIP are required by applicable development approvals issued pursuant to Section 380.06, Florida Statutes;

- the CIP is feasible to construct, there are no technical reasons existing at this time that would prevent the implementation of the CIP, and it is reasonable to assume that all necessary regulatory approvals will be obtained in due course;
- the District will pay the lesser of the actual cost of the improvements or fair market value; and
- the assessable property within the District will receive a special benefit from the CIP that is at least equal to such costs.

Also, the CIP will constitute a system of improvements that will provide benefits, both general, and special and peculiar to all lands within the District. The general public, property owners, and property outside the District will benefit from the provisions of the District's CIP; however, these are incidental to the District's CIP, which is designed solely to provide special benefits peculiar to property within the District. Special and peculiar benefits accrue to property within the District and enable properties within its boundaries to be developed.

The professional service for establishing the Construction Cost Estimate is consistent with the degree of care and skill exercised by members of the same profession under similar circumstances. The CIP will be owned by the District or other governmental units and such CIP is intended to be available and will reasonably be available for use by the general public (either by being part of a system of improvements that is available to the general public or is otherwise available to the general public) including nonresidents of the District. All of the CIP is or will be located on lands owned or to be owned by the District or another governmental entity or on perpetual easements in favor of the District or other governmental entity. The CIP, and any cost estimates set forth herein, do not include any earthwork, grading or other improvements on private lots or property.

Please note that the CIP as presented herein is based on current plans and market conditions which are subject to change. Accordingly, the CIP, as used herein, refers to sufficient public infrastructure of the kinds described herein (i.e., stormwater/floodplain management, sanitary sewer, potable water, etc.) to support the development and sale of the planned residential units in the District, which (subject to true-up determinations) number and type of units may be changed with the development of the site. Stated differently, 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, and the District expressly reserves the right to do so.

\_\_\_\_\_, P.E. Date

FL License No. \_\_\_\_\_



# SECTION V

**MASTER  
ASSESSMENT METHODOLOGY  
  
FOR  
WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT**

**Date: November 16, 2023**

**Prepared by**

**Governmental Management Services - Central Florida, LLC  
219 E. Livingston Street  
Orlando, FL 32801**



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**GMS-CF, LLC does not represent the Willowbrook Community Development District as a Municipal Advisor or Securities Broker nor is GMS-CF, LLC registered to provide such services as described in Section 15B of the Securities and Exchange Act of 1934, as amended. Similarly, GMS-CF, LLC does not provide the Willowbrook Community Development District with financial advisory services or offer investment advice in any form.**

## **1.0 Introduction**

The Willowbrook Community Development District is a local unit of special-purpose government organized and existing under Chapter 190, Florida Statutes (the “District”), as amended. The District plans to issue up to \$43,615,000 of tax exempt bonds in one or more series (the “Bonds”) for the purpose of financing certain infrastructure improvements within the District, more specifically described in the Master Engineer’s Report dated November 16, 2023 prepared Sloan Engineering Group, Inc. as may be amended and supplemented from time to time (the “Engineer’s Report”). The District anticipates the construction of public infrastructure improvements consisting of improvements that benefit property owners within the District.

### **1.1 Purpose**

This Master Assessment Methodology Report (the “Assessment Report”) provides for an assessment methodology for allocating the debt to be incurred by the District to benefiting properties within the District. This Assessment Report allocates the debt to properties based on the special benefits each receives from the District’s capital improvement plan (“CIP”). This Assessment Report will be supplemented with one or more supplemental methodology reports to reflect the actual terms and conditions at the time of the issuance of each series of Bonds. This Assessment Report is designed to conform to the requirements of Chapters 190 and 170, Florida Statutes with respect to special assessments and is consistent with our understanding of case law on this subject.

The District intends to impose non ad valorem special assessments on the benefited lands within the District based on this Assessment Report. It is anticipated that all of the proposed special assessments will be collected through the Uniform Method of Collection described in Chapter 197.3632, Florida Statutes or any other legal means of collection available to the District. It is not the intent of this Assessment Report to address any other assessments, if applicable, that may be levied by the District, a homeowner’s association, or any other unit of government.

### **1.2 Background**

The District currently includes approximately 284.91 acres entirely within the City of Winer Haven, Polk County, Florida. The development program currently envisions approximately 667 residential lots (herein the “Development”). The proposed Development program is depicted in Table 1. It is recognized that such land use plan may change, and this Assessment Report will be modified accordingly.

The public improvements contemplated by the District in the CIP will provide facilities that benefit certain property within the District. The CIP is delineated in the Engineer's Report. Specifically, the District will construct and/or acquire certain potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. The acquisition and construction costs are summarized in Table 2.

The assessment methodology is a four-step process.

1. The District Engineer must first determine the public infrastructure improvements that may be provided by the District and the costs to implement the CIP.
2. The District Engineer determines the assessable acres that benefit from the District's CIP.
3. A calculation is made to determine the funding amounts necessary to acquire and/or construct CIP.
4. This amount is initially divided equally among the benefited properties on a prorated gross acreage basis. Ultimately, as land is platted, this amount will be assigned to each of the benefited properties based on the number of platted units.

### **1.3 Special Benefits and General Benefits**

Improvements undertaken by the District create special and peculiar benefits to assessable property, different in kind and degree than general benefits, for properties within its borders as well as general benefits to the public at large.

However, as discussed within this Assessment Report, these general benefits are incidental in nature and are readily distinguishable from the special and peculiar benefits, which accrue to the assessable property within the District. The implementation of the CIP enables properties within its boundaries to be developed. Without the District's CIP, there would be no infrastructure to support development of land within the District. Without these improvements, development of the property within the District would be prohibited by law.

There is no doubt that the general public and property owners outside the District will benefit from the provision of the District's CIP. However, these benefits will be incidental to the District's CIP, which is designed solely to meet the needs of property within the District. Properties outside the District boundaries do not depend upon the District's CIP. The property owners within the District are therefore receiving special benefits not received by those outside the District's boundaries.

## **1.4 Requirements of a Valid Assessment Methodology**

There are two requirements under Florida law for a valid special assessment:

- 1) The properties must receive a special benefit from the improvements being paid for.
- 2) The assessments must be fairly and reasonably allocated to the properties being assessed.

Florida law provides for a wide application of special assessments that meet these two characteristics of special assessments.

## **1.5 Special Benefits Exceed the Costs Allocated**

The special benefits provided to the property owners within the District are greater than the costs associated with providing these benefits. The District Engineer estimates that the District's CIP that is necessary to support full development of property will cost approximately \$32,361,460. The District's Underwriter projects that financing costs required to fund the infrastructure improvements, including project costs, the cost of issuance of the Bonds, the funding of debt service reserves and capitalized interest, will be approximately \$43,615,000. Additionally, funding required to complete the CIP which is not financed with Bonds will be funded by the Developer(s). Without the CIP, the property would not be able to be developed and occupied by future residents of the community.

## **2.0 Assessment Methodology**

### **2.1 Overview**

The District is planning to issue up to \$43,615,000 in Bonds to fund all or a portion of the District's CIP, provide for capitalized interest, a debt service reserve account and cost of issuance. It is the purpose of this Assessment Report to allocate the \$43,615,000 in debt to the properties benefiting from the CIP.

Table 1 identifies the proposed land uses as identified by the Developer. The District has relied on the Engineer's Report to develop the costs of the CIP needed to support the Development, these construction costs are outlined in Table 2. The improvements needed to support the Development are described in detail in the Engineer's Report and are estimated to cost \$32,361,460. Based on the estimated costs, the size of the bond issue under current market conditions needed to generate funds to pay for the CIP and related costs was determined by the District's Underwriter to total approximately \$43,615,000. Table 3 shows the breakdown of the bond sizing.

## 2.2 Allocation of Debt

Allocation of debt is a continuous process until the development plan is completed. The CIP funded by District Bonds benefits all developable acres within the District.

The initial assessments will be levied on an equal basis to all acres within the District. A fair and reasonable methodology allocates the debt incurred by the District proportionately to the properties receiving the special benefits. At this point all of the lands within the District are benefiting from the improvements.

Once platting or the recording of declaration of condominium, (“Assigned Properties”) has begun, the assessments will be levied to the Assigned Properties based on the benefits they receive. The Unassigned Properties, defined as property that has not been platted, assigned development rights or subjected to a declaration of condominium, will continue to be assessed on a per acre basis (“Unassigned Properties”). Eventually the development plan will be completed and the debt relating to the Bonds will be allocated to the planned 667 residential units within the District, which are the beneficiaries of the CIP, as depicted in Table 5 and Table 6. If there are changes to the development plan, a true up of the assessment will be calculated to determine if a debt reduction or true-up payment from the Developer is required. The process is outlined in Section 3.0

The assignment of debt in this Assessment Report sets forth the process by which debt is apportioned. As mentioned herein, this Assessment Report will be supplemented from time to time.

## 2.3 Allocation of Benefit

The CIP consists of potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. There are *two* residential product types within the planned development. The single family 50’ product type has been set as the base unit and has been assigned one equivalent residential unit (“ERU”). Table 4 shows the allocation of benefit to the particular land uses. It is important to note that the benefit derived from the improvements on the particular units exceeds the cost that the units will be paying for such benefits.

## **2.4 Lienability Test: Special and Peculiar Benefit to the Property**

Construction and/or acquisition by the District of its proposed CIP will provide several types of systems, facilities and services for its residents. These include potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. These improvements accrue in differing amounts and are somewhat dependent on the type of land use receiving the special benefits peculiar to those properties, which flow from the logical relationship of the improvements to the properties.

Once these determinations are made, they are reviewed in the light of the special benefits peculiar to the property, which flow to the properties as a result of their logical connection from the improvements in fact actually provided.

For the provision of CIP, the special and peculiar benefits are:

- 1) the added use of the property,
- 2) added enjoyment of the property, and
- 3) the probability of increased marketability and value of the property.

These special and peculiar benefits are real and ascertainable but are not yet capable of being calculated as to value with mathematical certainty. However, each is more valuable than either the cost of, or the actual non-ad valorem special assessment levied for the improvement or the debt as allocated.

## **2.5 Lienability Test: Reasonable and Fair Apportionment of the Duty to Pay Non-Ad Valorem Assessments**

A reasonable estimate of the proportion of special and peculiar benefits received from the public improvements described in the Engineer's Report is delineated in Table 5 (expressed as Allocation of Par Debt per Product Type).

The determination has been made that the duty to pay the non-ad valorem special assessments is fairly and reasonably apportioned because the special and peculiar benefits to the property derived from the acquisition and/or construction of the District's CIP have been apportioned to the property according to reasonable estimates of the special and peculiar benefits provided consistent with the land use categories.



Accordingly, no acre or parcel of property within the boundaries of the District will have a lien for the payment of any non-ad valorem special assessment more than the determined special benefit peculiar to that property and therefore, the debt allocation will not be increased more than the debt allocation set forth in this Assessment Report.

In accordance with the benefit allocation suggested for the product types in Table 4, a total debt per unit and an annual assessment per unit have been calculated for each product type (Table 6). These amounts represent the preliminary anticipated per unit debt allocation assuming all anticipated units are built and sold as planned, and the entire proposed CIP is developed or acquired and financed by the District.

### **3.0 True Up Mechanism**

Although the District does not process plats, declaration of condominiums, site plans or revisions thereto for the Developer, it does have an important role to play during the course of platting and site planning. Whenever a plat, declaration of condominium or site plan is processed, the District must allocate a portion of its debt to the property according to this Assessment Report outlined herein. In addition, the District must also prevent any buildup of debt on Unassigned Property. Otherwise, the land could be fully conveyed and/or platted without all of the debt being allocated. To preclude this, at the time Unassigned Properties become Assigned Properties, the District will determine the amount of anticipated assessment revenue that remains on the Unassigned Properties, taking into account the proposed plat, or site plan approval. If the total anticipated assessment revenue to be generated from the Assigned and Unassigned Properties is greater than or equal to the maximum annual debt service then no adjustment is required. In the case that the revenue generated is less than the required amount then a debt reduction or true-up payment by the landowner in the amount necessary to reduce the par amount of the outstanding Bonds plus accrued interest to a level that will be supported by the new net annual debt service assessments will be required.

### **4.0 Assessment Roll**

The District will initially distribute the liens across the property within the District boundaries on a gross acreage basis. As Assigned Property becomes known with certainty, the District will refine its allocation of debt from a per acre basis to a per unit basis as shown in Table 6. If the land use plan changes, then the District will update Table 6 to reflect the changes. As a result, the assessment liens are neither fixed nor are they determinable with certainty on any acre of land in the District prior to the time final Assigned Properties become known. At this time the debt associated with the District's CIP will be distributed evenly across the acres within the District. As the development process occurs, the debt will be distributed against the Assigned Property in the manner described in this Assessment Report. The current assessment roll is depicted in Table 7.

TABLE 1  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 DEVELOPMENT PROGRAM  
 MASTER ASSESSMENT METHODOLOGY

Product Types	No. of Units *	Totals	ERUs per Unit (1)	Total ERUs
Single Family 40'	50	50	0.80	40
Single Family 50'	617	617	1.00	617
<b>Total Units</b>	<b>667</b>	<b>667</b>		<b>657</b>

(1) Benefit is allocated on an ERU basis; based on density of planned development, with a Single Family 50' unit equal to 1 ERU

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 2**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**INFRASTRUCTURE COST ESTIMATES**  
**MASTER ASSESSMENT METHODOLOGY**

Capital Improvement Plan ("CIP") (1)	Total Cost Estimate
Potable Water	\$ 4,233,800
Sanitary Sewer	\$ 5,786,300
Reclaim Water System	\$ 2,496,800
Internal Roadway/Curbing	\$ 5,865,400
Undergrounding of Conduit	\$ 297,000
Stormwater Improvements	\$ 3,035,900
Earthwork (Stormwater Ponds)	\$ 1,431,300
Landscape/Hardscape/Irrigation/Entry Features	\$ 1,000,000
Amenity	\$ 2,640,000
Professional Services and Permitting	\$ 1,353,900
10% Contingency	\$ 4,221,060
<b>Total</b>	<b>\$ 32,361,460</b>

(1) A detailed description of these improvements is provided in the Master Engineer's Report dated November 16, 2023

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 3**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**BOND SIZING**  
**MASTER ASSESSMENT METHODOLOGY**

<b>Description</b>		<b>Total</b>
Construction Funds	\$	32,361,460
Debt Service Reserve	\$	3,236,146
Capitalized Interest	\$	6,542,250
Underwriters Discount	\$	872,300
Cost of Issuance	\$	600,000
Rounding	\$	2,844
<b>Par Amount*</b>	<b>\$</b>	<b>43,615,000</b>

Bond Assumptions:

Average Coupon	7.50%
Amortization	30 years
Capitalized Interest	24 months
Debt Service Reserve	Max Annual D/S
Underwriters Discount	2%

\* Par amount is subject to change based on the actual terms at the sale of the Bonds

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 4  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 ALLOCATION OF BENEFIT  
 MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	ERU Factor	Total ERUs	% of Total ERUs	Total Improvements	
					Costs Per Product Type	Improvement Costs Per Unit
Single Family 40'	50	0.80	40	6.09%	\$1,970,256	\$39,405
Single Family 50'	617	1.00	617	93.91%	\$30,391,204	\$49,256
<b>Totals</b>	<b>667</b>		<b>657</b>	<b>100.00%</b>	<b>\$32,361,460</b>	

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 5**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**ALLOCATION OF TOTAL BENEFIT/PAR DEBT TO EACH PRODUCT TYPE**  
**MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	Total Improvements Costs Per Product Type	Allocation of Par Debt Per Product Type	Par Debt Per Unit
Single Family 40'	50	\$ 1,970,256	\$ 2,655,403	\$ 53,108
Single Family 50'	617	\$ 30,391,204	\$ 40,959,597	\$ 66,385
<b>Totals</b>	<b>667</b>	<b>\$ 32,361,460</b>	<b>\$ 43,615,000</b>	

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 6**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**PAR DEBT AND ANNUAL ASSESSMENTS FOR EACH PRODUCT TYPE**  
**MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	Allocation of Par Debt Per Product Type	Total Par Debt Per Unit	Maximum Annual Debt Service	Net Annual Debt Assessment Per Unit	Gross Annual Debt Assessment Per Unit (1)
Single Family 40'	50	\$2,655,403.35	\$53,108.07	\$197,025.63	\$3,940.51	\$4,237.11
Single Family 50'	617	\$40,959,596.65	\$66,385.08	\$3,039,120.37	\$4,925.64	\$5,296.39
<b>Totals</b>	<b>667</b>	<b>\$43,615,000.00</b>		<b>\$3,236,146.00</b>		

(1) This amount includes collection fees and early payment discounts when collected on the County Tax Bill

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 7  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 PRELIMINARY ASSESSMENT ROLL  
 MASTER ASSESSMENT METHODOLOGY**

Owner	Property*	Acres	Total Par Debt Allocation Per Acre	Total Par Debt Allocated	Net Annual Debt Assessment Allocation	Gross Annual Debt Assessment Allocation (1)
Jeffrey & JoAnn Yeager	Willowbrook CDD	284.91	\$ 153,086.12	\$ 43,615,000.00	\$ 3,236,146.00	\$ 3,479,726.88
<b>Totals</b>		<b>284.91</b>		<b>\$ 43,615,000.00</b>	<b>\$ 3,236,146.00</b>	<b>\$ 3,479,726.88</b>

(1) This amount includes 7% to cover collection fees and early payment discounts when collected utilizing the uniform method.

\*See Attached Legal Description

Annual Assessment Periods	30
Average Coupon Rate (%)	7.50%
Maximum Annual Debt Service	\$3,236,146

Prepared by: Governmental Management Services - Central Florida, LLC



# SECTION VI

## RESOLUTION 2024-42

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT DECLARING SPECIAL ASSESSMENTS; DESIGNATING THE NATURE AND LOCATION OF THE PROPOSED IMPROVEMENTS; DECLARING THE TOTAL ESTIMATED COST OF THE IMPROVEMENTS, THE PORTION TO BE PAID BY ASSESSMENTS, AND THE MANNER AND TIMING IN WHICH THE ASSESSMENTS ARE TO BE PAID; DESIGNATING THE LANDS UPON WHICH THE ASSESSMENTS SHALL BE LEVIED; PROVIDING FOR AN ASSESSMENT PLAT AND A PRELIMINARY ASSESSMENT ROLL; ADDRESSING THE SETTING OF PUBLIC HEARINGS; PROVIDING FOR PUBLICATION OF THIS RESOLUTION; AND ADDRESSING CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.**

**WHEREAS**, the Willowbrook Community Development District (the “District”) was established by Ordinance No. O-23-58 as adopted by the City Commission of the City of Winter Haven, Florida, effective November 13, 2023, and is a local unit of special-purpose government organized and existing under and pursuant to Chapter 190, *Florida Statutes*, as amended, located entirely within the City of Winter Haven, Florida; and

**WHEREAS**, the District is authorized by Chapter 190, *Florida Statutes*, to finance, fund, plan, establish, acquire, install, equip, operate, extend, or construct certain improvements, including but not limited to: transportation facilities, utility facilities, recreational facilities, and other infrastructure projects, and services necessitated by the development of, and serving lands within, the District; and

**WHEREAS**, the Board of Supervisors (the “Board”) of the District hereby determines to undertake, install, plan, establish, construct or reconstruct, enlarge or extend, equip, acquire, operate, and/or maintain the infrastructure improvements described in the District’s *Willowbrook Community Development District Engineer’s Report for Capital Improvements*, dated November 16, 2023, attached hereto as **Exhibit A** and incorporated herein by reference (“CIP” and the improvements described therein, the “Improvements”); and

**WHEREAS**, it is in the best interest of the District to pay all or a portion of the cost of the Improvements by special assessments levied on benefitted lands within the District pursuant to Chapters 170, 190 and 197, *Florida Statutes* (“Assessments”); and

**WHEREAS**, the District is empowered by Chapters 170, 190, and 197, *Florida Statutes*, to finance, fund, plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain the Improvements and to impose, levy and collect the Assessments; and

**WHEREAS**, this Resolution shall serve as the “resolution required to declare special assessments” contemplated by Section 170.03, *Florida Statutes*, for the assessment lien(s) levied against the property as described in **Exhibits A** and **B** that secure the Assessments.

**WHEREAS**, as set forth in the *Master Special Assessment Methodology Report*, dated November 16, 2023, attached hereto as **Exhibit B** and incorporated herein by reference (“Assessment Report”), and on file at Governmental Management Services-Central Florida, LLC, 219 E. Livingston Street, Orlando, Florida 32801 (“District Records Office”), the District hereby finds and determines that:

- (i) benefits from the Improvements will accrue to the property improved,
- (ii) the amount of those benefits will exceed the amount of the Assessments, and
- (iii) the Assessments are fairly and reasonably allocated.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT:**

**SECTION 1. AUTHORITY FOR THIS RESOLUTION; INCORPORATION OF RECITALS.** This Resolution is adopted pursuant to the provisions of Florida law, including without limitation Chapters 170, 190, and 197, *Florida Statutes*. The recitals stated above are incorporated herein and are adopted by the Board as true and correct statements.

**SECTION 2. DECLARATION OF ASSESSMENTS.** The Board hereby declares that it has determined to undertake all or a portion of the Improvements and to defray all or a portion of the cost thereof by the Assessments and is as set forth in the Assessment Report attached as **Exhibit B**.

**SECTION 3. DESIGNATING THE NATURE AND LOCATION OF IMPROVEMENTS.** The nature and general location of, and plans and specifications for, the Improvements are described in **Exhibit A** and as set forth in the CIP, which is on file at the District Records Office. **Exhibit B** is also on file and available for public inspection at the same location.

**SECTION 4. DECLARING THE TOTAL ESTIMATED COST OF THE IMPROVEMENTS, THE PORTION TO BE PAID BY ASSESSMENTS, AND THE MANNER AND TIMING IN WHICH THE ASSESSMENTS ARE TO BE PAID.**

- A.** The total estimated construction cost of the Improvements is **\$32,361,460** (“Estimated Cost”).
- B.** The Assessments will defray approximately **\$43,615,000**, which is the anticipated maximum par value of any bonds and which includes all or a portion of the Estimated Cost, as well as other financing-related costs, capitalized interest, and a debt service reserve as set forth in **Exhibit B**.
- C.** The manner in which the Assessments shall be apportioned and paid is set forth in the Assessment Report attached as **Exhibit B**, as may be modified by supplemental assessment resolutions. Commencing with the years in which the Assessments are certified for collection, the Assessments shall each be paid in not more than thirty (30) annual installments. The Assessments may be payable at the same time and in the same manner as are ad valorem taxes and collected pursuant to Chapter 197, *Florida Statutes*; provided, however, that in the event the uniform non-ad valorem assessment method of collecting the Assessments is not available to the District in any year, or if determined by the District to be in its best interest, the Assessments may be collected as is otherwise permitted by law, including but not limited to by direct bill. The decision to collect Assessments by any particular method – e.g., on the tax roll or by direct bill – does not mean that such method will be used to collect Assessments in future years, and the District reserves the right in its sole discretion to select collection methods in any given year, regardless of past practices.

**SECTION 5. DESIGNATING THE LANDS UPON WHICH THE ASSESSMENTS SHALL BE LEVIED.** The Assessments shall be levied, within the District, on all lots and lands adjoining and contiguous or bounding and abutting upon such Improvements or specially benefitted thereby and further designated by the assessment plat hereinafter provided for.

**SECTION 6. ASSESSMENT PLAT.** Pursuant to Section 170.04, *Florida Statutes*, there is on file, at the District Records Office, an assessment plat showing the area to be assessed, with certain plans and specifications describing the Improvements and the estimated cost of the Improvements, all of which are open to inspection by the public.

**SECTION 7. PRELIMINARY ASSESSMENT ROLL.** Pursuant to Section 170.06, *Florida Statutes*, the District Manager has caused to be made a preliminary assessment roll, in accordance with the method of assessment described in **Exhibit B** hereto, which shows the lots and lands assessed, the amount of benefit to and the maximum assessment against each lot or parcel of land and the number of annual installments into which the assessment may be divided, which assessment roll is hereby adopted and approved as the District's preliminary assessment roll.

**SECTION 8. PUBLIC HEARINGS DECLARED; DIRECTION TO PROVIDE NOTICE OF THE HEARINGS.** Pursuant to Sections 170.07 and 197.3632(4)(b), *Florida Statutes*, among other provisions of Florida law, there are hereby declared two (2) public hearings to be held as follows:

**NOTICE OF PUBLIC HEARINGS**

DATE:	Thursday, April 25, 2024
TIME:	10:00 a.m.
LOCATION:	Lake Alfred Public Library 245 N. Seminole Avenue Lake Alfred, Florida 33850

The purpose of the public hearings is to hear comment and objections to the proposed special assessment program for District Improvements as identified in the CIP and the preliminary assessment roll, a copy of which is on file at the District Records Office. Interested parties may appear at that hearing or submit their comments in writing prior to the hearings at the District Records Office.

Notice of said hearings shall be advertised in accordance with Chapters 170 and 197, *Florida Statutes*, and the District Manager is hereby authorized and directed to place said notice in a newspaper of paid general circulation within Polk County (by two (2) publications one (1) week apart with the first publication at least twenty (20) days prior to the date of the hearing established herein). The District Manager shall file a publisher's affidavit with the District Secretary verifying such publication of notice. The District Manager is further authorized and directed to give thirty (30) days written notice by mail of the time and place of the hearing to the owners of all property to be assessed and include in such notice the amount of the assessment for each such property owner, a description of the areas to be improved and notice that information concerning all assessments may be ascertained at the District Records Office. The District Manager shall file proof of such mailing by affidavit with the District Secretary.

**SECTION 9. PUBLICATION OF RESOLUTION.** Pursuant to Section 170.05, *Florida Statutes*, the District Manager is hereby directed to cause this Resolution to be published twice (once a week for two (2) weeks) in a newspaper of paid general circulation within Polk County and to provide such other notice as may be required by law or desired in the best interests of the District.

**SECTION 10. CONFLICTS.** All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed.

**SECTION 11. SEVERABILITY.** If any section or part of a section of this Resolution is declared invalid or unconstitutional, the validity, force, and effect of any other section or part of a section of this Resolution shall not thereby be affected or impaired unless it clearly appears that such other section or part

of a section of this Resolution is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.

**SECTION 12. EFFECTIVE DATE.** This Resolution shall become effective upon its adoption.

**PASSED AND ADOPTED** this 26th day of March 2024.

ATTEST:

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

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Secretary / Assistant Secretary

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Chairperson/Vice Chairperson  
Board of Supervisors

**Exhibit A:** *Engineer's Report for Capital Improvements*, dated November 16, 2023

**Exhibit B:** *Master Assessment Methodology*, dated November 16, 2023

ENGINEER'S REPORT

PREPARED FOR:

BOARD OF SUPERVISORS  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT

ENGINEER:

SLOAN ENGINEERING GROUP

November 16, 2023

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
ENGINEER'S REPORT**

**1. INTRODUCTION**

The purpose of this report is to provide a description of the capital improvement plan ("CIP"), and estimated costs of the CIP, for the Willowbrook Community Development District.

**2. GENERAL SITE DESCRIPTION**

The proposed District is located entirely within the City of Winter Haven, and covers approximately 284.905 acres of land, more or less. The site is generally located south of Lucerne Park Road and north of Martin Luther King Jr. Boulevard between Lake Fannie and Lake Smart.

**3. PROPOSED CAPITAL IMPROVEMENT PLAN**

The CIP is intended to provide public infrastructure improvements for the lands within the District, which are planned for 667 residential units. The following table shows the planned product types and land uses for the District:

**PRODUCT TYPES**

<b>Product Type</b>	<b>Total Units</b>
40 Ft Lots	50
50 Ft Lots	617
<b>TOTAL</b>	<b>667</b>

The CIP infrastructure includes:

**Roadway Improvements:**

The CIP includes subdivision roads within the District. All internal neighborhood roads will be 2-lane un-divided roads. Such roads include the roadway asphalt, base, and subgrade, roadway curb and gutter, striping and signage and sidewalks within rights-of-way abutting non-lot lands. Sidewalks abutting lots will be constructed by the homebuilders. All roads will be designed in accordance with applicable City and governmental standards.

All internal roadways may be financed by the District. Alternatively, the developer may elect to finance the internal roads, gate them, and turn them over to a homeowner's association for ownership, operation and maintenance (in such an event, the District would be limited to financing only utilities, conservation/mitigation and stormwater improvements behind such gated areas).

**Stormwater Management System:**

The stormwater collection and outfall system are a combination of roadway curbs, curb inlets, pipe, control structures and stormwater ponds designed to treat and attenuate stormwater runoff from District lands. The stormwater system will be designed consistent with the criteria established by the SWFWMD

and the City for stormwater/floodplain management systems. The District will finance, own, operate and maintain the stormwater system including the storm sewer inlets and piping within the right-of-way.

#### **Water, Wastewater and Reclaim Utilities:**

As part of the CIP, the District intends to construct and/or acquire water, wastewater and reclaim infrastructure. In particular, the on-site water supply improvements include water mains that will be located within rights-of-way and used for potable water service and fire protection.

Wastewater improvements for the project will include an onsite gravity collection system, offsite and onsite force main and onsite lift stations.

Similarly, the reclaim water distribution system will be constructed to provide service for irrigation throughout the community.

The water and reclaim distribution and wastewater collection systems for all phases will be completed by the District and then dedicated to the City for operation and maintenance.

#### **Hardscape, Landscape, and Irrigation:**

The District will construct and/or install landscaping, irrigation and hardscaping within District common areas and rights-of-way. The City has distinct design criteria requirements for planting and irrigation design. Therefore, this project will at a minimum meet those requirements but, in most cases, exceed the requirements with enhancements for the benefit of the community. All such landscaping, irrigation and hardscaping will be owned, maintained and funded by the District.

#### **Streetlights / Undergrounding of Electrical Utility Lines**

The District intends to lease streetlights through an agreement with the local utility provider in which case the District would fund the streetlights through an annual operations and maintenance assessment. As such, streetlights are not included as part of the CIP.

The CIP does however include the incremental cost of undergrounding electrical utility lines within right-of-way utility easements throughout the community. Any lines and transformers located in such areas would be owned by the local utility provider and not paid for by the District as part of the CIP.

#### **Recreational Amenities:**

In conjunction with the construction of the CIP, the District intends to construct amenity facilities, parks, trails and other passive amenities. These improvements, if financed through the District, will be funded, owned and maintained by the District. All such improvements will be open to the general public, subject to a reasonable fee adopted by the District pursuant to Florida law.

The developer may also privately construct and finance all or a portion of the amenity facilities. All such improvements will be considered common elements for the exclusive benefit of the District landowners.



## **Environmental Conservation/Mitigation**

The District will be responsible for the design, permitting, construction, maintenance, and government reporting of any on-site environmental conservation areas. The initial installation costs are minimal, but the improvements are included within the CIP.

## **Professional Services**

The CIP also includes various professional services. These include: (i) engineering, surveying and architectural fees, (ii) permitting and plan review costs, and (iii) development/construction management services fees that are required for the design, permitting, construction, and maintenance acceptance of the public improvements and community facilities.

## **Off-Site Improvements**

Offsite improvements will consist of roadway and utility extension to serve the community. The following offsite improvements are proposed:

- Turnlanes on Lucerne Park Road
- Turnlanes on Martin Luther King Jr Blvd.

NOTE: In the event that impact fee credits are generated from any roadway, utilities or other improvements funded by the District, any such credits, if any, will be the subject of a separate agreement between the applicable developer and the District. Pursuant to such an agreement, and without intending to alter the terms of such an agreement, the applicable developer may elect to retain such credits if the developer provides consideration equal to the market value of the credits in the form of work product, improvements and/or land (based on the lesser of appraised value or the developer's cost basis as it relates to land), or in the form of a cash paydown of certain debt assessments or a reduction in the acquisition cost to the District equal to the value of the credits.

## **4. PERMITTING/CONSTRUCTION COMMENCEMENT**

All necessary permits for the construction of the CIP have either been obtained or are currently under review by respective governmental authorities, and include the following:

Agency	Permit Description	Permit Status
City of Winter Haven	Site Construction Plans	Obtained
Polk County	Level 2 Review for Roadway Improvements	Obtained
Southwest Florida Water Management District	Environmental Resource Permit	Obtained
FDEP	Potable Water Permit	Obtained
FDEP	Sanitary Sewer Permit	Obtained
FDOT	Driveway Connection	In Progress

## 5. OPINION OF PROBABLE CONSTRUCTION COSTS

The table below presents, among other things, the cost estimate for the CIP. It is our professional opinion that the costs set forth below are reasonable and consistent with market pricing.

### COST ESTIMATE

<b>Improvement</b>	<b>TOTAL CIP Estimated Cost</b>	<b>O&amp;M Entity</b>
Potable Water	\$4,233,800.00	City of Winter Haven
Sanitary Sewer	\$5,786,300.00	City of Winter Haven
Reclaim Water System	\$2,496,800.00	City of Winter Haven
Internal Roadway/Curbing <sup>1</sup>	\$5,865,400.00	CDD
Undergrounding of Conduit	\$297,000.00	CDD
Stormwater Improvements	\$3,035,900.00	CDD
Earthwork (Stormwater Ponds)	\$1,431,300.00	CDD
Landscape/Hardscape/Irrigation/ Entry Features	\$1,000,000.00	CDD
Amenity	\$2,640,000.00	CDD
Professional Services & Permitting Fees	\$1,353,900.00	CDD
Contingency (15%)	\$4,221,060.00	As above
<b>TOTAL</b>	<b>\$32,361,460.00</b>	

1. Any offsite roadways currently owned and maintained by the City will remain owned and maintained by the City.
2. Roadway, landscape/hardscape/irrigation, and amenities improvements, if behind hard gates, will not be part of the CIP.
3. The developer reserves the right to finance any of the improvements outlined above, and have such improvements owned and maintained by a property owner's or homeowner's association (in which case such items would not be part of the CIP), the District or a third-party.
4. A third party, or an applicable property owner's or homeowner's association may elect to maintain any District-owned improvements, subject to the terms of an agreement with the District.

## 6. CONCLUSIONS

The CIP will be designed in accordance with current governmental regulations and requirements. The CIP will serve its intended function so long as the construction is in substantial compliance with the design.

It is further our opinion that:

- the estimated cost to the CIP as set forth herein is reasonable based on prices currently being experienced in the area in which the District is located, and is not greater than the lesser of the actual cost of construction or the fair market value of such infrastructure;
- All of the improvements comprising the CIP are required by applicable development approvals issued pursuant to Section 380.06, Florida Statutes;

- the CIP is feasible to construct, there are no technical reasons existing at this time that would prevent the implementation of the CIP, and it is reasonable to assume that all necessary regulatory approvals will be obtained in due course;
- the District will pay the lesser of the actual cost of the improvements or fair market value; and
- the assessable property within the District will receive a special benefit from the CIP that is at least equal to such costs.

Also, the CIP will constitute a system of improvements that will provide benefits, both general, and special and peculiar to all lands within the District. The general public, property owners, and property outside the District will benefit from the provisions of the District's CIP; however, these are incidental to the District's CIP, which is designed solely to provide special benefits peculiar to property within the District. Special and peculiar benefits accrue to property within the District and enable properties within its boundaries to be developed.

The professional service for establishing the Construction Cost Estimate is consistent with the degree of care and skill exercised by members of the same profession under similar circumstances. The CIP will be owned by the District or other governmental units and such CIP is intended to be available and will reasonably be available for use by the general public (either by being part of a system of improvements that is available to the general public or is otherwise available to the general public) including nonresidents of the District. All of the CIP is or will be located on lands owned or to be owned by the District or another governmental entity or on perpetual easements in favor of the District or other governmental entity. The CIP, and any cost estimates set forth herein, do not include any earthwork, grading or other improvements on private lots or property.

Please note that the CIP as presented herein is based on current plans and market conditions which are subject to change. Accordingly, the CIP, as used herein, refers to sufficient public infrastructure of the kinds described herein (i.e., stormwater/floodplain management, sanitary sewer, potable water, etc.) to support the development and sale of the planned residential units in the District, which (subject to true-up determinations) number and type of units may be changed with the development of the site. Stated differently, 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, and the District expressly reserves the right to do so.

\_\_\_\_\_  
 \_\_\_\_\_, P.E. Date  
 FL License No. \_\_\_\_\_

**MASTER  
ASSESSMENT METHODOLOGY  
  
FOR  
WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT**

**Date: November 16, 2023**

**Prepared by**

**Governmental Management Services - Central Florida, LLC  
219 E. Livingston Street  
Orlando, FL 32801**



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**GMS-CF, LLC does not represent the Willowbrook Community Development District as a Municipal Advisor or Securities Broker nor is GMS-CF, LLC registered to provide such services as described in Section 15B of the Securities and Exchange Act of 1934, as amended. Similarly, GMS-CF, LLC does not provide the Willowbrook Community Development District with financial advisory services or offer investment advice in any form.**

## **1.0 Introduction**

The Willowbrook Community Development District is a local unit of special-purpose government organized and existing under Chapter 190, Florida Statutes (the “District”), as amended. The District plans to issue up to \$43,615,000 of tax exempt bonds in one or more series (the “Bonds”) for the purpose of financing certain infrastructure improvements within the District, more specifically described in the Master Engineer’s Report dated November 16, 2023 prepared Sloan Engineering Group, Inc. as may be amended and supplemented from time to time (the “Engineer’s Report”). The District anticipates the construction of public infrastructure improvements consisting of improvements that benefit property owners within the District.

### **1.1 Purpose**

This Master Assessment Methodology Report (the “Assessment Report”) provides for an assessment methodology for allocating the debt to be incurred by the District to benefiting properties within the District. This Assessment Report allocates the debt to properties based on the special benefits each receives from the District’s capital improvement plan (“CIP”). This Assessment Report will be supplemented with one or more supplemental methodology reports to reflect the actual terms and conditions at the time of the issuance of each series of Bonds. This Assessment Report is designed to conform to the requirements of Chapters 190 and 170, Florida Statutes with respect to special assessments and is consistent with our understanding of case law on this subject.

The District intends to impose non ad valorem special assessments on the benefited lands within the District based on this Assessment Report. It is anticipated that all of the proposed special assessments will be collected through the Uniform Method of Collection described in Chapter 197.3632, Florida Statutes or any other legal means of collection available to the District. It is not the intent of this Assessment Report to address any other assessments, if applicable, that may be levied by the District, a homeowner’s association, or any other unit of government.

### **1.2 Background**

The District currently includes approximately 284.91 acres entirely within the City of Winer Haven, Polk County, Florida. The development program currently envisions approximately 667 residential lots (herein the “Development”). The proposed Development program is depicted in Table 1. It is recognized that such land use plan may change, and this Assessment Report will be modified accordingly.

The public improvements contemplated by the District in the CIP will provide facilities that benefit certain property within the District. The CIP is delineated in the Engineer's Report. Specifically, the District will construct and/or acquire certain potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. The acquisition and construction costs are summarized in Table 2.

The assessment methodology is a four-step process.

1. The District Engineer must first determine the public infrastructure improvements that may be provided by the District and the costs to implement the CIP.
2. The District Engineer determines the assessable acres that benefit from the District's CIP.
3. A calculation is made to determine the funding amounts necessary to acquire and/or construct CIP.
4. This amount is initially divided equally among the benefited properties on a prorated gross acreage basis. Ultimately, as land is platted, this amount will be assigned to each of the benefited properties based on the number of platted units.

### **1.3 Special Benefits and General Benefits**

Improvements undertaken by the District create special and peculiar benefits to assessable property, different in kind and degree than general benefits, for properties within its borders as well as general benefits to the public at large.

However, as discussed within this Assessment Report, these general benefits are incidental in nature and are readily distinguishable from the special and peculiar benefits, which accrue to the assessable property within the District. The implementation of the CIP enables properties within its boundaries to be developed. Without the District's CIP, there would be no infrastructure to support development of land within the District. Without these improvements, development of the property within the District would be prohibited by law.

There is no doubt that the general public and property owners outside the District will benefit from the provision of the District's CIP. However, these benefits will be incidental to the District's CIP, which is designed solely to meet the needs of property within the District. Properties outside the District boundaries do not depend upon the District's CIP. The property owners within the District are therefore receiving special benefits not received by those outside the District's boundaries.

## **1.4 Requirements of a Valid Assessment Methodology**

There are two requirements under Florida law for a valid special assessment:

- 1) The properties must receive a special benefit from the improvements being paid for.
- 2) The assessments must be fairly and reasonably allocated to the properties being assessed.

Florida law provides for a wide application of special assessments that meet these two characteristics of special assessments.

## **1.5 Special Benefits Exceed the Costs Allocated**

The special benefits provided to the property owners within the District are greater than the costs associated with providing these benefits. The District Engineer estimates that the District's CIP that is necessary to support full development of property will cost approximately \$32,361,460. The District's Underwriter projects that financing costs required to fund the infrastructure improvements, including project costs, the cost of issuance of the Bonds, the funding of debt service reserves and capitalized interest, will be approximately \$43,615,000. Additionally, funding required to complete the CIP which is not financed with Bonds will be funded by the Developer(s). Without the CIP, the property would not be able to be developed and occupied by future residents of the community.

## **2.0 Assessment Methodology**

### **2.1 Overview**

The District is planning to issue up to \$43,615,000 in Bonds to fund all or a portion of the District's CIP, provide for capitalized interest, a debt service reserve account and cost of issuance. It is the purpose of this Assessment Report to allocate the \$43,615,000 in debt to the properties benefiting from the CIP.

Table 1 identifies the proposed land uses as identified by the Developer. The District has relied on the Engineer's Report to develop the costs of the CIP needed to support the Development, these construction costs are outlined in Table 2. The improvements needed to support the Development are described in detail in the Engineer's Report and are estimated to cost \$32,361,460. Based on the estimated costs, the size of the bond issue under current market conditions needed to generate funds to pay for the CIP and related costs was determined by the District's Underwriter to total approximately \$43,615,000. Table 3 shows the breakdown of the bond sizing.



## 2.2 Allocation of Debt

Allocation of debt is a continuous process until the development plan is completed. The CIP funded by District Bonds benefits all developable acres within the District.

The initial assessments will be levied on an equal basis to all acres within the District. A fair and reasonable methodology allocates the debt incurred by the District proportionately to the properties receiving the special benefits. At this point all of the lands within the District are benefiting from the improvements.

Once platting or the recording of declaration of condominium, (“Assigned Properties”) has begun, the assessments will be levied to the Assigned Properties based on the benefits they receive. The Unassigned Properties, defined as property that has not been platted, assigned development rights or subjected to a declaration of condominium, will continue to be assessed on a per acre basis (“Unassigned Properties”). Eventually the development plan will be completed and the debt relating to the Bonds will be allocated to the planned 667 residential units within the District, which are the beneficiaries of the CIP, as depicted in Table 5 and Table 6. If there are changes to the development plan, a true up of the assessment will be calculated to determine if a debt reduction or true-up payment from the Developer is required. The process is outlined in Section 3.0

The assignment of debt in this Assessment Report sets forth the process by which debt is apportioned. As mentioned herein, this Assessment Report will be supplemented from time to time.

## 2.3 Allocation of Benefit

The CIP consists of potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. There are *two* residential product types within the planned development. The single family 50’ product type has been set as the base unit and has been assigned one equivalent residential unit (“ERU”). Table 4 shows the allocation of benefit to the particular land uses. It is important to note that the benefit derived from the improvements on the particular units exceeds the cost that the units will be paying for such benefits.

## **2.4 Lienability Test: Special and Peculiar Benefit to the Property**

Construction and/or acquisition by the District of its proposed CIP will provide several types of systems, facilities and services for its residents. These include potable water, sanitary sewer, reclaim water system, internal roadway/curbing, undergrounding of conduit, stormwater improvements, earthwork (stormwater ponds), landscape/hardscape/irrigation/entry features, amenity, professional services & permitting fees, and contingency. These improvements accrue in differing amounts and are somewhat dependent on the type of land use receiving the special benefits peculiar to those properties, which flow from the logical relationship of the improvements to the properties.

Once these determinations are made, they are reviewed in the light of the special benefits peculiar to the property, which flow to the properties as a result of their logical connection from the improvements in fact actually provided.

For the provision of CIP, the special and peculiar benefits are:

- 1) the added use of the property,
- 2) added enjoyment of the property, and
- 3) the probability of increased marketability and value of the property.

These special and peculiar benefits are real and ascertainable but are not yet capable of being calculated as to value with mathematical certainty. However, each is more valuable than either the cost of, or the actual non-ad valorem special assessment levied for the improvement or the debt as allocated.

## **2.5 Lienability Test: Reasonable and Fair Apportionment of the Duty to Pay Non-Ad Valorem Assessments**

A reasonable estimate of the proportion of special and peculiar benefits received from the public improvements described in the Engineer's Report is delineated in Table 5 (expressed as Allocation of Par Debt per Product Type).

The determination has been made that the duty to pay the non-ad valorem special assessments is fairly and reasonably apportioned because the special and peculiar benefits to the property derived from the acquisition and/or construction of the District's CIP have been apportioned to the property according to reasonable estimates of the special and peculiar benefits provided consistent with the land use categories.

Accordingly, no acre or parcel of property within the boundaries of the District will have a lien for the payment of any non-ad valorem special assessment more than the determined special benefit peculiar to that property and therefore, the debt allocation will not be increased more than the debt allocation set forth in this Assessment Report.

In accordance with the benefit allocation suggested for the product types in Table 4, a total debt per unit and an annual assessment per unit have been calculated for each product type (Table 6). These amounts represent the preliminary anticipated per unit debt allocation assuming all anticipated units are built and sold as planned, and the entire proposed CIP is developed or acquired and financed by the District.

### **3.0 True Up Mechanism**

Although the District does not process plats, declaration of condominiums, site plans or revisions thereto for the Developer, it does have an important role to play during the course of platting and site planning. Whenever a plat, declaration of condominium or site plan is processed, the District must allocate a portion of its debt to the property according to this Assessment Report outlined herein. In addition, the District must also prevent any buildup of debt on Unassigned Property. Otherwise, the land could be fully conveyed and/or platted without all of the debt being allocated. To preclude this, at the time Unassigned Properties become Assigned Properties, the District will determine the amount of anticipated assessment revenue that remains on the Unassigned Properties, taking into account the proposed plat, or site plan approval. If the total anticipated assessment revenue to be generated from the Assigned and Unassigned Properties is greater than or equal to the maximum annual debt service then no adjustment is required. In the case that the revenue generated is less than the required amount then a debt reduction or true-up payment by the landowner in the amount necessary to reduce the par amount of the outstanding Bonds plus accrued interest to a level that will be supported by the new net annual debt service assessments will be required.

### **4.0 Assessment Roll**

The District will initially distribute the liens across the property within the District boundaries on a gross acreage basis. As Assigned Property becomes known with certainty, the District will refine its allocation of debt from a per acre basis to a per unit basis as shown in Table 6. If the land use plan changes, then the District will update Table 6 to reflect the changes. As a result, the assessment liens are neither fixed nor are they determinable with certainty on any acre of land in the District prior to the time final Assigned Properties become known. At this time the debt associated with the District's CIP will be distributed evenly across the acres within the District. As the development process occurs, the debt will be distributed against the Assigned Property in the manner described in this Assessment Report. The current assessment roll is depicted in Table 7.

TABLE 1  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 DEVELOPMENT PROGRAM  
 MASTER ASSESSMENT METHODOLOGY

Product Types	No. of Units *	Totals	ERUs per Unit (1)	Total ERUs
Single Family 40'	50	50	0.80	40
Single Family 50'	617	617	1.00	617
<b>Total Units</b>	<b>667</b>	<b>667</b>		<b>657</b>

(1) Benefit is allocated on an ERU basis; based on density of planned development, with a Single Family 50' unit equal to 1 ERU

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 2**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**INFRASTRUCTURE COST ESTIMATES**  
**MASTER ASSESSMENT METHODOLOGY**

Capital Improvement Plan ("CIP") (1)	Total Cost Estimate
Potable Water	\$ 4,233,800
Sanitary Sewer	\$ 5,786,300
Reclaim Water System	\$ 2,496,800
Internal Roadway/Curbing	\$ 5,865,400
Undergrounding of Conduit	\$ 297,000
Stormwater Improvements	\$ 3,035,900
Earthwork (Stormwater Ponds)	\$ 1,431,300
Landscape/Hardscape/Irrigation/Entry Features	\$ 1,000,000
Amenity	\$ 2,640,000
Professional Services and Permitting	\$ 1,353,900
10% Contingency	\$ 4,221,060
<b>Total</b>	<b>\$ 32,361,460</b>

(1) A detailed description of these improvements is provided in the Master Engineer's Report dated November 16, 2023

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 3**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**BOND SIZING**  
**MASTER ASSESSMENT METHODOLOGY**

<b>Description</b>		<b>Total</b>
Construction Funds	\$	32,361,460
Debt Service Reserve	\$	3,236,146
Capitalized Interest	\$	6,542,250
Underwriters Discount	\$	872,300
Cost of Issuance	\$	600,000
Rounding	\$	2,844
<b>Par Amount*</b>	<b>\$</b>	<b>43,615,000</b>

Bond Assumptions:

Average Coupon	7.50%
Amortization	30 years
Capitalized Interest	24 months
Debt Service Reserve	Max Annual D/S
Underwriters Discount	2%

\* Par amount is subject to change based on the actual terms at the sale of the Bonds

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 4  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 ALLOCATION OF BENEFIT  
 MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	ERU Factor	Total ERUs	% of Total ERUs	Total Improvements	
					Costs Per Product Type	Improvement Costs Per Unit
Single Family 40'	50	0.80	40	6.09%	\$1,970,256	\$39,405
Single Family 50'	617	1.00	617	93.91%	\$30,391,204	\$49,256
<b>Totals</b>	<b>667</b>		<b>657</b>	<b>100.00%</b>	<b>\$32,361,460</b>	

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 5**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**ALLOCATION OF TOTAL BENEFIT/PAR DEBT TO EACH PRODUCT TYPE**  
**MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	Total Improvements Costs Per Product Type	Allocation of Par Debt Per Product Type	Par Debt Per Unit
Single Family 40'	50	\$ 1,970,256	\$ 2,655,403	\$ 53,108
Single Family 50'	617	\$ 30,391,204	\$ 40,959,597	\$ 66,385
<b>Totals</b>	<b>667</b>	<b>\$ 32,361,460</b>	<b>\$ 43,615,000</b>	

\* Unit mix is subject to change based on marketing and other factors

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**TABLE 6**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**PAR DEBT AND ANNUAL ASSESSMENTS FOR EACH PRODUCT TYPE**  
**MASTER ASSESSMENT METHODOLOGY**

Product Types	No. of Units *	Allocation of Par Debt Per Product Type	Total Par Debt Per Unit	Maximum Annual Debt Service	Net Annual Debt Assessment Per Unit	Gross Annual Debt Assessment Per Unit (1)
Single Family 40'	50	\$2,655,403.35	\$53,108.07	\$197,025.63	\$3,940.51	\$4,237.11
Single Family 50'	617	\$40,959,596.65	\$66,385.08	\$3,039,120.37	\$4,925.64	\$5,296.39
<b>Totals</b>	<b>667</b>	<b>\$43,615,000.00</b>		<b>\$3,236,146.00</b>		

(1) This amount includes collection fees and early payment discounts when collected on the County Tax Bill

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 7  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 PRELIMINARY ASSESSMENT ROLL  
 MASTER ASSESSMENT METHODOLOGY**

Owner	Property*	Acres	Total Par Debt Allocation Per Acre	Total Par Debt Allocated	Net Annual Debt Assessment Allocation	Gross Annual Debt Assessment Allocation (1)
Jeffrey & JoAnn Yeager	Willowbrook CDD	284.91	\$ 153,086.12	\$ 43,615,000.00	\$ 3,236,146.00	\$ 3,479,726.88
<b>Totals</b>		<b>284.91</b>		<b>\$ 43,615,000.00</b>	<b>\$ 3,236,146.00</b>	<b>\$ 3,479,726.88</b>

(1) This amount includes 7% to cover collection fees and early payment discounts when collected utilizing the uniform method.

\*See Attached Legal Description

Annual Assessment Periods	30
Average Coupon Rate (%)	7.50%
Maximum Annual Debt Service	\$3,236,146

Prepared by: Governmental Management Services - Central Florida, LLC

# SECTION VII

**2024 SUPPLEMENTAL ENGINEER'S REPORT FOR THE  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

March 2024

**1. PURPOSE**

This report supplements the *Engineer's Report for Willowbrook Community Development District*, dated November 16, 2023 ("**Master Report**") for the purpose of describing the portion of the District's CIP<sup>1</sup> to be known as the "**Assessment Area One Project**".

**2. Assessment Area One Project**

The District Lands have been broken up into two separate parcels the "**North Parcel**" and the "**South Parcel**." The North Parcel contains 132.944 acres of land which are planned to contain 434 residential units. The South Parcel contains 151.961 acres of land which are planned to contain 233 residential units.

<b>Assessment Area</b>	<b>Total Acres</b>
South Parcel	151.961
North Parcel	132.944
<b>TOTAL (approximate)</b>	<b>284.905</b>

Land development has been further broken into two separate phases of land development for each respective parcel. Phase 1 of land development associated with the North Parcel is anticipated to occur simultaneously with Phase 1 of land development associated with the South Parcel. Phase 2 of the North Parcel and Phase 2 of the South Parcel are each expected to be developed in the future. The portion of the CIP that is necessary for the development of Phase 1 of the North Parcel is referred to herein as the "North Phase 1 Project" whereas the portion of the CIP that is necessary for the development of Phase 1 of the South Parcel is referred to herein as the "South Phase 1 Project." The North Phase 1 Project and the South Phase 1 Project are collectively referred to as the "Assessment Area One Project." Phase 1 of the North Parcel and Phase 1 of the South Parcel are collectively referred to as "Assessment Area One" of the District. A legal description and sketch of Assessment Area One is shown in **Composite Exhibit A**. A current site plan is attached as **Exhibit B**.

**Product Mix**

The table below shows the total product types anticipated for the District:

<b>Unit Type</b>	<b>Phase 1 South</b>	<b>Phase 2 South</b>	<b>Phase 1 North</b>	<b>Phase 2 North</b>	<b>Total Units</b>
<b>SF 40'</b>	0	0	50	0	50
<b>SF 50'</b>	121	112	185	199	617
<b>TOTAL</b>	<b>121</b>	<b>112</b>	<b>235</b>	<b>199</b>	<b>667</b>

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Master Report.

**List of Assessment Area One Project Improvements**

The various improvements that are part of the overall CIP – including those that are part of the Assessment Area One Project – are described in detail in the Master Report, and those descriptions are incorporated herein. Estimated costs attributable to the Assessment Area One Project are as detailed below. The Assessment Area One Project includes, but is not limited to, the following items: offsite improvements, roadways, water/sewer/reclaim utilities, stormwater management, hardscape/landscape/irrigation, entry features, park and recreational facilities, the differential cost of undergrounding electrical conduit, contingency and soft costs.

**Permits**

The status of the applicable permits necessary for the Assessment Area One Project is as follows:

Agency	Permit Description	Permit Status
City of Winter Haven	Site Construction Plans	Obtained
Polk County	Level 2 Review for Roadway Improvements	Obtained
Southwest Florida Water Management District	Environmental Resource Permit	Obtained
FDEP	Potable Water Permit	Obtained
FDEP	Sanitary Sewer Permit	Obtained
FDOT	Driveway Connection	In Progress

**Estimated Costs**

The table below shows the costs that are necessary for delivery of the Assessment Area One Project:

**ESTIMATED COSTS OF DELIVERING THE ASSESSMENT AREA ONE PROJECT**

	North Phase 1 Project	South Phase 1 Project	Total 2024 Project
Number of Lots	235	121	356
<b>Infrastructure</b> (1)(6)(9)(10)			
Offsite Improvements (5)	94,362	184,081	278,443
Stormwater Management (2)(3)	3,251,119	1,664,479	4,915,598
Utilities (Water, Sewer, Reuse)	4,069,881	2,274,065	6,343,946
Lighting (8)	105,750	54,450	160,200
Roadway (4)	1,746,049	1,225,632	2,971,681
Landscape/Hardscape/Irrigation/Entry Features (7)	434,750	224,044	658,794
Parks and Recreation (Amenities)	1,127,200	580,800	1,708,000
Professional Services/Permitting	477,050	245,630	722,680
Contingency	1,922,048	1,097,041	3,019,088
<b>Total</b>	<b>13,228,209</b>	<b>7,550,221</b>	<b>20,778,430</b>

1. Infrastructure consists of public roadway improvements, stormwater management facilities, master sanitary sewer lift station and utilities, entry feature, landscaping and signage, and parks and recreational facilities.
2. Excludes grading of each lot both for initial pad construction and in conjunction with home construction, which will be provided by developer or homebuilder.
3. Includes stormwater pond excavation. Costs do not include transportation to or placement of fill on private property.
4. Includes sub-grade, base, asphalt paving, and curbing.
5. Offsite Improvements include turn lanes and any offsite roadways currently owned and maintained by the City will remain owned and maintained by the City.
6. Estimates are based actual current bids for site development work and other costs based on 2024 cost with common costs allocated to each phase.
7. Includes entry features, signage, hardscape, landscape, irrigation and fencing.
8. CDD will enter into a Lighting Agreement with Electric Company for the street light poles and lighting service. Only the incremental cost of undergrounding of wire in public right-of-way and on District land is included.
9. The developer reserves the right to finance any of the improvements outlined above, and have such improvements owned and maintained by a property owner's or homeowner's association (in which case such items would not be funded by the District), or a third-party.
10. The District will only fund professional and permitting costs that are allocable to improvements funded by the District.

### **3. CONCLUSION**

The Assessment Area One Project will be designed in accordance with current governmental regulations and requirements. The Assessment Area One Project will serve its intended function so long as the construction is in substantial compliance with the design.

It is further our opinion that:

- the estimated cost to the Assessment Area One Project as set forth herein is reasonable based on prices currently being experienced in the jurisdiction in which the District is located, and is not greater than the lesser of the actual cost of construction or the fair market value of such infrastructure;
- all of the improvements comprising the CIP are required by applicable development approvals issued pursuant to Section 380.06, Florida Statutes;
- the Assessment Area One Project is feasible to construct, there are no technical reasons existing at this time that would prevent the implementation of the Assessment Area One Project, and it is reasonable to assume that all necessary regulatory approvals will be obtained in due course; and
- the assessable property within the District will receive a special benefit from the Assessment Area One Project that is at least equal to the costs of the Assessment Area One Project.

As described above, this report identifies the benefits from the Assessment Area One Project to the lands within the District. The general public, property owners, and property outside the District will benefit from the provisions of the District's CIP; however, these are incidental to the District's Assessment Area One Project, which is designed solely to provide special benefits peculiar to property within the District. Special and peculiar benefits accrue to property within the District and enable properties within its boundaries to be developed.

The Assessment Area One Project will be owned by the District or other governmental units and such Assessment Area One Project is intended to be available and will reasonably be available for use by

the general public (either by being part of a system of improvements that is available to the general public or is otherwise available to the general public) including nonresidents of the District. All of the Assessment Area One Project is or will be located on lands owned or to be owned by the District or another governmental entity or on perpetual easements in favor of the District or other governmental entity. The Assessment Area One Project, and any cost estimates set forth herein, do not include any earthwork, grading or other improvements on private lots or property. The District will pay the lesser of the cost of the components of the Assessment Area One Project or the fair market value.

Please note that the Assessment Area One Project as presented herein is based on current plans and market conditions which are subject to change. Accordingly, the Assessment Area One Project, as used herein, refers to sufficient public infrastructure of the kinds described herein (i.e., stormwater/floodplain management, sanitary sewer, potable water, etc.) to support the development and sale of the planned residential units in the District, which (subject to true-up determinations) number and type of units may be changed with the development of the site. Stated differently, 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, and the District expressly reserves the right to do so.

---

Steve Sloan, P.E.

Date \_\_\_\_\_

**COMPOSITE EXHIBIT A:** Legal Descriptions and Sketch of Assessment Area One

**EXHIBIT B:** Site Plan

## Exhibit A



LEGAL DESCRIPTION:

COMMENCE AT A 4" x 4" CONCRETE MONUMENT WITH A DISK LABELED LB7454, LYING AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, SAID POINT HAVING A NORTHING OF 1,347,673.47 FEET, AND AN EASTING OF 752,255.25 FEET IN REFERENCE TO THE STATE PLANE COORDINATE SYSTEM OF FLORIDA, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT, AND RUN THENCE ALONG THE WEST BOUNDARY OF SAID SOUTHEAST 1/4, N00°05'30"W A DISTANCE OF 1379.25 FEET TO A POINT MONUMENTED WITH A ONE HALF INCH IRON ROD WITH CAP READING "PESURV LB8112", LYING ON THE NORTHERN RIGHT OF WAY OF MARTIN LUTHER KING BOULEVARD NE / AVENUE T NE (AS DESCRIBED IN OFFICIAL RECORD BOOK 748, PAGE 608 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA), SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY, NON TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 924.93 FEET, A DELTA ANGLE OF 13°36'00", CHORD LENGTH OF 219.03 FEET, AND CHORD BEARING N70°42'22"W. THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE, AN ARC DISTANCE OF 219.55 FEET TO A POINT OF REVERSE CURVATURE ON A CURVE HAVING A RADIUS OF 984.93 FEET, A DELTA ANGLE OF 17°29'50", CHORD LENGTH OF 299.61 FEET AND CHORD BEARING OF N72°39'17"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 300.78 FEET TO A POINT ON A CURVE HAVING A RADIUS OF 984.93 FEET, A CENTRAL ANGLE OF 9°30'10", CHORD LENGTH OF 163.17 FEET, AND CHORD BEARING OF N86°09'17"W. CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 163.35 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE HAVING A RADIUS OF 602.96 FEET, A CENTRAL ANGLE OF 23°57'00", CHORD LENGTH OF 250.21 FEET, AND CHORD BEARING OF S77°07'08"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 252.04 FEET TO THE EAST BOUNDARY OF THAT PARCEL DESCRIBED BY WARRANTY DEED IN OFFICIAL RECORD BOOK 4476, PAGE 439, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; RUN THENCE ALONG SAID EAST BOUNDARY N03°00'59"W A DISTANCE OF 10.76 FEET TO THE POINT OF BEGINNING; CONTINUE THENCE ALONG SAID EAST BOUNDARY THE FOLLOWING (13) COURSES: (1) N03°00'59"W A DISTANCE OF 827.20 FEET; (2) N27°38'59"W A DISTANCE OF 151.06 FEET; (3) N17°11'59"W A DISTANCE OF 119.50 FEET; (4) N02°16'59"W A DISTANCE OF 150.00 FEET; (5) N05°12'01"E A DISTANCE OF 279.98 FEET; (6) N02°52'01"E A DISTANCE OF 174.28 FEET; (7) N05°58'59"W A DISTANCE OF 107.84 FEET; (8) N24°03'59"W A DISTANCE OF 270.00 FEET; (9) N29°03'59"W A DISTANCE OF 273.00 FEET; (10) N07°36'59"W A DISTANCE 122.34 FEET; (11) N20°38'59"W A DISTANCE OF 229.76 FEET; (12) S84°36'01"W A DISTANCE OF 253.80 FEET; (13) N02°38'59"W A DISTANCE OF 423.10 FEET MORE OR LESS TO THE SOVEREIGN SUBMERGED LAND LINE FOR LAKE SMART; THENCE ALONG SAID SOVEREIGN SUBMERGED LAND LINE MEANDERED BY THE FOLLOWING (2) COURSES: (1) N37°11'01"E A DISTANCE OF 612.27 FEET; (2) N19°04'35"E A DISTANCE OF 692.87 FEET TO THE NORTH BOUNDARY OF A PERPETUAL CANAL EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 913, PAGE 237 AND CORRECTED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S74°39'25"E A DISTANCE OF 424.92 FEET TO THE BOUNDARY OF WILLOWBROOK GOLF COURSE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1006, PAGE 150 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID BOUNDARY OF WILLOWBROOK GOLF COURSE THE FOLLOWING (2) COURSES: (1) S03°20'11"E A DISTANCE OF 590.08 FEET; (2) S31°53'40"E A DISTANCE OF 165.00 FEET; THENCE DEPARTING SAID WILLOWBROOK GOLF COURSE BOUNDARY RUN S54°17'14"W A DISTANCE OF 112.40 FEET; THENCE S00°00'00"E A DISTANCE OF 110.00 FEET; THENCE N90°00'00"W A DISTANCE OF 94.00 FEET; THENCE S00°00'00"E A DISTANCE OF 40.00 FEET; THENCE N90°00'00"E A DISTANCE OF 84.00 FEET; THENCE S00°00'00"E A DISTANCE 1220.00 FEET; THENCE N90°00'00"W A DISTANCE OF 84.00 FEET; THENCE S00°00'00"E A DISTANCE OF 40.00 FEET TO A NON TANGENT POINT ON A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 26.00 FEET, A DELTA ANGLE OF 90°00'00", A CHORD BEARING S45°00'00"W, A CHORD DISTANCE OF 36.77 FEET; RUN THENCE ALONG SAID CURVE AN ARC DISTANCE OF 40.84 FEET; THENCE S00°00'00"E A DISTANCE OF 94.00 FEET; THENCE N90°00'00"E A DISTANCE OF 189.44 FEET; THENCE S14°33'00"E A DISTANCE OF 31.85 FEET TO A NON TANGENT POINT ON A CURVE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 170.00 FEET, A DELTA ANGLE OF 12°41'01", A CHORD BEARING S58°44'10"W, A CHORD DISTANCE OF 37.56 FEET; RUN THENCE ALONG SAID CURVE AN ARC DISTANCE OF 37.63 FEET; S52°23'39"W A DISTANCE OF 136.87 FEET; THENCE S37°36'21"E A DISTANCE OF 70.00 FEET; THENCE S52°23'39"W A DISTANCE OF 289.39 FEET; TO A CURVE TO THE RIGHT, HAVING A RADIUS OF 100.00 FEET, A DELTA ANGLE OF 55°24'38", A CHORD BEARING S24°41'20"W, A CHORD DISTANCE OF 92.98 FEET; RUN THENCE ALONG SAID CURVE AN ARC DISTANCE OF 96.71 FEET; THENCE S03°00'59"E A DISTANCE OF 1158.14 FEET; THENCE S17°23'22"E A DISTANCE OF 74.22 FEET TO NORTH RIGHT OF WAY OF AVENUE T NW (MARTIN LUTHER KING BOULEVARD NE) AS DESCRIBED IN OFFICIAL RECORD BOOK 13012, PAGE 1751, PUBLIC RECORDS OF POLK COUNTY, FLORIDA, SAID POINT LYING ON A CURVE NON TANGENT TO THE PREVIOUS COURSE HAVING A RADIUS OF 612.96 FEET, A DELTA ANGLE OF 08°39'27", A CHORD BEARING S69°50'49"W, A CHORD DISTANCE OF 92.53 FEET; RUN THENCE ALONG SAID CURVE AN NORTH RIGHT OF WAY LINE AN ARC DISTANCE OF 92.62 FEET TO THE POINT OF BEGINNING.

NOT VALID WITHOUT A DIGITAL SIGNATURE OR A SIGNATURE AND RAISED SEAL



MAILING: P.O. BOX 253, BARTOW, FL 33831  
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PHONE: (863) 537-7413 WWW.BASEPOINTSURVEYING.COM  
FLORIDA CERTIFICATE OF AUTHORIZATION # LB 8112

ROBERT E. LAZENBY, IV, P.S.M. # 6369

WILLOWBROOK SOUTH  
Section 15, Township 28 S, Range 26 E

SKETCH OF DESCRIPTION  
NOT A SURVEY  
SHEET 1 OF 4

DRAWING: #####

JOB #11153



NORTH

NORTH BOUNDARY PERPETUAL CANAL EASEMENT  
OFFICIAL RECORD BOOK 913, PAGE 237 &  
OFFICIAL RECORD BOOK 1003, PAGE 901

BOUNDARY WILLOWBROOK GOLF COURSE  
OFFICIAL RECORDS BOOK 1006, PAGE 150

LAKE SMART SOVEREIGN  
SUBMERGED LANDS MEANDER LINE

SHEET 4 OF 4  
SHEET 3 OF 4

MARTIN LUTHER KING BOULEVARD NE  
/ AVENUE T NE

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**BASEPOINT**  
SURVEYING, INC.

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WILLOWBROOK SOUTH  
Section 15, Township 28 S, Range 26 E

SKETCH OF DESCRIPTION  
NOT A SURVEY  
SHEET 2 OF 4

ROBERT E. LAZENBY, IV, P.S.M. # 6369

DRAWING: #####

JOB #11153



NORTH  
SCALE: 1" = 300'

MATCH LINE

LINE TABLE		
LINE #	LENGTH	BEARING
L1	10.76'	N03° 00' 59"W
L2	827.20'	N03° 00' 59"W
L3	151.06'	N27° 38' 59"W
L4	119.50'	N17° 11' 59"W
L5	150.00'	N02° 16' 59"W
L6	279.98'	N05° 12' 01"E
L7	174.28'	N02° 52' 01"E
L8	107.84'	N05° 58' 59"W
L9	270.00'	N24° 03' 59"W
L10	273.00'	N29° 03' 59"W
L26	84.00'	N90° 00' 00"W
L27	40.00'	S00° 00' 00"E
L28	94.00'	S00° 00' 00"E
L29	189.44'	N90° 00' 00"E
L30	31.85'	S14° 33' 00"E
L31	136.87'	S52° 23' 39"W
L32	70.00'	S37° 36' 21"E
L33	289.39'	S52° 23' 39"W
L34	1158.14'	S03° 00' 59"E
L35	74.22'	S17° 23' 22"E

Curve Table					
Curve #	Length	Radius	Delta	Chord	Bearing
C1	219.55'	924.93'	013°36'00"	219.03'	S70° 42' 22"E
C2	300.78'	984.93'	017°29'50"	299.61'	N72° 39' 17"W
C3	163.35'	984.93'	009°30'10"	163.17'	N86° 09' 17"W
C4	252.04'	602.96'	023°57'00"	250.21'	S77° 07' 08"W
C5	40.84'	26.00'	090°00'00"	36.77'	S45° 00' 00"W
C6	37.63'	170.00'	012°41'01"	37.56'	S58° 44' 10"W
C7	96.71'	100.00'	055°24'38"	92.98'	S24° 41' 20"W
C8	92.62'	612.96'	008°39'27"	92.53'	S69° 50' 49"W

EAST BOUNDARY  
PARCEL DESCRIBED  
BY WARRANTY DEED  
OFFICIAL RECORD  
BOOK 4476, PAGE 439

NORTHERN RIGHT OF WAY  
MARTIN LUTHER KING BOULEVARD NE /  
AVENUE T NE OFFICIAL RECORDS  
BOOK 13012, PAGE 1751

NORTHERN RIGHT OF WAY  
MARTIN LUTHER KING BOULEVARD NE /  
AVENUE T NE OFFICIAL RECORDS  
BOOK 748, PAGE 608

POINT OF BEGINNING

POINT OF COMMENCEMENT  
SOUTHWEST CORNER, SE 1/4, SECTION 15  
TOWNSHIP 28 SOUTH, RANGE 26 EAST  
NORTHING: 1,347,673.47, EASTING: 752,255.25  
4"x4" CONCRETE MONUMENT LB7454

1/2" IRON ROD & CAP  
STAMPED "PESURV LB8112

1379.25'  
S00°05'30"E

NOT VALID WITHOUT A DIGITAL  
SIGNATURE OR A SIGNATURE AND  
RAISED SEAL



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SKETCH OF DESCRIPTION  
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SHEET 3 OF 4

ROBERT E. LAZENBY, IV, P.S.M. # 6369

DRAWING: #####

JOB #11153

NORTH BOUNDARY PERPETUAL CANAL EASEMENT  
 OFFICIAL RECORD BOOK 913, PAGE 237 &  
 OFFICIAL RECORD BOOK 1003, PAGE 901



NORTH  
 SCALE: 1" = 300'

BOUNDARY WILLOWBROOK GOLF COURSE  
 OFFICIAL RECORDS BOOK 1006, PAGE 150

LAKE SMART SOVEREIGN  
 SUBMERGED LANDS MEANDER LINE

EAST BOUNDARY  
 PARCEL DESCRIBED  
 BY WARRANTY DEED  
 OFFICIAL RECORD  
 BOOK 4476, PAGE 439

LINE TABLE		
LINE #	LENGTH	BEARING
L9	270.00'	N24° 03' 59"W
L10	273.00'	N29° 03' 59"W
L11	122.34'	N07° 36' 59"W
L12	229.76'	N20° 38' 59"W
L13	253.80'	S84° 36' 01"W
L14	423.10'	N02° 38' 59"W
L15	612.27'	N37° 11' 01"E
L16	692.87'	N19° 04' 35"E
L17	424.92'	S74° 39' 25"E
L18	590.08'	S03° 20' 11"E
L19	165.00'	S31° 53' 40"E
L20	112.40'	S54° 17' 14"W
L21	110.00'	S00° 00' 00"E
L22	94.00'	N90° 00' 00"W
L23	40.00'	S00° 00' 00"E
L24	84.00'	N90° 00' 00"E
L25	1220.00'	S00° 00' 00"E
L26	84.00'	N90° 00' 00"W
L27	40.00'	S00° 00' 00"E

MATCH LINE

NOT VALID WITHOUT A DIGITAL  
 SIGNATURE OR A SIGNATURE AND  
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WILLOWBROOK SOUTH  
 Section 15, Township 28 S, Range 26 E

SKETCH OF DESCRIPTION  
 NOT A SURVEY  
 SHEET 4 OF 4

DRAWING: #####

JOB #11153

# SECTION VIII

**SUPPLEMENTAL**  
**ASSESSMENT METHODOLOGY - ASSESSMENT AREA ONE**

**FOR**

**WILLOWBROOK**

**COMMUNITY DEVELOPMENT DISTRICT**

**Date: March 26, 2023**

**Prepared by**

**Governmental Management Services - Central Florida, LLC**  
**219 E. Livingston Street**  
**Orlando, FL 32801**



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**GMS-CF, LLC does not represent the Willowbrook Community Development District as a Municipal Advisor or Securities Broker nor is GMS-CF, LLC registered to provide such services as described in Section 15B of the Securities and Exchange Act of 1934, as amended. Similarly, GMS-CF, LLC does not provide the Willowbrook Community Development District with financial advisory services or offer investment advice in any form.**

## **1.0 Introduction**

The Willowbrook Community Development District is a local unit of special-purpose government organized and existing under Chapter 190, Florida Statutes (the “District”), as amended. The District plans to issue up to \$43,615,000 of tax exempt bonds (the “Series 2024 Bonds” or “Bonds”) for the purpose of financing certain infrastructure improvements within the District consisting on Phase 1 of development within the District (herein “Assessment Area One”), more specifically described in the 2024 Supplemental Engineer’s Report dated March 2024 prepared by Sloan Engineering Group, Inc. as may be amended and supplemented from time to time (the “Engineer’s Report”). The District anticipates the construction of public infrastructure improvements consisting of improvements that benefit property owners within the District; however, it is anticipated that the series 2024 Bonds will be absorbed and secured by the lands within Assessment Area One upon platting.

### **1.1 Purpose**

This Preliminary Supplemental Assessment Methodology Report for Assessment Area One (the “Supplemental Report”) supplements the Master Assessment Methodology dated November 16, 2023 (together the “Assessment Report”) and provides for an assessment methodology for allocating the debt to be incurred by the District to benefiting properties within the District. This Assessment Report allocates the debt to properties based on the special benefits each receives from the District’s capital improvement plan (“Assessment Area One Project”). This Assessment Report will be supplemented with one or more supplemental methodology reports to reflect the actual terms and conditions at the time of the issuance of each series of Bonds. This Assessment Report is designed to conform to the requirements of Chapters 190 and 170, Florida Statutes with respect to special assessments and is consistent with our understanding of case law on this subject.

The District intends to impose non ad valorem special assessments on the benefited lands within the District based on this Assessment Report. It is anticipated that all of the proposed special assessments will be collected through the Uniform Method of Collection described in Section 197.3632, Florida Statutes or any other legal means of collection available to the District. It is not the intent of this Assessment Report to address any other assessments, if applicable, that may be levied by the District, a homeowner’s association, or any other unit of government.

### **1.2 Background**

The District currently includes approximately 284.91 acres entirely within the City of Winer Haven, Polk County, Florida. Assessment Area One within the District envisions 356 residential units (herein the “Development Program”). The proposed



Development Program is depicted in Table 1. It is recognized that such land use plan may change, and this Assessment Report will be modified accordingly.

The public improvements contemplated by the District in the Assessment Area One Project will provide facilities that benefit certain property within the District, including Assessment Area One. The Assessment Area One Project is delineated in the Engineer's Report. Specifically, the District will construct and/or acquire certain offsite improvements, stormwater management, utilities (water, sewer, reuse), lighting, roadway, landscape/hardscape/irrigation/entry features, parks and recreation (amenities), professional services/permitting, and contingency. The acquisition and construction costs are summarized in Table 2.

The assessment methodology is a four-step process.

1. The District Engineer must first determine the public infrastructure improvements that may be provided by the District and the costs to implement the Assessment Area One Project.
2. The District Engineer determines the assessable acres that benefit from the District's Assessment Area One Project.
3. A calculation is made to determine the funding amounts necessary to acquire and/or construct the Assessment Area One Project.
4. This amount is initially divided equally among the benefited properties on a prorated gross acreage basis. Ultimately, as land is platted, this amount will be assigned to each of the benefited properties based on the number of platted units.

### **1.3 Special Benefits and General Benefits**

Improvements undertaken by the District create special and peculiar benefits to assessable property, different in kind and degree than general benefits, for properties within its borders as well as general benefits to the public at large.

However, as discussed within this Supplemental Report, these general benefits are incidental in nature and are readily distinguishable from the special and peculiar benefits, which accrue to the assessable property within the District. The implementation of the Assessment Area One Project enables properties within the District's boundaries to be developed. Without the District's Assessment Area One Project, there would be no infrastructure to support development of land within the District. Without these improvements, development of the property within the District would be prohibited by law.

There is no doubt that the general public and property owners outside the District will benefit from the provision of the District's Assessment Area One Project. However, these benefits will be incidental to the District's Assessment Area One Project, which

is designed solely to meet the needs of property within the District. Properties outside the District boundaries do not depend upon the District's Assessment Area One Project. The property owners within the District are therefore receiving special benefits not received by those outside the District's boundaries.

#### **1.4 Requirements of a Valid Assessment Methodology**

There are two requirements under Florida law for a valid special assessment:

- 1) The properties must receive a special benefit from the improvements being paid for.
- 2) The assessments must be fairly and reasonably allocated to the properties being assessed.

Florida law provides for a wide application of special assessments that meet these two characteristics of special assessments.

#### **1.5 Special Benefits Exceed the Costs Allocated**

The special benefits provided to the property owners within the District are greater than the costs associated with providing these benefits. The District Engineer estimates that the District's Assessment Area One Project will cost approximately \$32,361,460. The District's Underwriter projects that financing costs required to fund the infrastructure improvements, including project costs, the cost of issuance of the Bonds, the funding of debt service reserves and capitalized interest, will be approximately \$43,615,000. Additionally, funding required to complete the Assessment Area One Project which is not financed with Bonds will be funded by the Developer(s) or through the issuance of an additional series of bonds. Without the Assessment Area One Project, the property would not be able to be developed and occupied by future residents of the community.

### **2.0 Assessment Methodology**

#### **2.1 Overview**

The District is planning to issue up to \$43,615,000 in Bonds to fund all or a portion of the District's Assessment Area One Project, provide for capitalized interest, a debt service reserve account and cost of issuance. It is the purpose of this Supplemental Report to allocate the \$43,615,000 in debt to the properties within the District benefiting from the Assessment Area One Project.

Table 1 identifies the proposed land uses as identified by the Developer of the land within Assessment Area One of the District which will ultimately secure the Series 2023 Bonds. The District has relied on the Engineer's Report to develop the costs of

the Assessment Area One Project needed to support the Development Program; these construction costs are outlined in Table 2. The improvements needed to support the Development Program are described in detail in the Engineer's Report and are estimated to cost \$32,361,460. Based on the estimated costs, the size of the bond issue under current market conditions needed to generate funds to pay for the Assessment Area One Project and related costs was determined by the District's Underwriter to total approximately \$43,615,000. Table 3 shows the breakdown of the bond sizing.

## **2.2 Allocation of Debt**

Allocation of debt is a continuous process until the development plan is completed. The Assessment Area One Project funded by District Bonds benefits all developable acres within the District. The initial assessments will be levied on an equal basis to all acres within the District. A fair and reasonable methodology allocates the debt incurred by the District proportionately to the properties receiving the special benefits. At this point all of the lands within the District are benefiting from the improvements.

Once platting or the recording of declaration of condominium, ("Assigned Properties") has begun, the assessments will be levied to the Assigned Properties based on the benefits they receive. The Unassigned Properties, defined as property that has not been platted, assigned development rights or subjected to a declaration of condominium, will continue to be assessed on a per acre basis ("Unassigned Properties"). Eventually the development plan will be completed and the debt relating to the Bonds will be allocated to the planned 667 residential units within the District, which are the beneficiaries of the Assessment Area One Project, as depicted in Table 5 and Table 6. If there are changes to the development plan, a true up of the assessment will be calculated to determine if a debt reduction or true-up payment from the Developer is required. The process is outlined in Section 3.0

In order for debt service assessment levels to be consistent with market conditions, developer contributions are recognized. This is reflected on Table 5. Based on the product type and number of units anticipated to absorb expected Bond principal, it is estimated that the CDD will recognize a developer contribution equal to \$3,060,000 in eligible infrastructure.

The assignment of debt in this Assessment Report sets forth the process by which debt is apportioned. As mentioned herein, this Assessment Report will be supplemented from time to time.

### **2.3 Allocation of Benefit**

The Assessment Area One Project consists of offsite improvements, stormwater management, utilities (water, sewer, reuse), lighting, roadway, landscape/hardscape/irrigation/entry features, parks and recreation (amenities), professional services/permitting, and contingency. There are *two* residential product types within the planned development. The single family 50' product type has been set as the base unit and has been assigned one equivalent residential unit ("ERU"). The Assessment Area One Project is reflected in Table 2. There may be other improvements constructed in Assessment Area One, but not funded by the Series 2024 Bonds. It is contemplated that the Developer will fund these costs and may be reimbursed from a future bond issue. Table 4 shows the allocation of benefit to the particular land uses. It is important to note that the benefit derived from the improvements on the particular units exceeds the cost that the units will be paying for such benefits.

### **2.4 Lienability Test: Special and Peculiar Benefit to the Property**

Construction and/or acquisition by the District of its proposed Assessment Area One Project will provide several types of systems, facilities and services for its residents. These include offsite improvements, stormwater management, utilities (water, sewer, reuse), lighting, roadway, landscape/hardscape/irrigation/entry features, parks and recreation (amenities), professional services/permitting, and contingency. These improvements accrue in differing amounts and are somewhat dependent on the type of land use receiving the special benefits peculiar to those properties, which flow from the logical relationship of the improvements to the properties.

Once these determinations are made, they are reviewed in the light of the special benefits peculiar to the property, which flow to the properties as a result of their logical connection from the improvements in fact actually provided.

For the provision of Assessment Area One Project, the special and peculiar benefits are:

- 1) the added use of the property,
- 2) added enjoyment of the property, and
- 3) the probability of increased marketability and value of the property.

These special and peculiar benefits are real and ascertainable but are not yet capable of being calculated as to value with mathematical certainty. However, each is more valuable than either the cost of, or the actual non-ad valorem special assessment levied for the improvement or the debt as allocated.

## **2.5 Lienability Test: Reasonable and Fair Apportionment of the Duty to Pay Non-Ad Valorem Assessments**

A reasonable estimate of the proportion of special and peculiar benefits received from the public improvements described in the Engineer's Report is delineated in Table 5 (expressed as Allocation of Par Debt per Product Type).

The determination has been made that the duty to pay the non-ad valorem special assessments is fairly and reasonably apportioned because the special and peculiar benefits to the property derived from the acquisition and/or construction of the District's Assessment Area One Project have been apportioned to the property according to reasonable estimates of the special and peculiar benefits provided consistent with the land use categories.

Accordingly, no acre or parcel of property within the boundaries of the District will have a lien for the payment of any non-ad valorem special assessment more than the determined special benefit peculiar to that property and therefore, the debt allocation will not be increased more than the debt allocation set forth in this Assessment Report.

In accordance with the benefit allocation suggested for the product types in Table 4, a total debt per unit and an annual assessment per unit have been calculated for each product type (Table 6). These amounts represent the preliminary anticipated per unit debt allocation assuming all anticipated units are built and sold as planned, and the entire proposed Assessment Area One Project is developed or acquired and financed by the District.

## **3.0 True Up Mechanism**

Although the District does not process plats, declaration of condominiums, site plans or revisions thereto for the Developer, it does have an important role to play during the course of platting and site planning. Whenever a plat, declaration of condominium or site plan is processed, the District must allocate a portion of its debt to the property according to this Assessment Report outlined herein. In addition, the District must also prevent any buildup of debt on Unassigned Property. Otherwise, the land could be fully conveyed and/or platted without all of the debt being allocated. To preclude this, at the time Unassigned Properties become Assigned Properties, the District will determine the amount of anticipated assessment revenue that remains on the Unassigned Properties, taking into account the proposed plat, or site plan approval. If the total anticipated assessment revenue to be generated from the Assigned and Unassigned Properties is greater than or equal to the maximum annual debt service then no adjustment is required. In the case that the revenue generated is less than the required amount then a debt reduction or true-up payment by the landowner in the amount necessary to reduce the par amount of the outstanding Bonds plus accrued interest to a level that will be supported by the new net annual debt service assessments will be required.

#### **4.0 Assessment Roll**

The District will initially allocate Series 2024 Assessments across the property within the District boundaries on a gross acreage basis. As Assigned Property becomes known with certainty, the District will refine its allocation of debt from a per acre basis to a per unit basis as shown in Table 6. If the land use plan changes, then the District will update Table 6 to reflect the changes. As a result, the assessment liens are neither fixed nor are they determinable with certainty on any acre of land in the District prior to the time final Assigned Properties become known. At this time the debt associated with the District's Assessment Area One Project will be distributed evenly across the acres within the District. As the development process occurs, the debt will be distributed against the Assigned Property in the manner described in this Assessment Report. The current assessment roll is depicted in Table 7.

**TABLE 1  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 DEVELOPMENT PROGRAM  
 SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Product Types	Phase 1 South	Phase 1 North	Totals	ERUs per Unit (1)	Total ERUs
Single Family 40'	0	50	50	0.80	40
Single Family 50'	121	185	306	1.00	306
<b>Total Units</b>	<b>121</b>	<b>235</b>	<b>356</b>		<b>346</b>

(1) Benefit is allocated on an ERU basis; based on density of planned development, with a Single Family 50' unit equal to 1 ERU

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 2**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**INFRASTRUCTURE COST ESTIMATES**  
**SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Assessment Area One Project (1)	South Phase 1	North Phase 1	Total Cost Estimate
Offsite Improvements	\$ 184,081	\$ 94,362	\$ 278,443
Stormwater Management	\$ 1,664,479	\$ 3,251,119	\$ 4,915,598
Utilities (Water, Sewer, Reuse)	\$ 2,274,065	\$ 4,069,881	\$ 6,343,946
Lighting	\$ 54,450	\$ 105,750	\$ 160,200
Roadway	\$ 1,225,632	\$ 1,746,049	\$ 2,971,681
Landscape/Hardscape/Irrigation/Entry Features	\$ 224,044	\$ 434,750	\$ 658,794
Parks and Recreation (Amenities)	\$ 580,800	\$ 1,127,200	\$ 1,708,000
Professional Services/Permitting	\$ 245,630	\$ 477,050	\$ 722,680
Contingency	\$ 1,097,041	\$ 1,922,048	\$ 3,019,088
<b>Total</b>	<b>\$ 7,550,221</b>	<b>\$ 13,228,209</b>	<b>\$ 20,778,430</b>

(1) A detailed description of these improvements is provided in the 2024 Supplemental Engineer's Report dated March, 2024

Prepared by: Governmental Management Services - Central Florida, LLC



**TABLE 3**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**BOND SIZING**  
**SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

<b>Description</b>	<b>Total</b>
Phase 1 South Construction Account	\$ 4,037,590
Phase 1 North Construction Account	\$ 7,841,600
Debt Service Reserve	\$ 1,017,971
Capitalized Interest	\$ 833,040
Underwriters Discount	\$ 284,800
Cost of Issuance	\$ 225,000
<b>Par Amount*</b>	<b>\$ 14,240,000</b>

Bond Assumptions:

Average Coupon	5.85%
Amortization	30 years
Capitalized Interest	12 Months
Debt Service Reserve	Max Annual D/S
Underwriters Discount	2%

\* Par amount is subject to change based on the actual terms at the sale of the Bonds

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 4  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
ALLOCATION OF BENEFIT  
SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Product Types	No. of Units *	ERU Factor	Total ERUs	% of Total ERUs	Total Improvements	
					Costs Per Product Type	Improvement Costs Per Unit
Single Family 40'	50	0.80	40	11.56%	\$ 2,402,131	\$ 48,043
Single Family 50'	306	1.00	306	88.44%	\$ 18,376,299	\$ 60,053
<b>Totals</b>	<b>356</b>		<b>346</b>	<b>100.00%</b>	<b>\$ 20,778,430</b>	

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 5**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**ALLOCATION OF TOTAL BENEFIT/PAR DEBT TO EACH PRODUCT TYPE**  
**SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Product Types	No. of Units *	Total Improvements Costs Per Product Type	Potential Allocation of Par Debt Per Product Type	Developer Contributions**	Allocation of Par Debt Per Product Type	Revised Par Debt Per Unit
Single Family 40'	50	\$ 2,402,131	\$ 2,000,000	\$ -	\$ 2,000,000	\$ 40,000
Single Family 50'	306	\$ 18,376,299	\$ 15,300,000	\$ (3,060,000)	\$ 12,240,000	\$ 40,000
<b>Totals</b>	<b>356</b>	<b>\$ 20,778,430</b>	<b>\$ 17,300,000</b>	<b>\$ (3,060,000)</b>	<b>\$ 14,240,000</b>	

\* Unit mix is subject to change based on marketing and other factors

\*\* In order for debt service assessment levels to be consistent with market conditions, developer contributions are recognized. Based on the product type and number of units anticipated to absorb the Bond Principal, it is estimated that the CDD will recognize a developer contribution equal to \$3,060,000 in eligible infrastructure.

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**TABLE 6**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**  
**PAR DEBT AND ANNUAL ASSESSMENTS FOR EACH PRODUCT TYPE**  
**SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Product Types	No. of Units *	Allocation of Par Debt Per Product Type	Total Par Debt Per Unit	Maximum Annual Debt Service	Net Annual Debt Assessment Per Unit	Gross Annual Debt Assessment Per Unit (1)
Single Family 40'	50	\$ 2,000,000.00	\$ 40,000.00	\$ 142,973.50	\$ 2,859.47	\$ 3,074.70
Single Family 50'	306	\$ 12,240,000.00	\$ 40,000.00	\$ 874,997.82	\$ 2,859.47	\$ 3,074.70
<b>Totals</b>	<b>356</b>	<b>\$ 14,240,000.00</b>		<b>\$ 1,017,970.90</b>		

(1) This amount includes 7% for collection fees and early payment discounts when collected on the Polk County Tax Bill

\* Unit mix is subject to change based on marketing and other factors

Prepared by: Governmental Management Services - Central Florida, LLC

**TABLE 7  
 WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
 PRELIMINARY ASSESSMENT ROLL  
 SUPPLEMENTAL ASSESSMENT METHODOLOGY FOR ASSESSMENT AREA ONE**

Owner	Property*	Acres	Total Par Debt Allocation Per Acre	Total Par Debt Allocated	Net Annual Debt Assessment Allocation	Gross Annual Debt Assessment Allocation (1)
Jeffrey & JoAnn Yeager	Willowbrook CDD	284.91	\$ 49,981.57	\$ 14,240,000.00	\$ 1,017,970.90	\$ 1,094,592.37
<b>Totals</b>		<b>284.91</b>		<b>\$ 14,240,000.00</b>	<b>\$ 1,017,970.90</b>	<b>\$ 1,094,592.37</b>

(1) This amount includes 7% to cover collection fees and early payment discounts when collected utilizing the uniform method.

\*See Attached Legal Description

Annual Assessment Periods	30
Average Coupon Rate (%)	5.85%
Maximum Annual Debt Service	\$1,017,971

Prepared by: Governmental Management Services - Central Florida, LLC

WILLOWBROOK SOUTH:

COMMENCE AT A 4" x 4" CONCRETE MONUMENT WITH A DISK LABELED LB7454, LYING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, SAID POINT HAVING A NORTHING OF 1,347,673.47 FEET, AND AN EASTING OF 752,255.25 FEET IN REFERENCE TO THE STATE PLANE COORDINATE SYSTEM OF FLORIDA, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT, AND RUN THENCE ALONG THE WEST BOUNDARY OF SAID SOUTHEAST 1/4 , N00°05'30"W A DISTANCE OF 1379.25 FEET TO A POINT MONUMENTED WITH A ONE HALF INCH IRON ROD WITH CAP READING "PESURV LB8112", LYING ON THE NORTHERN RIGHT OF WAY OF BUCKEYE LOOP ROAD / AVENUE T NE (AS DESCRIBED IN OFFICIAL RECORD BOOK 748, PAGE 608 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA), SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY, NON TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 924.93 FEET, A DELTA ANGLE OF 13°36'00", CHORD LENGTH OF 219.03 FEET, AND CHORD BEARING N70°42'22"W. THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE, AN ARC DISTANCE OF 219.55 FEET TO A POINT OF REVERSE CURVATURE ON A CURVE HAVING A RADIUS OF 984.93 FEET, A DELTA ANGLE OF 17°29'50", CHORD LENGTH OF 299.61 FEET AND CHORD BEARING OF N72°39'17"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 300.78 FEET TO THE POINT OF BEGINNING, SAID POINT ON A CURVE HAVING A RADIUS OF 984.93 FEET, A CENTRAL ANGLE OF 9°30'10", CHORD LENGTH OF 163.17 FEET, AND CHORD BEARING OF N86°09'17"W. CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 163.35 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE HAVING A RADIUS OF 602.96 FEET, A CENTRAL ANGLE OF 23°57'00", CHORD LENGTH OF 250.21 FEET, AND CHORD BEARING OF S77°07'08"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 252.04 FEET TO THE EAST BOUNDARY OF THAT PARCEL DESCRIBED BY WARRANTY DEED IN OFFICIAL RECORD BOOK 4476, PAGE 439, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; RUN THENCE ALONG SAID EAST BOUNDARY THE FOLLOWING (13) COURSES: (1) N03°00'59"W A DISTANCE OF 837.96 FEET; (2) N27°38'59"W A DISTANCE OF 151.06 FEET; (3) N17°11'59"W A DISTANCE OF 119.50 FEET; (4) N02°16'59"W A DISTANCE OF 150.00 FEET; (5) N05°12'01"E A DISTANCE OF 279.98 FEET; (6) N02°52'01"E A DISTANCE OF 174.28 FEET; (7) N05°58'59"W A DISTANCE OF 107.84 FEET; (8) N24°03'59"W A DISTANCE OF 270.00 FEET; (9) N29°03'59"W A DISTANCE OF 273.00 FEET; (10) N07°36'59"W A DISTANCE 122.34 FEET; (11) N20°38'59"W A DISTANCE OF 229.76 FEET; (12) S84°36'01"W A DISTANCE OF 253.80 FEET; (13) N02°38'59"W A DISTANCE OF 423.10 FEET MORE OR LESS TO THE SOVEREIGN SUBMERGED LAND LINE FOR LAKE SMART; THENCE ALONG SAID SOVEREIGN SUBMERGED LAND LINE MEANDERED BY THE FOLLOWING (2) COURSES: (1) N37°11'01"E A DISTANCE OF 612.27 FEET; (2) N19°04'35"E A DISTANCE OF 692.87 FEET TO THE NORTH BOUNDARY OF A PERPETUAL CANAL EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 913, PAGE

237 AND CORRECTED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S74°39'25"E A DISTANCE OF 424.92 FEET TO THE BOUNDARY OF WILLOWBROOK GOLF COURSE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1006, PAGE 150 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID BOUNDARY OF WILLOWBROOK GOLF COURSE THE FOLLOWING (5) COURSES: (1) S03°20'11"E A DISTANCE OF 590.08 FEET; (2) S31°53'40"E A DISTANCE OF 165.00 FEET; (3) S75°33'40"E A DISTANCE OF 700.00 FEET; (4) N59°06'20"E A DISTANCE OF 180.00 FEET; (5) N14°51'22"E A DISTANCE OF 530.00 FEET TO SAID NORTH BOUNDARY OF CANAL EASEMENT; THENCE ALONG SAID NORTH BOUNDARY S74°39'03"E A DISTANCE OF 656.11 FEET MORE OR LESS TO THE STATE SOVEREIGN SUBMERGED LAND LINE FOR LAKE FANNIE; THENCE ALONG STATE SOVEREIGN LAND LINE MEANDERED BY THE FOLLOWING (17 ) COURSES: (1) S22°54'12"W A DISTANCE OF 84.02 FEET; (2) S23°20'01"W A DISTANCE OF 77.13 FEET; (3) S01°56'35"W A DISTANCE OF 183.39 FEET; (4) S17°50'27"E A DISTANCE OF 156.71 FEET; (5) S03°23'58"W A DISTANCE OF 272.03 FEET; (6) S04°08'43"E A DISTANCE OF 136.28 FEET; (7) S01°04'00"W A DISTANCE OF 140.27 FEET; (8) S08°34'41"E A DISTANCE OF 72.00 FEET; (9) S08°34'41"E A DISTANCE OF 115.99 FEET; (10) S18°02'29"E A DISTANCE OF 188.98 FEET; (11) S06°24'25"W A DISTANCE OF 239.38 FEET; (12) S16°39'01"E A DISTANCE OF 139.88 FEET; (13) S04°16'33"W A DISTANCE OF 81.73 FEET; (14) S01°16'19"W A DISTANCE OF 240.92 FEET; (15) S08°50'46"W A DISTANCE OF 194.47 FEET; (16) S19°25'21"E A DISTANCE OF 131.16 FEET; (17) S30°20'43"E A DISTANCE OF 50.01 FEET TO THE NORTH BOUNDARY OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, ALSO BEING THE NORTH BOUNDARY OF POINSETTIA PARK UNIT 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 23, PAGE 5 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S89°11'18"W A DISTANCE OF 1183.64 FEET TO THE WEST BOUNDARY OF SAID NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15; THENCE ALONG SAID WEST BOUNDARY S00°05'30"E A DISTANCE OF 189.74 FEET; THENCE N48°21'56"W A DISTANCE OF 7.64 FEET TO THAT JURISDICTIONAL WETLAND LINE DESCRIBED BY ENVIRONMENTAL RESOURCE PERMIT 43029879.00 ; THENCE ALONG SAID JURISDICTIONAL WETLANDS LINE THE FOLLOWING (18) COURSES: (1) S09°32'52"W A DISTANCE OF 5.79 FEET; (2) S64°35'31"W A DISTANCE OF 42.41 FEET; (3) S53°10'36"W A DISTANCE OF 71.33 FEET; (4) S41°33'05"W A DISTANCE OF 99.64 FEET; (5) S39°51'13"W A DISTANCE OF 136.53 FEET; (6) S15°48'15"W A DISTANCE OF 93.60 FEET; (7) S11°37'15"E A DISTANCE OF 78.22 FEET; (8) S38°10'38"E A DISTANCE OF 89.25 FEET; (9) S22°39'08"W A DISTANCE OF 66.24 FEET; (10) S39°40'21"W A DISTANCE OF 32.28 FEET; (11) S23°39'36"E A DISTANCE OF 22.48 FEET; (12) N80°26'21"W A DISTANCE OF 32.38 FEET; (13) S61°11'23"W A DISTANCE OF 39.18 FEET; (14) S45°26'59"W A DISTANCE OF 69.06 FEET; (15) S57°05'32"W A DISTANCE OF 57.78 FEET; (16) S42°55'02"W A DISTANCE OF 46.01 FEET; (17) S21°40'16"W A DISTANCE OF 102.79 FEET; (18) S08°52'51"W A DISTANCE OF 67.76 FEET TO THE POINT OF BEGINNING.

WILLOWBROOK-NORTH:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF POLK, STATE OF FLORIDA, AND IS DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 28 SOUTH, RANGE 26 EAST; THENCE, ALONG THE EAST LINE OF SAID SECTION 10, RUN SOUTH 00°07'28" EAST A DISTANCE OF 137.45 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF STATE ROAD NO. 544 (LUCERNE PARK ROAD); THENCE, RUN SOUTH 89°53'19" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 1699.36 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 22°43'03", A CHORD BEARING SOUTH 78°31'48" WEST WITH A CHORD DISTANCE OF 726.69 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 731.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE AND ALONG THE FOLLOWING ONE HUNDRED SEVEN (107) COURSES AS DESCRIBED BY A SURVEY PESURV, INC., PROJECT NO. 1579, ROBERT E. LAZENBY IV, P.E. #52006, PSM #6389, RUN (1) SOUTH 24°14'34" EAST A DISTANCE OF 65.67 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 102.00 FEET, A CENTRAL ANGLE OF 22°30'16", A CHORD BEARING SOUTH 12°59'26" EAST WITH A CHORD DISTANCE OF 39.81 FEET; THENCE, ALONG SAID CURVE, RUN (2) A DISTANCE OF 40.06 FEET TO A POINT OF TANGENCY; THENCE RUN (3) SOUTH 01°44'19" EAST A DISTANCE OF 61.72 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 17.00 FEET, A CENTRAL ANGLE OF 90°00'03", A CHORD BEARING SOUTH 46°44'17" EAST WITH A CHORD DISTANCE OF 24.04 FEET; THENCE, ALONG SAID CURVE, (4) RUN A DISTANCE OF 26.70 FEET TO A POINT OF TANGENCY; THENCE RUN (5) NORTH 88°15'41" EAST A DISTANCE OF 29.84 FEET; THENCE RUN (6) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (7) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (8) NORTH 88°15'41" EAST A DISTANCE OF 191.46 FEET; THENCE RUN (9) SOUTH 21°47'55" WEST A DISTANCE OF 182.23 FEET; THENCE RUN (10) SOUTH 10°18'49" WEST A DISTANCE OF 111.02 FEET; THENCE RUN (11) SOUTH 06°20'28" EAST A DISTANCE OF 31.78 FEET; THENCE RUN (12) SOUTH 10°24'42" EAST A DISTANCE OF 54.63 FEET; THENCE RUN (13) SOUTH 05°19'55" EAST A DISTANCE OF 113.33 FEET; THENCE RUN (14) SOUTH 05°26'27" WEST A DISTANCE OF 49.92 FEET; THENCE RUN (15) SOUTH 01°21'11" EAST A DISTANCE OF 279.65 FEET; THENCE RUN (16) SOUTH 01°30'16" EAST A DISTANCE OF 33.99 FEET; THENCE RUN (17) SOUTH 01°07'03" WEST A DISTANCE OF 61.24 FEET; THENCE RUN (18) SOUTH 03°14'57" EAST A DISTANCE OF 61.33 FEET; THENCE RUN (19) SOUTH 09°38'37" EAST A DISTANCE OF 85.84 FEET; THENCE RUN (20) SOUTH 02°33'05" WEST A DISTANCE OF 82.31 FEET; THENCE RUN (21) SOUTH 00°59'55" WEST A DISTANCE OF 41.05 FEET; THENCE RUN (22) SOUTH 27°20'51" EAST A DISTANCE OF 119.34 FEET; THENCE RUN (23) SOUTH 21°55'15" EAST A DISTANCE OF 43.92 FEET; THENCE RUN (24) SOUTH 25°25'05" EAST A DISTANCE OF 46.73 FEET; THENCE RUN (25) SOUTH 29°18'59" EAST A DISTANCE OF 62.53 FEET; THENCE (26) RUN SOUTH 18°08'22" EAST A DISTANCE OF 69.12 FEET

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THENCE RUN (27) SOUTH 25°45'05" EAST A DISTANCE OF 203.70 FEET; THENCE RUN (28) SOUTH 35°31'25" EAST A DISTANCE OF 129.37 FEET; THENCE RUN (29) SOUTH 39°05'37" EAST A DISTANCE OF 170.07 FEET; THENCE RUN (30) SOUTH 62°35'36" EAST



A DISTANCE OF 86.01 FEET; THENCE RUN (31) SOUTH 67°18'39" EAST A DISTANCE OF 81.88 FEET; THENCE RUN (32) SOUTH 65°17'05" EAST A DISTANCE OF 86.19 FEET; THENCE RUN (33) SOUTH 65°14'32" EAST A DISTANCE OF 160.88 FEET; THENCE RUN (34) SOUTH 42°25'05" EAST A DISTANCE OF 62.14 FEET; THENCE RUN (35) SOUTH 16°46'33" EAST A DISTANCE OF 71.63 FEET; THENCE RUN (36) SOUTH 31°17'48" EAST A DISTANCE OF 112.99 FEET; THENCE RUN (37) SOUTH 45°31'19" EAST A DISTANCE OF 123.81 FEET; THENCE RUN (38) SOUTH 33°31'02" EAST A DISTANCE OF 108.20 FEET; THENCE RUN (39) SOUTH 75°18'46" EAST A DISTANCE OF 30.67 FEET; THENCE RUN (40) SOUTH 18°52'36" EAST A DISTANCE OF 49.22 FEET; THENCE RUN (41) SOUTH 42°51'44" EAST A DISTANCE OF 44.94 FEET; THENCE RUN (42) SOUTH 18°43'34" EAST A DISTANCE OF 61.08 FEET; THENCE RUN (43) SOUTH 41°25'19" EAST A DISTANCE OF 99.47 FEET; THENCE RUN (44) SOUTH 10°00'58" EAST A DISTANCE OF 49.92 FEET; THENCE RUN (45) SOUTH 28°45'37" EAST A DISTANCE OF 128.89 FEET; THENCE RUN (46) SOUTH 22°27'37" EAST A DISTANCE OF 48.99 FEET; THENCE RUN (47) SOUTH 23°23'08" EAST A DISTANCE OF 168.86 FEET; THENCE RUN (48) SOUTH 18°38'33" EAST A DISTANCE OF 14.11 FEET; THENCE RUN (49) SOUTH 16°12'55" EAST A DISTANCE OF 173.77 FEET; THENCE RUN (50) SOUTH 26°02'45" EAST A DISTANCE OF 146.50 FEET; THENCE RUN (51) SOUTH 39°50'19" EAST A DISTANCE OF 74.25 FEET; THENCE RUN (52) SOUTH 27°05'27" EAST A DISTANCE OF 68.44 FEET; THENCE RUN (53) SOUTH 56°07'54" EAST A DISTANCE OF 30.87 FEET; THENCE RUN (54) SOUTH 13°44'32" EAST A DISTANCE OF 32.09 FEET; THENCE RUN (55) SOUTH 38°42'48" EAST A DISTANCE OF 90.93 FEET; THENCE RUN (56) SOUTH 17°00'26" EAST A DISTANCE OF 22.47 FEET; THENCE RUN (57) SOUTH 46°15'23" EAST A DISTANCE OF 70.76 FEET; THENCE RUN (58) SOUTH 47°18'33" EAST A DISTANCE OF 92.46 FEET; THENCE RUN (59) SOUTH 45°47'01" WEST A DISTANCE OF 27.26 FEET; THENCE RUN (60) NORTH 66°16'10" EAST A DISTANCE OF 19.12 FEET; THENCE RUN (61) SOUTH 72°14'50" EAST A DISTANCE OF 61.74 FEET; THENCE RUN (62) SOUTH 01°17'45" EAST A DISTANCE OF 47.33 FEET; THENCE RUN (63) SOUTH 34°55'37" EAST A DISTANCE OF 122.41 FEET; THENCE RUN (64) SOUTH 30°41'09" EAST A DISTANCE OF 115.62 FEET; THENCE RUN (65) SOUTH 31°51'50" EAST A DISTANCE OF 114.98 FEET; THENCE RUN (66) SOUTH 24°49'19" EAST A DISTANCE OF 108.73 FEET; THENCE RUN (67) SOUTH 20°40'07" EAST A DISTANCE OF 54.42 FEET; THENCE RUN (68) SOUTH 14°25'21" EAST A DISTANCE OF 60.74 FEET; THENCE RUN (69) SOUTH 30°18'00" EAST A DISTANCE OF 56.19 FEET; THENCE RUN (70) SOUTH 22°25'07" EAST A DISTANCE OF 66.79 FEET; THENCE RUN (71) SOUTH 23°19'46" EAST A DISTANCE OF 46.76 FEET; THENCE RUN (72) SOUTH 26°34'29" EAST A DISTANCE OF 120.05 FEET; THENCE RUN (73) SOUTH 04°03'40" WEST A DISTANCE OF 113.51 FEET; THENCE RUN (74) SOUTH 20°25'56" EAST A DISTANCE OF 30.41 FEET; THENCE RUN (75) SOUTH 56°12'51" EAST A DISTANCE OF 45.66 FEET; THENCE RUN (76) SOUTH 09°45'17" WEST A DISTANCE OF 42.32 FEET; THENCE RUN (77) SOUTH 13°18'50" WEST A DISTANCE OF 36.73 FEET; THENCE RUN (78) SOUTH 15°22'55" WEST A DISTANCE OF 17.85 FEET; THENCE RUN (79) SOUTH 00°57'02" WEST A DISTANCE OF 22.66 FEET; THENCE RUN (80) SOUTH

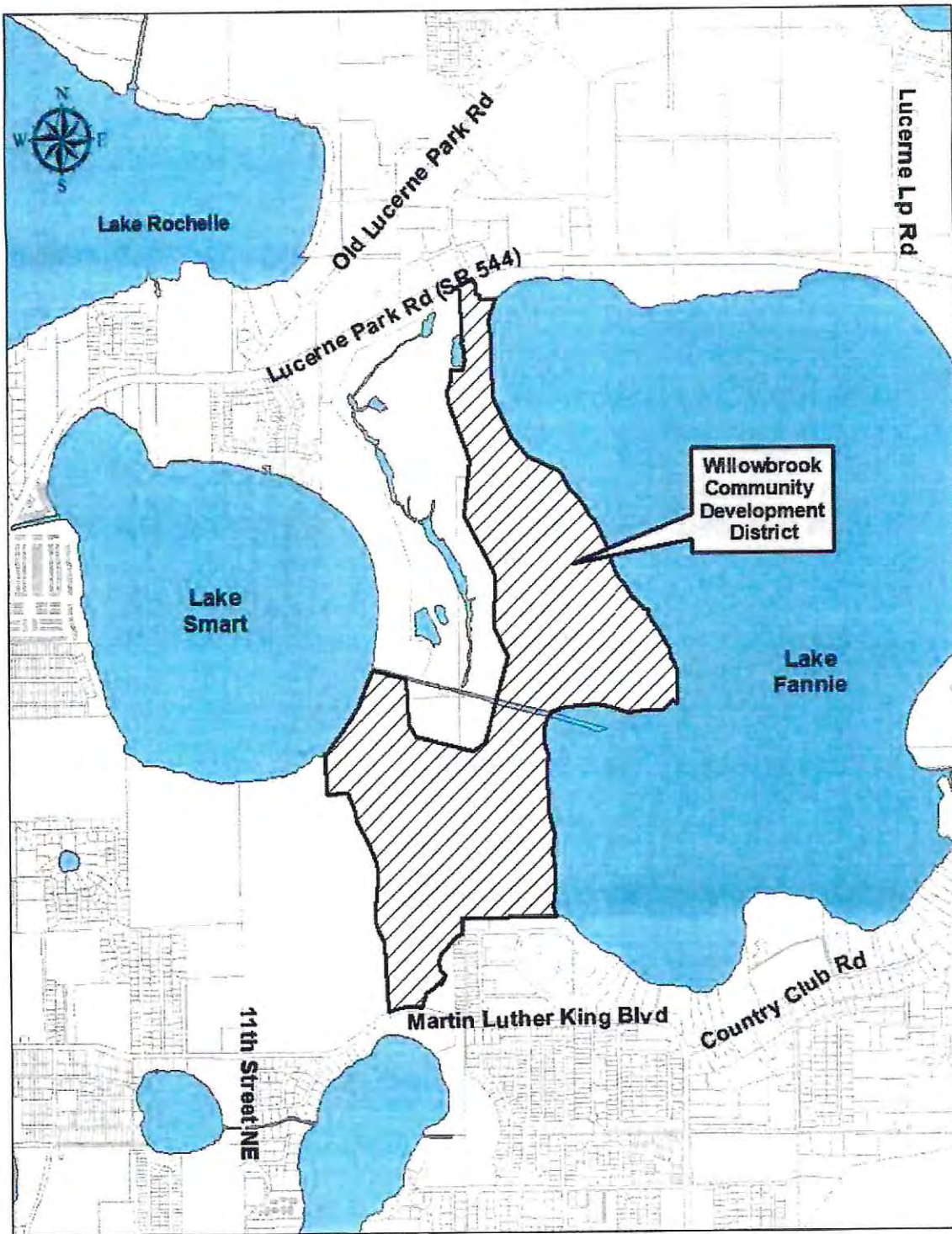
Exhibit "A"

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26°50'51" WEST A DISTANCE OF 32.66 FEET; THENCE RUN (81) NORTH 87°11'09" WEST A DISTANCE OF 56.18 FEET; THENCE RUN (82) NORTH 78°15'36" WEST A DISTANCE OF 21.13 FEET; THENCE RUN (83) NORTH 33°14'32" WEST A DISTANCE OF 45.29 FEET; THENCE RUN (84) SOUTH 47°47'36" WEST A DISTANCE OF 38.67 FEET; THENCE RUN (85) SOUTH 28°21'34" WEST A DISTANCE OF 5.10 FEET; THENCE RUN

(86) SOUTH 45°31'50" WEST A DISTANCE OF 135.10 FEET; THENCE RUN (87) SOUTH 89°49'14" WEST A DISTANCE OF 202.62 FEET; THENCE RUN (88) NORTH 81°35'22" WEST A DISTANCE OF 200.26 FEET; THENCE RUN (89) NORTH 70°35'59" WEST A DISTANCE OF 144.18 FEET; THENCE RUN (90) NORTH 72°07'51" WEST A DISTANCE OF 111.39 FEET; THENCE RUN (91) NORTH 81°30'44" WEST A DISTANCE OF 137.41 FEET; THENCE RUN (92) SOUTH 86°56'56" WEST A DISTANCE OF 393.25 FEET; THENCE RUN (93) SOUTH 66°45'52" WEST A DISTANCE OF 199.31 FEET; THENCE RUN (94) SOUTH 23°20'01" WEST A DISTANCE OF 10.08 FEET TO A POINT ON THE NORTH LINE OF THAT PERPETUAL 100 FOOT WIDE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 OF THE PUBLIC RECORDS OF POLK COUNTY FLORIDA; THENCE RUN (95) NORTH 74°39'11" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 656.11 FEET; THENCE, DEPARTING SAID NORTH LINE, RUN (96) NORTH 14°51'12" EAST A DISTANCE OF 540.08 FEET; THENCE RUN (97) NORTH 24°23'40" WEST A DISTANCE OF 380.00 FEET; THENCE RUN (98) NORTH 01°07'00" EAST A DISTANCE OF 629.14 FEET; THENCE RUN (99) NORTH 27°23'40" WEST A DISTANCE OF 800.00 FEET; THENCE RUN (100) NORTH 06°15'35" EAST A DISTANCE OF 680.00 FEET; THENCE RUN (101) NORTH 20°23'40" WEST A DISTANCE OF 735.00 FEET; THENCE RUN (102) NORTH 03°49'25" WEST A DISTANCE OF 140.00 FEET; THENCE RUN (103) NORTH 20°10'35" EAST A DISTANCE OF 130.00 FEET; THENCE RUN (104) NORTH 03°49'25" WEST A DISTANCE OF 125.00 FEET; THENCE RUN (105) NORTH 86°10'35" EAST A DISTANCE OF 150.00 FEET; THENCE RUN (106) NORTH 01°24'48" WEST A DISTANCE OF 941.77 FEET; THENCE RUN (107) NORTH 59°53'40" WEST A DISTANCE OF 70.00 FEET TO A POINT ON THE AFORESAID SOUTHERLY RIGHT OF WAY LINE OF STATE ROAD NO. 544, THENCE RUN NORTH 63°17'43" EAST A DISTANCE OF 75.21 FEET TO A POINT OF CURVATURE, ON SAID RIGHT-OF-WAY LINE, OF A CURVE TO THE RIGHT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 03°51'58", A CHORD BEARING NORTH 65°14'18" EAST WITH A CHORD DISTANCE OF 124.46 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 124.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

CONTAINING 284.905 ACRES, MORE OR LESS.



# SECTION IX

## RESOLUTION 2024-41

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT AUTHORIZING THE ISSUANCE OF ITS WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT SPECIAL ASSESSMENT BONDS, SERIES 2024 (ASSESSMENT AREA ONE PROJECT) (THE "SERIES 2024 BONDS"); DETERMINING CERTAIN DETAILS OF THE SERIES 2024 BONDS AND ESTABLISHING CERTAIN PARAMETERS FOR THE SALE THEREOF; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE; AUTHORIZING THE NEGOTIATED SALE OF THE SERIES 2024 BONDS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT WITH RESPECT TO THE SERIES 2024 BONDS AND AWARDING THE SERIES 2024 BONDS TO THE UNDERWRITER NAMED THEREIN; APPROVING THE FORM OF AND AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY LIMITED OFFERING MEMORANDUM RELATING TO THE SERIES 2024 BONDS AND ITS USE BY THE UNDERWRITER IN CONNECTION WITH THE OFFERING FOR SALE OF THE SERIES 2024 BONDS; APPROVING THE EXECUTION AND DELIVERY OF A FINAL LIMITED OFFERING MEMORANDUM RELATING TO THE SERIES 2024 BONDS; APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PROVIDING FOR THE APPLICATION OF THE SERIES 2024 BOND PROCEEDS; AUTHORIZING THE PROPER OFFICIALS TO DO ALL THINGS DEEMED NECESSARY IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE SERIES 2024 BONDS; MAKING CERTAIN DECLARATIONS; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES.**

**WHEREAS**, Willowbrook Community Development District (the "District") is a local unit of special purpose government duly organized and existing under the provisions of the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the "Act") and created by Ordinance No. O-23-58 (Revised) enacted by the City Commission of the City of Winter Haven, Florida on November 13, 2023, which became effective on [November 13, 2023]; and

**WHEREAS**, pursuant to the Act and Resolution No. 2024-26 duly adopted by the Board of Supervisors of the District on November 16, 2023 (the "Bond Resolution"), the Board of Supervisors has approved the form of a Master Trust Indenture (the "Master Indenture"), between the District and U.S. Bank Trust Company, National Association, as Trustee (the "Trustee"); and

**WHEREAS**, the District duly adopted Resolution No. 2024-11 on November 16, 2023, declaring the levy and collection of special assessments (the "Special Assessments") pursuant to

the Act and Chapter 170, Florida Statutes, indicating the location, nature and estimated cost of the improvements which cost is to be defrayed by the Special Assessments, providing the manner in which the Special Assessments will be made, designating the benefited lands upon which the Special Assessments will be levied, authorizing the preparation of a preliminary assessment roll and fixing the time and place of a public hearing; and

**WHEREAS**, the District duly adopted Resolution No. 2024-27 on November 16, 2023, authorizing the construction of public infrastructure within the District boundaries which are to be developed in multiple phases, as described more particularly in the Willowbrook Community Development District Engineer's Report for Capital Improvements, dated November 16, 2023, as supplemented by the 2024 Supplemental Engineer's Report for the Willowbrook Community Development District, dated March 2024, and summarized in Schedule I attached to this Resolution, and equalizing, approving, confirming and levying the Special Assessments on the property within the District benefited by the Assessment Area One Project (as defined herein); and

**WHEREAS**, the District has determined to issue its Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One Project) (the "Series 2024 Bonds") for the primary purpose of providing funds to pay all or a portion of the costs of the planning, financing, acquisition, construction, equipping and installation of public infrastructure for 356 residential units (the "Assessment Area One Project"); and

**WHEREAS**, the Series 2024 Bonds constitute Bonds validated and confirmed by a final judgment of the Tenth Judicial Circuit Court in and for Polk County, Florida, rendered on the 31<sup>st</sup> day of January, 2024; and

**WHEREAS**, on November 16, 2023, the District approved a Master Assessment Methodology for Willowbrook Community Development District dated November 16, 2023, as supplemented by the [Preliminary First Supplemental Special Assessment Methodology Report for the Willowbrook Community Development District dated \_\_\_\_\_, 2024], and approved by the District on [\_\_\_\_\_, 2024] (collectively, the "Assessment Methodology Report"), each prepared by the District's Methodology Consultant, Governmental Management Services – Central Florida, LLC, setting forth the District's methodology for allocating debt to property within the District, setting forth the District's methodology for allocating debt in connection with the Series 2024 Bonds to property within the District comprising the first two phases of development "Assessment Area One"; and

**WHEREAS**, the Series 2024 Bonds will be secured by special assessments levied and imposed on assessable land within the District in accordance with the Assessment Methodology Report and comprising Assessment Area One; and

**WHEREAS**, there has been submitted to this meeting with respect to the issuance and sale of the Series 2024 Bonds and submitted to the Board:

- (i) a form of First Supplemental Trust Indenture between the Trustee and the District attached hereto as Exhibit A (the "First Supplemental Indenture" and together with the Master Indenture, the "Indenture");

(ii) a form of Bond Purchase Contract with respect to the Series 2024 Bonds between FMSbonds, Inc. (the "Underwriter") and the District attached hereto as Exhibit B (the "Bond Purchase Contract"), together with the form of a disclosure statement attached to the Bond Purchase Contract in accordance with Section 218.385, Florida Statutes;

(iii) a form of Preliminary Limited Offering Memorandum relating to the Series 2024 Bonds attached hereto as Exhibit C (the "Preliminary Limited Offering Memorandum");

(iv) a form of Rule 15c2-12 Certificate of the District relating to the Preliminary Limited Offering Memorandum, attached hereto as Exhibit D (the "Rule 15c2-12 Certificate"); and

(v) a form of the Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") to be entered into among the District, the dissemination agent named therein (the "Dissemination Agent"), and any landowner constituting an "Obligated Person" under the terms of the Continuing Disclosure Agreement, attached hereto as Exhibit E;

**WHEREAS**, any capitalized term used herein and not otherwise expressly defined herein shall have the meaning ascribed thereto in the Indenture; and

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Supervisors of Willowbrook Community Development District, as follows:

**Section 1. Authorization of Issuance of Series 2024 Bonds** . There are hereby authorized and directed to be issued Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One Project) (the "Series 2024 Bonds") in an aggregate principal amount not to exceed \$16,000,000, for the purposes of (i) providing funds to pay all or a portion of the costs of the planning, financing, acquisition, construction, equipping and installation of the Assessment Area One Project, (ii) making a deposit to the Series 2024 Reserve Account in an amount equal to the Series 2024 Reserve Requirement, (iii) funding a portion of the interest coming due on the Series 2024 Bonds, and (iv) paying certain costs of issuance in respect of the Series 2024 Bonds. The Series 2024 Bonds shall be issued under and secured by the Indenture the form of which by reference is hereby incorporated by reference into this resolution as if set forth in full herein.

**Section 2. Details of the Series 2024 Bonds**. The District hereby determines that the Series 2024 Bonds shall mature in the amounts and at the times, shall bear interest at the rates, be redeemable at the redemption prices and in the manner as determined by the Chair of the Board of Supervisors of the District (the "Chair") or any member of the Board of Supervisors designated by the Chair (a "Designated Member"), prior to the sale of said Series 2024 Bonds, all in a manner consistent with the requirements of the Bond Resolution and within the parameters set forth in Section 5 hereof.

**Section 3. First Supplemental Indenture**. The District hereby approves and authorizes the execution of the First Supplemental Indenture by the Chair or any Designated

Member and the Secretary or any Assistant Secretary of the Board of Supervisors (the "Secretary") and the delivery of the First Supplemental Indenture in substantially the form thereof attached hereto as Exhibit A, with such changes therein as shall be approved by the Chair or Designated Member executing the same, with such execution to constitute conclusive evidence of such officer's approval and the District's approval of any changes therein from the form of First Supplemental Indenture attached hereto.

**Section 4. Negotiated Sale.** The Series 2024 Bonds shall be sold by a negotiated sale to the Underwriter. It is hereby determined by the District that a negotiated sale of the Series 2024 Bonds to the Underwriter will best effectuate the purposes of the Act, is in the best interests of the District and is necessitated by, in general, the characteristics of the issues and prevailing market conditions and specifically, the following additional reasons:

(i) because of the complexity of the financing structure of the Series 2024 Bonds, including the pledge of Special Assessments as security for the Series 2024 Bonds, it is desirable to sell the Series 2024 Bonds pursuant to a negotiated sale so as to have an underwriter involved from the outset of the financing to assist in these matters;

(ii) because of changing market conditions for tax-exempt bonds and the necessity of being able to adjust the terms of the Series 2024 Bonds, it is in the best interests of the District to sell the Series 2024 Bonds by a negotiated sale;

(iii) the Underwriter has participated in structuring the issuance of the Series 2024 Bonds and can assist the District in attempting to obtain the most attractive financing for the District;

(iv) the Series 2024 Bonds do not bear a credit rating and will be offered initially only to accredited investors within the meaning of Chapter 517, Florida Statutes, and the rules of the Florida Department of Financial Services promulgated thereunder; and

(v) the District will not be adversely affected if the Series 2024 Bonds are not sold pursuant to a competitive sale.

**Section 5. Bond Purchase Contract.** The District hereby approves the form of the Bond Purchase Contract submitted by the Underwriter and attached hereto as Exhibit B, and the sale of the Series 2024 Bonds by the District upon the terms and conditions set forth in the Bond Purchase Contract is hereby approved. The Chair or a Designated Member are each hereby authorized, acting individually, to execute the Bond Purchase Contract and to deliver the Bond Purchase Contract to the Underwriter. The Bond Purchase Contract shall be in substantially the form of the Bond Purchase Contract attached hereto as Exhibit B with such changes, amendments, modifications, omissions and additions as may be approved by the Chair or the Designated Member; provided, however,

(i) Any optional redemption of the Series 2024 Bonds will be determined at pricing of the Series 2024 Bonds;



(ii) The interest rate on the Series 2024 Bonds shall not exceed the maximum statutory rate (calculated under Section 215.84(3), Florida Statutes, as amended);

(iii) The aggregate principal amount of the Series 2024 Bonds shall not exceed \$16,000,000;

(iv) The Series 2024 Bonds shall have a final maturity not later than the maximum term allowed by Florida law, which is currently thirty (30) years of principal amortization; and

(v) The price at which the Series 2024 Bonds shall be sold to the Underwriter shall not be less than 98.0% of the aggregate face amount of the Series 2024 Bonds, exclusive of original issue discount.

Execution by the Chair or a Designated Member of the Bond Purchase Contract shall be deemed to be conclusive evidence of approval of such changes.

**Section 6. Preliminary Limited Offering Memorandum; Final Limited Offering Memorandum.** The District hereby approves the form of the Preliminary Limited Offering Memorandum submitted to this meeting and attached hereto as Exhibit C and authorizes its distribution and use in connection with the limited offering for sale of the Series 2024 Bonds. The preparation of a final Limited Offering Memorandum relating to the Series 2024 Bonds (the "Limited Offering Memorandum") is hereby approved and the Chair or any Designated Member is hereby authorized to execute such final Limited Offering Memorandum to be dated the date of the award of the Series 2024 Bonds and, upon such award, to deliver the same to the Underwriter for use by it in connection with the sale and distribution of the Series 2024 Bonds. The Limited Offering Memorandum shall be substantially in the form of the Preliminary Limited Offering Memorandum attached hereto as Exhibit C, with such changes as shall be approved by the Chair or Designated Member as necessary to conform the details of the Series 2024 Bonds and such other insertions, modifications and changes as may be approved by the Chair or Designated Member. The execution and delivery of the Limited Offering Memorandum by the Chair or Designated Member shall constitute evidence of the approval thereof. The District hereby authorizes the use of the Limited Offering Memorandum and the information contained therein in connection with the offering and sale of the Series 2024 Bonds. The Chair is further authorized to deem the Preliminary Limited Offering Memorandum "final" within the meaning of Rule 15c2-12 of the Securities and Exchange Commission under the Securities Exchange Act of 1934, in the form as mailed, and in furtherance thereof to execute the Rule 15c2-12 Certificate evidencing the same substantially in the forms attached hereto as Exhibit D.

**Section 7. Continuing Disclosure.** The District hereby authorizes and approves the execution and delivery of the Continuing Disclosure Agreement by and among the District, the Dissemination Agent and any landowner constituting an "Obligated Person" under the Continuing Disclosure Agreement, by the Chair or a Designated Member substantially in the form presented to this meeting and attached hereto as Exhibit E, with such changes therein as shall be approved by the Chair or Designated Member executing the same, with such execution to constitute conclusive evidence of such officer's approval and the District's approval of any changes therein from the form of Continuing Disclosure Agreement attached hereto. The Continuing Disclosure

Agreement is being executed by the District in order to assist the Underwriter in complying with Rule 15c2-12(b)(5) promulgated by the U.S. Securities and Exchange Commission.

**Section 8. Application of Bond Proceeds.** The proceeds of the Series 2024 Bonds shall be applied in the manner required in the First Supplemental Indenture.

**Section 9. Further Official Action; Ratification of Prior and Subsequent Acts.** The Chair, the Secretary and each member of the Board of Supervisors of the District and any other proper official of the District are each hereby authorized and directed to execute and deliver any and all documents and instruments (including, without limitation, any documents required by the Trustee to evidence its rights and obligations with respect to the Series 2024 Bonds, any documents required in connection with implementation of a book-entry system of registration, and investment agreements relating to the investment of the proceeds of the Series 2024 Bonds and any agreements in connection with maintaining the exclusion of interest on the Series 2024 Bonds from gross income of the holders thereof) and to do and cause to be done any and all acts and things necessary or desirable for carrying out the transactions contemplated by this Resolution, including changing the series designation or the dated date of any and all documents on behalf of the District which are necessary and desirable in connection with the issuance of the Series 2024 Bonds. In the event that the Chair or the Secretary is unable to execute and deliver the documents herein contemplated, such documents shall be executed and delivered by the respective designee of such officer or official or any other duly authorized officer or official of the District. The Secretary or any Assistant Secretary is hereby authorized and directed to apply and attest the official seal of the District to any agreement or instrument authorized or approved herein that requires such a seal and attestation. Execution by the Chair or a Designated Member of such document shall be deemed to be conclusive evidence of approval of such change of date. All of the acts and doings of such members of the Board, the officers of the District, and the agents and employees of the District, which are in conformity with the intent and purposes of this Resolution and the issuance of the Series 2024 Bonds, whether heretofore or hereafter taken or done, shall be and are hereby ratified, confirmed and approved.

**Section 10. Severability.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause or provision.

**Section 11. Inconsistent Proceedings.** All resolutions or proceedings, or parts thereof, in conflict with the provisions hereof are to the extent of such conflict hereby repealed or amended to the extent of such inconsistency.

**Section 12. Public Meetings.** It is hereby found and determined that all formal actions of the District concerning and relating to the adoption of this Resolution and the consummation of the transactions contemplated by this Resolution were adopted in open meetings of the District, and that all deliberations of the District that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

**Section 13. Effective Date.** This Resolution shall take effect immediately upon its adoption.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE  
FOLLOWS]

**PASSED** in Public Session of the Board of Supervisors of Willowbrook Community Development District, this 26<sup>th</sup> day of March, 2024.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

Attest:

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Secretary,  
Board of Supervisors

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Chair, Board of Supervisors

## SCHEDULE I

### DESCRIPTION OF ASSESSMENT AREA ONE PROJECT

The Assessment Area One Project includes, but is not limited to the following public infrastructure described in the 2024 Supplemental Engineer's Report for the Willowbrook Community Development District dated March 2024, prepared by Sloan Engineering Group, Inc.:

	<b>North Phase 1 Project</b>	<b>South Phase 1 Project</b>	<b>Total 2024 Project</b>
Number of Lots	235	121	356
<b>Infrastructure</b> <sup>(1)(6)(9)(10)</sup>			
Offsite Improvements <sup>(5)</sup>	\$ 94,362	\$ 184,081	\$ 278,443
Stormwater Management <sup>(2)(3)</sup>	3,251,119	1,664,479	4,915,598
Utilities (Water, Sewer, Reuse)	4,069,881	2,274,065	6,343,946
Lighting <sup>(8)</sup>	105,750	54,450	160,200
Roadway <sup>(4)</sup>	1,746,049	1,225,632	2,971,681
Landscape/Hardscape/Irrigation/Entry Features <sup>(7)</sup>	434,750	224,044	658,794
Parks and Recreation (Amenities)	1,127,200	580,800	1,708,000
Professional Services/Permitting	477,050	245,630	722,680
Contingency	1,922,048	1,097,041	3,019,088
<b>Total</b>	<b>\$13,228,209</b>	<b>\$7,550,221</b>	<b>\$20,778,430</b>

1. Infrastructure consists of public roadway improvements, stormwater management facilities, master sanitary sewer lift station and utilities, entry feature, landscaping and signage, and parks and recreational facilities.
2. Excludes grading of each lot both for initial pad construction and in conjunction with home construction, which will be provided by developer or homebuilder.
3. Includes stormwater pond excavation. Costs do not include transportation to or placement of fill on private property.
4. Includes sub-grade, base, asphalt paving, and curbing.
5. Offsite Improvements include turn lanes and any offsite roadways currently owned and maintained by the City will remain owned and maintained by the City.
6. Estimates are based actual current bids for site development work and other costs based on 2024 cost with common costs allocated to each phase.
7. Includes entry features, signage, hardscape, landscape, irrigation and fencing.
8. CDD will enter into a Lighting Agreement with Electric Company for the street light poles and lighting service. Only the incremental cost of undergrounding of wire in public right-of-way and on District land is included.
9. The developer reserves the right to finance any of the improvements outlined above, and have such improvements owned and maintained by a property owner's or homeowner's association (in which case such items would not be funded by the District), or a third-party.
10. The District will only fund professional and permitting costs that are allocable to improvements funded by the District.

**EXHIBIT A**

**FORM OF FIRST SUPPLEMENTAL TRUST INDENTURE**

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**FIRST SUPPLEMENTAL TRUST INDENTURE**

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between

**WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT  
(CITY OF WINTER HAVEN, FLORIDA)**

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

as Trustee

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**Dated as of [\_\_\_\_\_ 1, 2024]**

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**Authorizing and Securing  
\$ \_\_\_\_\_  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT BONDS, SERIES 2024  
(ASSESSMENT AREA ONE PROJECT)**

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**THIS FIRST SUPPLEMENTAL TRUST INDENTURE** (the "First Supplemental Trust Indenture"), dated as of [\_\_\_\_\_ 1, 2024], between the **WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT** (together with its successors and assigns, the "Issuer" or the "District"), a local unit of special-purpose government organized and existing under the laws of the State of Florida, and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America and having a designated corporate trust office in Fort Lauderdale, Florida, as trustee (said national banking association and any bank or trust company becoming successor trustee under this First Supplemental Trust Indenture being hereinafter referred to as the "Trustee");

**WITNESSETH:**

**WHEREAS**, the Issuer is a local unit of special purpose government duly organized and existing under the provisions of the Uniform Community Development District Act of 1980, Chapter 190, Florida Statutes, as amended (the "Act"), created pursuant to Ordinance No. O-23-58 (Revised) enacted by the City Commission of the City of Winter Haven, Florida (the ":City") on November 13, 2023, which became effective on [November 13, 2023], for the purposes of delivering community development services and facilities to property to be served by the District; and

**WHEREAS**, the premises governed by the Issuer (the "District Lands") (as further described in Exhibit A attached to the Master Indenture (as defined herein)) currently consist of approximately 284.91 gross acres of land located entirely within the City and Polk County, Florida (the "County"); and

**WHEREAS**, the Issuer has been created for the purpose of delivering certain community development services and facilities for the benefit of the District Lands; and

**WHEREAS**, the Issuer has determined to undertake, in two phases, the acquisition and/or construction of public infrastructure improvements and community facilities for the special benefit of the District Lands (the "Capital Improvement Program"), as described in the Willowbrook Community Development District Engineer's Report for Capital Improvements, dated November 16, 2023, as supplemented by the 2024 Supplemental Engineer's Report for the Willowbrook Community Development District, dated March 2024 (together, the "Engineer's Report"), each approved by the Board of Supervisors of the District (the "Board") on November 16, 2023 and March 26, 2024, respectively, and described in Exhibit A attached hereto; and

**WHEREAS**, the Issuer has previously adopted Resolution No. 2024-26 on November 16, 2023 (the "Original Authorizing Resolution"), authorizing the issuance of not to exceed \$43,615,000 in aggregate principal amount of its Special Assessment Bonds (the "Bonds") to finance all or a portion of the planning, design, acquisition and construction costs of certain improvements pursuant to the Act for the special benefit of the District Lands or portions thereof and approving the form of and authorizing the execution and delivery of the Master Indenture; and

**WHEREAS**, the Bonds were validated by the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Hardee, Highlands and Polk Counties, rendered on the 31st day of January, 2024, and the appeal period from such final judgment has expired with no appeal being taken; and

**WHEREAS**, KRPC Willowbrook, LLC, a Florida limited liability (the "Assessment Area One Landowner"), is the owner of (i) lands known as "Phase 1 North" planned for 235 single family residential units and (ii) lands known as "Phase 1 South" planned for 121 single family residential units; and

**WHEREAS**, the lands comprising Phase 1 North and Phase 1 South are collectively referred to herein as "Assessment Area One", and the Assessment Area One Landowner will construct or cause the Issuer to construct all or a portion of the public infrastructure necessary to serve Assessment Area One (such public infrastructure as described in the Engineer's Report and on Exhibit A attached hereto and collectively referred to as the "Assessment Area One Project"); and

**WHEREAS**, the Issuer has determined to issue its first Series of Bonds, as authorized by Resolution No. 2024-[ ] duly adopted by the Board on [March 26, 2024], and designated as the Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One Project) (the "Series 2024 Bonds"), pursuant to that certain Master Indenture and this First Supplemental Trust Indenture (hereinafter sometimes collectively referred to as the "Assessment Area One Indenture") to secure the issuance of the Series 2024 Bonds and to set forth the terms of the Series 2024 Bonds; and

**WHEREAS**, in the manner provided herein, the net proceeds of the Series 2024 Bonds will be used for the purposes of (i) providing funds to pay all or a portion of the costs of the planning, financing, acquisition, construction, equipping and installation of the Assessment Area One Project, (ii) funding a deposit to the Assessment Area One Reserve Account in the amount of the Assessment Area One Reserve Requirement, (iii) paying a portion of the interest coming due on the Series 2024 Bonds, and (iv) paying the costs of issuance of the Series 2024 Bonds; and

**WHEREAS**, the Series 2024 Bonds will be secured by a pledge of Assessment Area One Pledged Revenues (as herein defined) to the extent provided herein.

**NOW, THEREFORE, THIS FIRST SUPPLEMENTAL TRUST INDENTURE WITNESSETH**, that to provide for the issuance of the Series 2024 Bonds, the security and payment of the principal or redemption price thereof (as the case may be) and interest thereon, the rights of the Bondholders and the performance and observance of all of the covenants contained herein and in said Series 2024 Bonds, and for and in consideration of the mutual covenants herein contained and of the purchase and acceptance of the Series 2024 Bonds by the Holders thereof, from time to time, and of the acceptance by the Trustee of the trusts hereby created, and intending to be legally bound hereby, the Issuer does hereby assign, transfer, set over and pledge to U.S. Bank Trust Company, National Association, as Trustee, its successors in trust and its assigns forever, and grants a lien on all of the right, title and interest of the Issuer in and to the Assessment Area One Pledged Revenues as security for the payment of the principal, redemption or purchase price of (as the case may be) and interest on the Series 2024 Bonds issued hereunder, all in the manner hereinafter provided, and the Issuer further hereby agrees with and covenants unto the Trustee as follows:

**TO HAVE AND TO HOLD** the same and, to the extent the same may be lawfully granted, any other revenues, property, contracts or contract rights, accounts receivable, chattel paper,

instruments, general intangibles or other rights and the proceeds thereof, which may, by delivery, assignment or otherwise, be subject to the lien created by the Assessment Area One Indenture with respect to the Series 2024 Bonds.

**IN TRUST NEVERTHELESS**, for the equal and ratable benefit and security of all present and future Holders of the Series 2024 Bonds issued and to be issued under this First Supplemental Trust Indenture, without preference, priority or distinction as to lien or otherwise (except as otherwise specifically provided in this First Supplemental Trust Indenture) of any one Series 2024 Bond over any other Series 2024 Bond, all as provided in the Assessment Area One Indenture.

**PROVIDED, HOWEVER**, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or make due provision for the payment of the principal or redemption price of the Series 2024 Bonds issued, secured and Outstanding hereunder and the interest due or to become due thereon, at the times and in the manner mentioned in such Series 2024 Bonds and the Assessment Area One Indenture, according to the true intent and meaning thereof and hereof, and the Issuer shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of the Assessment Area One Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then upon such final payments this First Supplemental Trust Indenture and the rights hereby granted shall cease and terminate, otherwise this First Supplemental Trust Indenture to be and remain in full force and effect.

## **ARTICLE I DEFINITIONS**

In this First Supplemental Trust Indenture capitalized terms used without definition shall have the meanings ascribed thereto in the Master Indenture and, in addition to certain terms defined in the recitals above, the following terms shall have the meanings specified below, unless otherwise expressly provided or unless the context otherwise requires:

"Acquisition Agreement" shall mean that certain Agreement by and between the District and the Assessment Area One Landowner regarding the acquisition of certain work product, improvements and real property, dated [\_\_\_\_\_] \_\_, 2024.

"Arbitrage Certificate" shall mean that certain Arbitrage Certificate, including arbitrage rebate covenants, of the Issuer, dated [\_\_\_\_\_] \_\_, 2024, relating to certain restrictions on arbitrage under the Code with respect to the Series 2024 Bonds.

"Assessment Area One Acquisition and Construction Accounts" shall mean the Phase 1 North Acquisition and Construction Account and the Phase 1 South Acquisition and Construction Account, each established as a separate Account within the Acquisition and Construction Fund pursuant to Section 4.01(a) of this First Supplemental Trust Indenture in connection with components of the Assessment Area One Project.

"Assessment Area One Bond Redemption Account" shall mean the Account so designated, established as a separate Account within the Bond Redemption Fund pursuant to Section 4.01(g) of this First Supplemental Trust Indenture.

"Assessment Area One Costs of Issuance Account" shall mean the Account so designated, established as a separate Account within the Acquisition and Construction Fund pursuant to Section 4.01(a) of this First Supplemental Trust Indenture.

"Assessment Area One General Redemption Subaccount" shall mean the subaccount so designated, established as a separate subaccount under the Assessment Area One Bond Redemption Account pursuant to Section 4.01(g) of this First Supplemental Trust Indenture.

"Assessment Area One Indenture" shall have the meaning as described in the recitals hereto.

"Assessment Area One Interest Account" shall mean the Account so designated, established as a separate Account within the Debt Service Fund pursuant to Section 4.01(d) of this First Supplemental Trust Indenture.

"Assessment Area One Landowner" shall have the meaning as described in the recitals hereto.

"Assessment Area One Optional Redemption Subaccount" shall mean the subaccount so designated, established as a separate subaccount under the Assessment Area One Bond Redemption Account pursuant to Section 4.01(g) of this First Supplemental Trust Indenture.

"Assessment Area One Pledged Revenues" shall mean with respect to the Series 2024 Bonds (a) all revenues received by the Issuer from Assessment Area One Special Assessments levied and collected on the assessable lands within Assessment Area One benefitted by the Assessment Area One Project, including, without limitation, amounts received from any foreclosure proceeding for the enforcement of collection of such Assessment Area One Special Assessments or from the issuance and sale of tax certificates with respect to such Assessment Area One Special Assessments, and (b) all moneys on deposit in the Funds, Accounts and subaccounts established under the Assessment Area One Indenture created and established with respect to or for the benefit of the Series 2024 Bonds; provided, however, that Assessment Area One Pledged Revenues shall not include (A) any moneys transferred to the Assessment Area One Rebate Fund and investment earnings thereon, (B) moneys on deposit in the Assessment Area One Costs of Issuance Account of the Acquisition and Construction Fund, and (C) "special assessments" levied and collected by the Issuer under Section 190.022 of the Act for maintenance purposes or "maintenance assessments" levied and collected by the Issuer under Section 190.021(3) of the Act (it being expressly understood that the lien and pledge of the Assessment Area One Indenture shall not apply to any of the moneys described in the foregoing clauses (A), (B) and (C) of this proviso).

"Assessment Area One Prepayment Principal" shall mean the portion of a Prepayment corresponding to the principal amount of Assessment Area One Special Assessments being prepaid pursuant to Section 4.05 of this First Supplemental Trust Indenture or Assessment Area One Special Assessments collected as a result of an acceleration of the Assessment Area One Special Assessments pursuant to Section 170.10, Florida Statutes, if such Assessment Area One Special Assessments are being collected through a direct billing method.

"Assessment Area One Prepayment Subaccount" shall mean the subaccount so designated, established as a separate subaccount under the Assessment Area One Bond Redemption Account pursuant to Section 4.01(g) of this First Supplemental Trust Indenture.

"Assessment Area One Project" shall mean the public infrastructure described on Exhibit A attached hereto, a portion of which will be funded with the net proceeds of the Series 2024 Bonds and benefiting Assessment Area One.

"Assessment Area One Rebate Account" shall mean the Account so designated, established as a separate Account within the Rebate Fund pursuant to Section 4.01(j) of this First Supplemental Trust Indenture.

"Assessment Area One Reserve Account" shall mean the Account so designated, established as a separate Account within the Debt Service Reserve Fund pursuant to Section 4.01(f) of this First Supplemental Trust Indenture.

"Assessment Area One Reserve Requirement" or "Reserve Requirement" shall mean (i) initially, an amount equal to the maximum annual debt service on the Series 2024 Bonds as calculated from time to time; (ii) upon the occurrence of the Reserve Release Conditions #1, fifty percent (50%) of the maximum annual debt service on the Series 2024 Bonds as calculated from time to time; and (iii) upon the occurrence of the Reserve Release Conditions #2, ten percent (10%) of the maximum annual debt service on the Series 2024 Bonds as calculated from time to time. Upon satisfaction of the Reserve Release Conditions #1 or Reserve Release Conditions #2, as applicable, such excess amount shall be released from the Assessment Area One Reserve Account and transferred to either or both of the respective Assessment Area One Acquisition and Construction Accounts in accordance with the provisions of Sections 4.01(a) and 4.01(f) hereof. For the purpose of calculating the Assessment Area One Reserve Requirement, maximum annual debt service, fifty percent (50%) of maximum annual debt service, or ten percent (10%) of maximum annual debt service, as the case may be, shall be recalculated in connection with the extraordinary mandatory redemption described in Sections 3.01(b)(i) and 3.01(b)(iii) hereof (but not upon the optional or mandatory sinking fund redemption thereof) and such excess amount shall be released from the Assessment Area One Reserve Account and, other than as provided in the immediately preceding sentence, transferred to the Assessment Area One General Redemption Subaccount or the Assessment Area One Prepayment Subaccount as applicable, in accordance with the provisions of Sections 3.01(b)(i), 3.01(b)(iii), 4.01(f), 4.01(i) and 4.05(a) hereof. Amounts on deposit in the Assessment Area One Reserve Account may, upon final maturity or redemption of all Outstanding Series 2024 Bonds be used to pay principal of and interest on the Series 2024 Bonds at that time. Initially, the Assessment Area One Reserve Requirement shall be equal to \$ \_\_\_\_\_.

"Assessment Area One Revenue Account" shall mean the Account so designated, established as a separate Account within the Revenue Fund pursuant to Section 4.01(b) of this First Supplemental Trust Indenture.

"Assessment Area One Sinking Fund Account" shall mean the Account so designated, established as a separate Account within the Debt Service Fund pursuant to Section 4.01(e) of this First Supplemental Trust Indenture.

"Assessment Area One Special Assessments" shall mean the Special Assessments levied on the assessable lands within Assessment Area One as a result of the Issuer's acquisition and/or construction of the Assessment Area One Project, corresponding in amount to the debt service on the Series 2024 Bonds and designated as such in the methodology report relating thereto.

"Assessment Area One" shall have the meaning as described in the recitals hereto.

"Assessment Resolutions" shall mean Resolution Nos. 2024-11, 2024-27, 2024-\_\_ and 2024-\_\_ of the Issuer adopted on November 16, 2023, November 16, 2023, \_\_\_\_\_, 2024, and \_\_\_\_\_, 2024, respectively, as amended and supplemented from time to time.

"Authorized Denomination" shall mean with respect to the Series 2024 Bonds, on the date of issuance, in the denominations of \$5,000 and any integral multiple thereof provided, however, if any initial beneficial owner does not purchase at least \$100,000 of the Series 2024 Bonds at the time of initial delivery of the Series 2024 Bonds, such beneficial owner must either execute and deliver to the Underwriter on the date of delivery of the Series 2024 Bonds the investor letter substantially in the form attached hereto as Exhibit D or otherwise establish to the satisfaction of the Underwriter that such Beneficial Owner is an "accredited investor," as described in Rule 501(a) under Regulation D of the Securities Act of 1933, as amended.

"Board" shall have the meaning as described in the recitals hereto.

["Collateral Assignment" shall mean the agreement wherein certain rights and material documents necessary to complete the development planned by the Assessment Area One Landowner on Assessment Area One are collaterally assigned to the District as security for the Assessment Area One Landowner's obligation to pay the Assessment Area One Special Assessments imposed against such lands which are benefited by the Assessment Area One Project and subject to the Assessment Area One Special Assessments and owned by Assessment Area One Landowner from time to time.]

"Consulting Engineer" shall mean Sloan Engineering Group, Inc.

"Continuing Disclosure Agreement" shall mean the Continuing Disclosure Agreement for the benefit of the Beneficial Owners of the Series 2024 Bonds, dated [\_\_\_\_\_] \_\_, 2024, by and among the Issuer, the dissemination agent named therein, and the Assessment Area One Landowner, in connection with the issuance of the Series 2024 Bonds.

["Completion Agreements" shall mean the Agreements between the District and the Assessment Area One Landowner regarding the completion of certain improvements, dated [\_\_\_\_\_] \_\_, 2024.]

["Declaration of Consent" shall mean the certain instrument executed by the Assessment Area One Landowner declaring consent to the jurisdiction of the District and the imposition of the Assessment Area One Special Assessments.]

"District Manager" shall mean Governmental Management Services – Central Florida, LLC, and its successors and assigns.

"Electronic Means" shall mean telecopy, facsimile transmission, email transmission or other similar electronic means of communicating providing evidence of transmission.

"Engineer's Report" shall have the meaning as described in the recitals hereto.

"Interest Payment Date" shall mean May 1 and November 1 of each year, commencing November 1, 2024.

"Majority Holders" means the Beneficial Owners of more than fifty percent (50%) in aggregate principal amount of the Outstanding Series 2024 Bonds.

"Master Indenture" shall mean the Master Trust Indenture, dated as of [\_\_\_\_\_ 1, 2024], by and between the Issuer and the Trustee, as supplemented and amended with respect to matters pertaining solely to the Master Indenture or the Series 2024 Bonds (as opposed to supplements or amendments relating to any Series of Bonds other than the Series 2024 Bonds as specifically defined in this First Supplemental Trust Indenture).

"Paying Agent" shall mean U.S. Bank Trust Company, National Association, and its successors and assigns as Paying Agent hereunder.

"Phase 1 North Acquisition and Construction Account" shall mean the Account so designated, established as a separate Account within the Acquisition and Construction Fund pursuant to Section 4.01(a) of this First Supplemental Trust Indenture for the purpose of funding the acquisition and/or construction of components of the Assessment Area One Project necessary for the development of Phase 1 North.

"Phase 1 North" shall have the meaning as described in the recitals hereto.

"Phase 1 South Acquisition and Construction Account" shall mean the Account so designated, established as a separate Account within the Acquisition and Construction Fund pursuant to Section 4.01(a) of this First Supplemental Trust Indenture for the purpose of funding the acquisition and/or construction of components of the Assessment Area One Project necessary for the development of Phase 1 South.

"Phase 1 South" shall have the meaning as described in the recitals hereto.

"Prepayment" shall mean the payment by any owner of property of the amount of Assessment Area One Special Assessments encumbering its property, in whole or in part, prior to its scheduled due date, including optional prepayments. The term "Prepayment" also means any proceeds received as a result of accelerating and/or foreclosing the Assessment Area One Special Assessments. "Prepayments" shall include, without limitation, Assessment Area One Prepayment Principal.

"Quarterly Redemption Date" shall mean each February 1, May 1, August 1, and November 1 of any calendar year.



"Redemption Price" shall mean the principal amount of any Series 2024 Bond plus the applicable premium, if any payable upon redemption thereof pursuant to this First Supplemental Trust Indenture.

"Registrar" shall mean U.S. Bank Trust Company, National Association and its successors and assigns as Registrar hereunder.

"Regular Record Date" shall mean the fifteenth day (whether or not a Business Day) of the calendar month next preceding each Interest Payment Date or the date on which the principal of the Series 2024 Bonds are to be paid.

"Reserve Release Conditions #1" shall mean collectively (i) all of the Outstanding principal amount of the Assessment Area One Special Assessments shall have been assigned to lots that have been developed, platted and conveyed to homebuilders, and (ii) there shall be no Events of Default under the Assessment Area One Indenture, all as certified by the District Manager in writing and upon which the Trustee may conclusively rely.

"Reserve Release Conditions #2" shall mean collectively (i) satisfaction of Reserve Release Conditions #1, (ii) all of the Outstanding principal portion of the Assessment Area One Special Assessments has been assigned to homes that have received a certificate of occupancy, and (iii) there shall be no Events of Default under the Assessment Area One Indenture, all as certified by the District Manager in writing and upon which the Trustee may conclusively rely.

"Resolution" shall mean, collectively, (i) Resolution No. 2024-26 of the Issuer adopted on November 16, 2023, pursuant to which the Issuer authorized the issuance of not exceeding \$43,615,000 aggregate principal amount of its Bonds to finance the construction and/or acquisition of certain public infrastructure improvements for the special benefit of the District Lands, including the Assessment Area One Project, and (ii) Resolution No. 2024-[41] of the Issuer adopted on [March 26, 2024], pursuant to which the Issuer authorized, among other things, the issuance of the Series 2024 Bonds to pay all or a portion of the costs of the planning, financing, acquisition, construction, equipping and installation of the Assessment Area One Project, specifying the details of the Series 2024 Bonds and awarding the Series 2024 Bonds to the purchasers of the Series 2024 Bonds.

"Series 2024 Bonds" shall have the meaning as described in the recitals hereto.

"Substantially Absorbed" means the date at least 90% of the principal portion of the Assessment Area One Special Assessments have been assigned to residential units within the District that have received certificates of occupancy. The District shall present the Trustee with a certification that the Assessment Area One Special Assessments are Substantially Absorbed and the Trustee may rely conclusively upon such certification and shall have no duty to verify if the Assessment Area One Special Assessments are Substantially Absorbed.

["True-Up Agreements" shall mean the Agreements dated [\_\_\_\_\_] \_\_, 2024, by and between the Issuer and the Assessment Area One Landowner, relating to the true-up of Assessment Area One Special Assessments.]

"Underwriter" shall mean FMSbonds, Inc., the underwriter of the Series 2024 Bonds.

The words "hereof," "herein," "hereto," "hereby," and "hereunder" (except in the form of Series 2024 Bonds), refer to the entire Assessment Area One Indenture.

Every "request," "requisition," "order," "demand," "application," "notice," "statement," "certificate," "consent," or similar action hereunder by the Issuer shall, unless the form or execution thereof is otherwise specifically provided, be in writing signed by the Chair or Vice Chair and the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary or Responsible Officer of the Issuer.

All words and terms importing the singular number shall, where the context requires, import the plural number and vice versa.

[END OF ARTICLE I]

**ARTICLE II**  
**THE SERIES 2024 BONDS**

**SECTION 2.01.** Amounts and Terms of Series 2024 Bonds; Issue of Series 2024 Bonds. No Series 2024 Bonds may be issued under this First Supplemental Trust Indenture except in accordance with the provisions of this Article and Articles II and III of the Master Indenture.

(a) The total principal amount of Series 2024 Bonds that may be issued under this First Supplemental Trust Indenture is expressly limited to \$ \_\_\_\_\_. The Series 2024 Bonds shall be numbered consecutively from R-1 and upwards.

(b) Any and all Series 2024 Bonds shall be issued substantially in the form attached hereto as Exhibit B, with such appropriate variations, omissions and insertions as are permitted or required by the Assessment Area One Indenture and with such additional changes as may be necessary or appropriate to conform to the provisions of the Resolution. The Issuer shall issue the Series 2024 Bonds upon execution of this First Supplemental Trust Indenture and satisfaction of the requirements of Section 3.01 of the Master Indenture; and the Trustee shall, at the Issuer's request, authenticate such Series 2024 Bonds and deliver them as specified in the request.

**SECTION 2.02.** Execution. The Series 2024 Bonds shall be executed by the Issuer as set forth in the Master Indenture.

**SECTION 2.03.** Authentication. The Series 2024 Bonds shall be authenticated as set forth in the Master Indenture. No Series 2024 Bond shall be valid until the certificate of authentication shall have been duly executed by the Trustee, as provided in the Master Indenture.

**SECTION 2.04.** Purpose, Designation and Denominations of, and Interest Accruals on, the Series 2024 Bonds.

(a) The Series 2024 Bonds are being issued hereunder in order to provide funds for the purposes of (i) providing funds to pay all or a portion of the costs of the planning, financing, acquisition, construction, equipping and installation of the Assessment Area One Project, (ii) funding a deposit to the Assessment Area One Reserve Account in the amount of the Assessment Area One Reserve Requirement, (iii) paying a portion of the interest coming due on the Series 2024 Bonds and (iv) paying the costs of issuance of the Series 2024 Bonds. The Series 2024 Bonds shall be designated "Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One Project)," and shall be issued as fully registered Bonds without coupons in Authorized Denominations.

(b) The Series 2024 Bonds shall be dated as of the date of initial delivery. Interest on the Series 2024 Bonds shall be payable on each Interest Payment Date to maturity or prior redemption. Interest on the Series 2024 Bonds shall be payable from the most recent Interest Payment Date next preceding the date of authentication thereof to which interest has been paid, unless the date of authentication thereof is a May 1 or November 1 to which interest has been paid, in which case from such date of authentication, or unless the date of authentication thereof is prior to November 1, 2024, in which case from the date of initial delivery or unless the date of

authentication thereof is between a Record Date and the next succeeding Interest Payment Date, in which case from such Interest Payment Date.

(c) Except as otherwise provided in Section 2.07 of this First Supplemental Trust Indenture in connection with a book-entry-only system of registration of the Series 2024 Bonds, the principal or Redemption Price of the Series 2024 Bonds shall be payable in lawful money of the United States of America at the designated corporate trust office of the Paying Agent upon presentation of such Series 2024 Bonds. Except as otherwise provided in Section 2.07 of this First Supplemental Trust Indenture in connection with a book-entry-only system of registration of the Series 2024 Bonds, the payment of interest on the Series 2024 Bonds shall be made on each Interest Payment Date to the Registered Owners of the Series 2024 Bonds by check or draft drawn on the Paying Agent and mailed on the applicable Interest Payment Date to each Registered Owner as such Registered Owner appears on the Bond Register maintained by the Registrar as of the close of business on the Regular Record Date, at his address as it appears on the Bond Register. Any interest on any Series 2024 Bond which is payable, but is not punctually paid or provided for on any Interest Payment Date (hereinafter called "Defaulted Interest") shall be paid to the Registered Owner in whose name the Series 2024 Bond is registered at the close of business on a Special Record Date to be fixed by the Trustee, such date to be not more than fifteen (15) nor less than ten (10) days prior to the date of proposed payment. The Trustee shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be sent by Electronic Means or mailed, first-class, postage-prepaid, to each Registered Owner of record as of the fifth (5th) day prior to such mailing, at his address as it appears in the Bond Register not less than ten (10) days prior to such Special Record Date. The foregoing notwithstanding, any Registered Owner of Series 2024 Bonds in an aggregate principal amount of at least \$1,000,000 shall be entitled to have interest paid by wire transfer to such Registered Owner to the bank account number on file with the Paying Agent, upon requesting the same in writing received by the Paying Agent at least fifteen (15) days prior to the relevant Record Date, which writing shall specify the bank, which shall be a bank within the continental United States, and bank account number to which interest payments are to be wired. Any such request for interest payments by wire transfer shall remain in effect until rescinded or changed, in writing delivered by the Registered Owner to the Paying Agent, and any such rescission or change of wire transfer instructions must be received by the Paying Agent at least fifteen (15) days prior to the relevant Record Date.

**SECTION 2.05.**      Debt Service on the Series 2024 Bonds.

(a) The Series 2024 Bonds will mature on May 1 in the years and in the principal amounts, and bear interest at the rates all set forth below, subject to the right of prior redemption in accordance with their terms.

<u>Year</u>	<u>Amount</u>	<u>Interest Rate</u>
	\$	%

(b) Interest on the Series 2024 Bonds will be computed in all cases on the basis of a 360-day year of twelve 30-day months. Interest on overdue principal and, to the extent lawful, on overdue interest will be payable at the numerical rate of interest borne by the Series 2024 Bonds on the day before the default occurred.

**SECTION 2.06.** Disposition of Series 2024 Bond Proceeds. From the net proceeds of the Series 2024 Bonds received by the Trustee in the amount of \$\_\_\_\_\_ (par amount of \$\_\_\_\_\_, [plus/minus] [net] [original issue discount/premium] of \$\_\_\_\_\_ and less underwriter's discount of \$\_\_\_\_\_ which is retained by the underwriter of the Series 2024 Bonds):

(a) \$\_\_\_\_\_, which is an amount equal to the Assessment Area One Reserve Requirement, shall be deposited in the Assessment Area One Reserve Account of the Debt Service Reserve Fund;

(b) \$\_\_\_\_\_, shall be deposited into the Assessment Area One Interest Account and applied to pay interest coming due on the Series 2024 Bonds through May 1, 2025;

(c) \$\_\_\_\_\_, shall be deposited into the Assessment Area One Costs of Issuance Account of the Acquisition and Construction Fund for payment of the costs of issuing the Series 2024 Bonds;

(d) \$\_\_\_\_\_, shall be deposited into the Phase 1 North Acquisition and Construction Account which the Issuer shall cause to be applied only to the payment of Costs of Phase 1 North in accordance with Section 4.01(a) hereof, Article V of the Master Indenture and the terms of the respective Acquisition Agreement; and

(e) \$\_\_\_\_\_, shall be deposited into the Phase 1 South Acquisition and Construction Account which the Issuer shall cause to be applied only to the payment of Costs of Phase 1 South in accordance with Section 4.01(a) hereof, Article V of the Master Indenture and the terms of the respective Acquisition Agreement.

**SECTION 2.07.** Book-Entry Form of Series 2024 Bonds. The Series 2024 Bonds shall be issued as one fully registered bond for each maturity of Series 2024 Bonds and deposited with The Depository Trust Company ("DTC"), New York, New York, which is responsible for establishing and maintaining records of ownership for its participants.

As long as the Series 2024 Bonds are held in book-entry-only form, Cede & Co. shall be considered the Registered Owner for all purposes hereof and in the Master Indenture. The Series 2024 Bonds shall not be required to be presented for payment. DTC shall be responsible for maintaining a book-entry-only system for recording the ownership interest of its participants ("Direct Participants") and other institutions that clear through or maintain a custodial relationship

with a Direct Participant, either directly or indirectly ("Indirect Participants"). The Direct Participants and Indirect Participants will be responsible for maintaining records with respect to the beneficial ownership interests of individual purchasers of the Series 2024 Bonds ("Beneficial Owners").

Principal and interest on the Series 2024 Bonds registered in the name of Cede & Co. prior to and at maturity shall be payable directly to Cede & Co. in care of DTC. Disbursal of such amounts to Direct Participants shall be the responsibility of DTC. Payments by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners shall be the responsibility of Direct Participants and Indirect Participants and not of DTC, the Trustee, or the Issuer.

Individuals may purchase beneficial interests in Authorized Denominations in book-entry-only form, without certificated Series 2024 Bonds, through Direct Participants and Indirect Participants.

During the period for which Cede & Co. is Registered Owner of the Series 2024 Bonds, any notices to be provided to any Beneficial Owner will be provided to Cede & Co. DTC shall be responsible for notices to Direct Participants and Direct Participants shall be responsible for notices to Indirect Participants, and Direct Participants and Indirect Participants shall be responsible for notices to Beneficial Owners.

The Issuer and the Trustee, if appropriate, shall enter into a blanket letter of representations with DTC providing for such book-entry-only system. Such agreement may be terminated at any time by either DTC or the Issuer in accordance with the procedures of DTC. In the event of such termination, the Issuer shall select another securities depository and, in that event, all references herein to DTC or Cede & Co., shall be deemed to be for reference to such successor. If the Issuer does not replace DTC, the Trustee will register and deliver to the Beneficial Owners replacement Series 2024 Bonds in the form of fully registered Series 2024 Bonds in accordance with the instructions from Cede & Co.

In the event DTC, any successor of DTC or the Issuer, but only in accordance with the procedures of DTC, elects to discontinue the book-entry only system, the Trustee shall deliver bond certificates in accordance with the instructions from DTC or its successor and after such time Series 2024 Bonds may be exchanged for an equal aggregate principal amount of Series 2024 Bonds in other Authorized Denominations upon surrender thereof at the designated corporate trust office of the Trustee.

**SECTION 2.08.** Appointment of Registrar and Paying Agent. The Issuer shall keep, at the designated corporate trust office of the Registrar, books (the "Bond Register") for the registration, transfer, and exchange of the Series 2024 Bonds, and hereby appoints U.S. Bank Trust Company, National Association, as its Registrar to keep such books and make such registrations, transfers, and exchanges as required hereby. U.S. Bank Trust Company, National Association hereby accepts its appointment as Registrar and its duties and responsibilities as Registrar hereunder. Registrations, transfers, and exchanges shall be without charge to the Bondholder requesting such registration, transfer, or exchange, but such Bondholder shall pay any taxes or other governmental charges on all registrations, transfers, and exchanges.

The Issuer hereby appoints U.S. Bank Trust Company, National Association as Paying Agent for the Series 2024 Bonds. U.S. Bank Trust Company, National Association hereby accepts its appointment as Paying Agent and its duties and responsibilities as Paying Agent hereunder.

**SECTION 2.09.** Conditions Precedent to Issuance of the Series 2024 Bonds. In addition to complying with the requirements set forth in the Master Indenture in connection with the issuance of the Series 2024 Bonds, all the Series 2024 Bonds shall be executed by the Issuer for delivery to the Trustee and thereupon shall be authenticated by the Trustee and delivered to the Issuer or upon its order, but only upon the further receipt by the Trustee of:

- (a) Certified copies of the Assessment Resolutions;
- (b) A copy of the executed Master Indenture and an executed copy of this First Supplemental Trust Indenture;
- (c) Customary closing opinions of District Counsel and Bond Counsel;
- (d) A certificate of an Authorized Officer to the effect that, upon the authentication and delivery of the Series 2024 Bonds, the Issuer will not be in default in the performance of the terms and provisions of the Master Indenture or this First Supplemental Trust Indenture;
- (e) Copies of executed investor letters in the form attached hereto as Exhibit D if such investor letter is required, as determined by the Underwriter; and
- (f) Executed copies of the [Arbitrage Certificate, the True-Up Agreements, the Acquisition Agreement, Declaration of Consent, the Completion Agreements, the Continuing Disclosure Agreement, and the Collateral Assignments].

Payment to the Trustee of the net proceeds of the Series 2024 Bonds shall be conclusive evidence that the foregoing conditions have been fulfilled to the satisfaction of the Issuer and the Underwriter.

[END OF ARTICLE II]

**ARTICLE III**  
**REDEMPTION OF SERIES 2024 BONDS**

**SECTION 3.01.** Redemption Dates and Prices. The Series 2024 Bonds shall be subject to redemption at the times and in the manner provided in Article VIII of the Master Indenture and in this Article III. All payments of the Redemption Price of the Series 2024 Bonds shall be made on the dates hereinafter required. Except as otherwise provided in this Section 3.01, if less than all the Series 2024 Bonds of a maturity are to be redeemed pursuant to an extraordinary mandatory redemption, the Trustee shall select the Series 2024 Bonds or portions of the Series 2024 Bonds to be redeemed by lot. Partial redemptions of Series 2024 Bonds shall, to the extent possible, be made in such a manner that the remaining Series 2024 Bonds held by each Bondholder shall be in Authorized Denominations, except for the last remaining Series 2024 Bond.

The Series 2024 Bonds are subject to redemption prior to maturity in the amounts, at the times and in the manner provided below. All payments of the Redemption Price of the Series 2024 Bonds shall be made on the dates specified below. Upon any redemption of Series 2024 Bonds other than in accordance with scheduled mandatory sinking fund redemption amounts, the Issuer shall cause to be recalculated and delivered to the Trustee revised mandatory sinking fund redemption amounts recalculated so as to amortize the Outstanding principal amount of Series 2024 Bonds in substantially equal annual installments of principal and interest (subject to rounding to Authorized Denominations of principal) over the remaining term of the Series 2024 Bonds. The mandatory sinking fund redemption amounts as so recalculated shall not result in an increase in the aggregate of the mandatory sinking fund redemption amounts for all Series 2024 Bonds in any year. In the event of a redemption or purchase occurring less than forty-five (45) days prior to a date on which a mandatory sinking fund redemption payment is due, the foregoing recalculation shall not be made to the mandatory sinking fund redemption amounts due in the year in which such redemption occurs, but shall be made to the mandatory sinking fund redemption amounts for the immediately succeeding and subsequent years.

(a) Optional Redemption. The Series 2024 Bonds maturing after May 1, 20\_\_ may, at the option of the Issuer be called for redemption prior to maturity as a whole or in part, at any time, on or after May 1, 20\_\_ (less than all Series 2024 Bonds of a maturity to be selected by lot), at a Redemption Price equal to the principal amount of Series 2024 Bonds to be redeemed, plus accrued interest from the most recent Interest Payment Date through which interest has been paid to the redemption date from moneys on deposit in the Assessment Area One Optional Redemption Subaccount of the Assessment Area One Bond Redemption Account. If such optional redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be optionally redeemed from each maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

(b) Extraordinary Mandatory Redemption in Whole or in Part. The Series 2024 Bonds are subject to extraordinary mandatory redemption prior to maturity by the Issuer in whole or in part, on any date (other than in the case of clause (i) below, which extraordinary mandatory redemption in part must occur on a Quarterly Redemption Date), at a Redemption Price equal to 100% of the principal amount of the Series 2024 Bonds to be redeemed, plus interest accrued to the redemption date, as follows:



(i) from Assessment Area One Prepayment Principal deposited into the Assessment Area One Prepayment Subaccount of the Assessment Area One Bond Redemption Account following the payment in whole or in part of Assessment Area One Special Assessments on any assessable property within the District in accordance with the provisions of Section 4.05(a) of this First Supplemental Trust Indenture, together with any excess moneys transferred by the Trustee from the Assessment Area One Reserve Account to the Assessment Area One Prepayment Subaccount as a result of such Prepayment and pursuant to Sections 4.01(f) and 4.05(a) of this First Supplemental Trust Indenture. If such redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be redeemed from each maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

(ii) from moneys, if any, on deposit in the Funds, Accounts and subaccounts held by the Trustee hereunder (other than the Assessment Area One Rebate Fund and the Assessment Area One Acquisition and Construction Accounts) sufficient to pay and redeem all Outstanding Series 2024 Bonds and accrued interest thereon to the redemption date or dates in addition to all amounts owed to Persons under the Master Indenture.

(iii) upon the Completion Date, from any funds remaining on deposit in the Assessment Area One Acquisition and Construction Accounts in accordance with the provisions of Section 4.01(a) hereof, not otherwise reserved to complete the Assessment Area One Project and transferred to the Assessment Area One General Redemption Subaccount of the Assessment Area One Bond Redemption Account, together with moneys deposited therein in accordance with the provisions of Section 4.01(a) hereof, as a result of the reduction of the Assessment Area One Reserve Requirement. If such redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be redeemed from each maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

(c) Mandatory Sinking Fund Redemption. The Series 2024 Bonds maturing on May 1, 20\_\_ are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

Year	Mandatory Sinking Fund Redemption Amount	Year	Mandatory Sinking Fund Redemption Amount
	\$		\$

\*

\* Maturity.

The Series 2024 Bonds maturing on May 1, 20\_\_ are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>	<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>
	\$		\$

\*

\* Maturity.

The Series 2024 Bonds maturing on May 1, 2054 are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>	<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>
	\$		\$

\*

\* Maturity.

**SECTION 3.02.** Notice of Redemption. When required to redeem Series 2024 Bonds under any provision of this First Supplemental Trust Indenture or directed to redeem Series 2024 Bonds by the Issuer, the Trustee shall give or cause to be given to Registered Owners of the Series 2024 Bonds to be redeemed, notice of the redemption, as set forth in Article VIII of the Master Indenture.

[END OF ARTICLE III]

**ARTICLE IV**  
**ESTABLISHMENT OF CERTAIN FUNDS AND ACCOUNTS;**  
**ADDITIONAL COVENANTS OF THE ISSUER; PREPAYMENTS;**  
**REMOVAL OF ASSESSMENT AREA ONE SPECIAL ASSESSMENT LIENS**

**SECTION 4.01.**      Establishment of Certain Funds and Accounts.

(a) The Trustee shall establish a separate account within the Acquisition and Construction Fund designated as (i) the "Phase 1 North Acquisition and Construction Account" and (ii) the "Phase 1 South Acquisition and Construction Account." Net proceeds of the Series 2024 Bonds shall initially be deposited into the Phase 1 North Acquisition and Construction Account and the Phase 1 South Acquisition and Construction Account in the amounts set forth in Section 2.06 of this First Supplemental Trust Indenture, together with any moneys subsequently transferred or deposited thereto, including moneys transferred from the Assessment Area One Reserve Account after satisfaction of either the Reserve Release Conditions #1 or Reserve Release Conditions #2 as certified in writing by the District Manager and upon which the Trustee may conclusively rely, and such moneys shall be applied as set forth in this Section 4.01(a), Section 5.01 of the Master Indenture, and by the District as set forth in the Acquisition Agreement and the Engineer's Report. Funds on deposit in the Phase 1 North Acquisition and Construction Account shall only be requested by the Issuer to be applied to the Costs of Phase 1 North of the Assessment Area One Project subject to Sections 3.01(b)(iii), 4.01(f) and 5.05 herein. Funds on deposit in the Phase 1 South Acquisition and Construction Account shall only be requested by the Issuer to be applied to the Costs of Phase 1 South, of the Assessment Area One Project, subject to Sections 3.01(b)(iii), 4.01(f) and 5.06 herein. Upon satisfaction of the Reserve Release Conditions #1 and Reserve Release Conditions #2, the amount on deposit in the Assessment Area One Reserve Account in excess of the Assessment Area One Reserve Requirement, as applicable and as calculated by the District shall then be transferred by the Trustee to the Phase 1 North Acquisition and Construction Account and/or the Phase 1 South Acquisition and Construction Account, in such amounts as are directed in writing to the Trustee by the District Manager, upon consultation with the Consulting Engineer, and applied as provided in this Section 4.01(a).

In the event the Completion Date for Phase 1 North occurs prior to the Completion Date for Phase 1 South, or vice versa, moneys remaining in the Phase 1 North Acquisition and Construction Account after retaining costs to complete Phase 1 North portion of the Assessment Area One Project shall be transferred to the Phase 1 South Acquisition and Construction Account, or moneys remaining in the Phase 1 South Acquisition and Construction Account after retaining costs to complete Phase 1 South portion of the Assessment Area One Project shall be transferred to the Phase 1 North Acquisition and Construction Account, as the case may be, as directed in writing to the Trustee by the District Manager, upon consultation with the Consulting Engineer. Following the Completion Date for Phase 1 North and Phase 1 South of the Assessment Area One Project, all moneys remaining in either or both of the Assessment Area One Acquisition and Construction Accounts shall be transferred to the Assessment Area One General Redemption Subaccount, as directed in writing by the District Manager, on behalf of the Issuer to the Trustee to be applied as provided in Section 3.01(b)(iii).

The Trustee shall make no such transfers from either of the Assessment Area One Acquisition and Construction Accounts to the Assessment Area One General Redemption

Subaccount if an Event of Default exists with respect to the Series 2024 Bonds of which the Trustee has actual knowledge as described in Section 11.06 of the Master Indenture. Except as provided in Section 5.06 and Section 3.01(b)(iii) hereof, only upon presentment to the Trustee of a properly signed requisition in substantially the form attached hereto as Exhibit C, shall the Trustee withdraw moneys from the Assessment Area One Acquisition and Construction Accounts or subaccounts therein. After no funds remain in the Assessment Area One Acquisition and Construction Accounts, such Account shall be closed.

Notwithstanding the foregoing, neither of the Assessment Area One Acquisition and Construction Accounts shall be closed until the Reserve Release Conditions #2 shall have occurred and the excess funds from the Assessment Area One Reserve Account shall have been transferred to either or both of the Assessment Area One Acquisition and Construction Accounts, as directed in writing to the Trustee by the District Manager, and applied in accordance with this Section 4.01(a) and Section 4.01(f) hereof. The Trustee shall not be responsible for determining the amounts in the respective Assessment Area One Acquisition and Construction Accounts and subaccounts allocable to the respective components of the Assessment Area One Project or any transfers made to such Accounts in accordance with written direction from the District Manager as provided for herein.

Pursuant to the Master Indenture, the Trustee shall establish a separate account within the Acquisition and Construction Fund designated as the "Assessment Area One Costs of Issuance Account." Net proceeds of the Series 2024 Bonds shall be deposited into the Assessment Area One Costs of Issuance Account in the amount set forth in Section 2.06 of this First Supplemental Trust Indenture. Upon presentment to the Trustee of a properly signed requisition in substantially the form attached hereto as Exhibit C, the Trustee shall withdraw moneys from the Assessment Area One Costs of Issuance Account to pay the costs of issuing the Series 2024 Bonds. Six months after the issuance of the Series 2024 Bonds, any moneys remaining in the Assessment Area One Costs of Issuance Account in excess of the amounts requested to be disbursed by the Issuer shall be deposited into the Assessment Area One Interest Account and the Assessment Area One Costs of Issuance Account shall be closed. Any deficiency in the amount allocated to pay the cost of issuing the Series 2024 Bonds shall be paid from excess Assessment Area One Pledged Revenues on deposit in the Assessment Area One Revenue Account as provided in Section 4.02. After no funds remain therein, the Assessment Area One Costs of Issuance Account shall be closed.

(b) Pursuant to Section 6.03 of the Master Indenture, the Trustee shall establish a separate Account within the Revenue Fund designated as the "Assessment Area One Revenue Account." Assessment Area One Special Assessments (except for Prepayments of Assessment Area One Special Assessments which shall be identified as such by the Issuer to the Trustee and deposited in the Assessment Area One Prepayment Subaccount) shall be deposited by the Trustee into the Assessment Area One Revenue Account which shall be applied as set forth in Section 6.03 of the Master Indenture and Section 4.02 of this First Supplemental Trust Indenture. The Trustee may conclusively rely that unless expressly indicated in writing by the District as a Prepayment upon deposit thereof with the Trustee, payments of Assessment Area One Special Assessments otherwise received by the Trustee are to be deposited into the Assessment Area One Revenue Account.

(c) [RESERVED].

(d) Pursuant to Section 6.04 of the Master Indenture and Section 4.02 of this First Supplemental Trust Indenture, the Trustee shall establish a separate Account within the Debt Service Fund designated as the "Assessment Area One Interest Account." Moneys deposited into the Assessment Area One Interest Account pursuant to Section 6.04 of the Master Indenture and Sections 2.06 and 4.02 of this First Supplemental Trust Indenture, shall be applied for the purposes provided therein and used to pay interest on the Series 2024 Bonds.

(e) Pursuant to Section 6.04 of the Master Indenture, the Trustee shall establish a separate account within the Debt Service Fund designated as the "Assessment Area One Sinking Fund Account." Moneys shall be deposited into the Assessment Area One Sinking Fund Account as provided in Section 6.04 of the Master Indenture and Section 4.02 of this First Supplemental Trust Indenture, and applied for the purposes provided therein and in Section 3.01(c) of this First Supplemental Trust Indenture.

(f) Pursuant to Section 6.05 of the Master Indenture, the Trustee shall establish a separate Account within the Debt Service Reserve Fund designated as the "Assessment Area One Reserve Account." Net proceeds of the Series 2024 Bonds shall be deposited into the Assessment Area One Reserve Account in the amount set forth in Section 2.06 of this First Supplemental Trust Indenture, and such moneys, together with any other moneys deposited into the Assessment Area One Reserve Account shall be applied for the purposes provided in the Master Indenture and in this Section 4.01(f) and Sections 4.01 and 4.05 of this First Supplemental Trust Indenture. Notwithstanding any provisions in the Master Indenture to the contrary, the Issuer covenants not to substitute the cash and Investment Securities on deposit in the Assessment Area One Reserve Account with a Debt Service Reserve Insurance Policy or a Debt Service Reserve Letter of Credit. Except as provided in the next paragraph, all investment earnings on moneys in the Assessment Area One Reserve Account shall remain on deposit therein.

On each March 15 and September 15 (or, if such date is not a Business Day, on the Business Day next preceding such day), the Trustee shall determine the amount on deposit in the Assessment Area One Reserve Account and transfer any excess therein above the Assessment Area One Reserve Requirement resulting from investment earnings to the Assessment Area One Revenue Account in accordance with Section 4.02 hereof.

Subject to the provisions of Section 4.05 hereof, on any date the Issuer receives notice from the District Manager that a landowner wishes to prepay its Assessment Area One Special Assessments relating to the benefited property of such landowner, or as a result of a mandatory true-up payment, the Issuer shall, or cause the District Manager, on behalf of the Issuer, to calculate the principal amount of such Prepayment taking into account a credit against the amount of Assessment Area One Prepayment Principal due by the amount of money in the Assessment Area One Reserve Account that will exceed the Assessment Area One Reserve Requirement for the Series 2024 Bonds, taking into account the proposed Prepayment. Such excess shall be transferred to the Assessment Area One Prepayment Subaccount of the Assessment Area One Bond Redemption Account, as a result of such Prepayment. The District Manager, on behalf of the Issuer, shall make such calculation within ten (10) Business Days after such Prepayment and shall instruct the Trustee in writing to transfer such amount of credit given to the respective landowner from the Assessment Area One Reserve Account to the Assessment Area One Prepayment Subaccount of the Assessment Area One Bond Redemption Account to be used for the

extraordinary mandatory redemption of the Series 2024 Bonds in accordance with Section 3.01(b)(i) hereof. The Trustee is authorized to make such transfers and has no duty to verify such calculations. Notwithstanding any of the foregoing, amounts on deposit in the Assessment Area One Reserve Account shall be transferred by the Trustee, in the amounts directed in writing by the Majority Holders of the Series 2024 Bonds to the Assessment Area One General Redemption Subaccount, if as a result of the application of Article X of the Master Indenture, the proceeds received from lands sold subject to the Assessment Area One Special Assessments and applied to redeem a portion of the Series 2024 Bonds is less than the principal amount of Series 2024 Bonds indebtedness attributable to such lands.

Notwithstanding the foregoing, upon satisfaction of the Reserve Release Conditions #1 and #2, the Trustee shall deposit such excess as directed by the District Manager in writing on deposit in the Assessment Area One Reserve Account to the respective Assessment Area One Acquisition and Construction Account and pay such amount as designated in a requisition in the form attached hereto as Exhibit C to the Issuer submitted by the Assessment Area One Landowner within thirty (30) days of such transfer which requisition shall be executed by the Issuer and the Consulting Engineer. Such payment is authorized notwithstanding that the Completion Date might have been declared provided the Assessment Area One Landowner can establish, to the satisfaction of the Consulting Engineer, Costs of the Assessment Area One Project that were not paid from moneys initially deposited in the respective Assessment Area One Acquisition and Construction Account. In the event that there are no unreimbursed Costs to pay to the Assessment Area One Landowner, such excess moneys transferred from the Assessment Area One Reserve Account to the Assessment Area One Acquisition and Construction Account shall be deposited into the Assessment Area One General Redemption Subaccount of the Assessment Area One Bond Redemption Account upon direction to the Trustee by the District. If no completed requisition as provided in this section is submitted to the Trustee within thirty (30) days of moneys having been transferred from the Assessment Area One Reserve Account to the respective Assessment Area One Acquisition and Construction Account as a result of the satisfaction of the Reserve Release Conditions #1 and #2, such excess moneys in the respective Assessment Area One Acquisition and Construction Account shall then be transferred by the Trustee to the Assessment Area One General Redemption Subaccount and applied to the redemption of Series 2024 Bonds as provided in Section 4.01(a) hereinabove.

In addition, and together with the moneys transferred from the Assessment Area One Reserve Account pursuant to this paragraph, if the amount on deposit in the Assessment Area One General Redemption Subaccount, is not sufficient to redeem a principal amount of the Series 2024 Bonds in an Authorized Denomination, the Trustee is authorized to withdraw amounts from the Assessment Area One Revenue Account to round up the amount in the Assessment Area One General Redemption Subaccount to the nearest Authorized Denomination. Notwithstanding the foregoing, no transfers from the Assessment Area One Revenue Account shall be made to pay interest on and/or principal of the Series 2024 Bonds for the redemption pursuant to Section 3.01(b)(iii) if as a result the deposits required under Section 4.02 FIRST through FIFTH cannot be made in full.

(g) Pursuant to Section 6.06 of the Master Indenture, the Trustee shall establish a separate Series Bond Redemption Account within the Bond Redemption Fund designated as the "Assessment Area One Bond Redemption Account" and within such Account, an "Assessment

Area One General Redemption Subaccount," an "Assessment Area One Optional Redemption Subaccount," and an "Assessment Area One Prepayment Subaccount." Except as otherwise provided in this First Supplemental Trust Indenture regarding Prepayments or in connection with the optional redemption of the Series 2024 Bonds, moneys to be deposited into the Assessment Area One Bond Redemption Account as provided in Section 6.06 of the Master Indenture, shall be deposited to the Assessment Area One General Redemption Subaccount.

(h) Moneys that are deposited into the Assessment Area One General Redemption Subaccount (including all earnings on investments held therein) shall be used to call for the extraordinary mandatory redemption (i) in whole, pursuant to Section 3.01(b)(ii) hereof, the Outstanding amount of Series 2024 Bonds, or (ii) in whole or in part, pursuant to Section 3.01(b)(iii) hereof.

(i) Moneys in the Assessment Area One Prepayment Subaccount (including all earnings on investments held in such Assessment Area One Prepayment Subaccount) shall be accumulated therein to be used to call for redemption pursuant to Section 3.01(b)(i) hereof an amount of Series 2024 Bonds equal to the amount of money transferred to the Assessment Area One Prepayment Subaccount of the Assessment Area One Bond Redemption Account for the purpose of such extraordinary mandatory redemption on the dates and at the price provided in such Section 3.01(b)(i) hereof. In addition, and together with the moneys transferred from the Assessment Area One Reserve Account pursuant to paragraph (f) above, if the amount on deposit in the Assessment Area One Prepayment Subaccount is not sufficient to redeem a principal amount of the Series 2024 Bonds in an Authorized Denomination, the Trustee upon written direction from the Issuer, shall be authorized to withdraw amounts from the Assessment Area One Revenue Account to deposit to the Assessment Area One Prepayment Subaccount to round-up the amount to the nearest Authorized Denomination. Notwithstanding the foregoing, no transfers from the Assessment Area One Revenue Account shall be directed by the Issuer to pay interest on and/or principal of the Series 2024 Bonds for the redemption pursuant to Section 3.01(b)(i) if as a result the deposits required under Section 4.02 FIRST through FIFTH cannot be made in full.

(j) The Issuer hereby directs the Trustee to establish a separate account in the Rebate Fund designated as the "Assessment Area One Rebate Account." Moneys shall be deposited into the Assessment Area One Rebate Account, as provided in the Arbitrage Certificate, and applied for the purposes provided therein.

(k) Moneys on deposit in the Assessment Area One Optional Redemption Subaccount shall be used to optionally redeem all or a portion of the Series 2024 Bonds pursuant to Section 3.01(a) hereof.

**SECTION 4.02.** Assessment Area One Revenue Account. The Trustee shall transfer from amounts on deposit in the Assessment Area One Revenue Account to the Funds, Accounts and subaccounts designated below, the following amounts, at the following times and in the following order of priority:

FIRST, upon receipt but no later than the Business Day next preceding each Interest Payment Date, commencing November 1, 2024, to the Assessment Area One Interest Account of the Debt Service Fund, an amount equal to the interest on the Series 2024 Bonds

becoming due on the next succeeding Interest Payment Date, less any amount on deposit in the Assessment Area One Interest Account not previously credited;

SECOND, no later than the Business Day next preceding each May 1, commencing May 1, 2026, to the Assessment Area One Sinking Fund Account, an amount equal to the principal amount of Series 2024 Bonds subject to sinking fund redemption on such May 1, less any amount on deposit in the Assessment Area One Sinking Fund Account not previously credited;

THIRD, upon receipt but no later than the Business Day next preceding each Interest Payment Date while Series 2024 Bonds remain Outstanding, to the Assessment Area One Reserve Account, an amount equal to the amount, if any, which is necessary to make the amount on deposit therein equal to the Assessment Area One Reserve Requirement for the Series 2024 Bonds;

FOURTH, notwithstanding the foregoing, at any time the Series 2024 Bonds are subject to redemption on a date which is not a May 1 or November 1 Interest Payment Date, the Trustee shall be authorized to transfer to the Assessment Area One Interest Account, the amount necessary to pay interest on the Series 2024 Bonds subject to redemption on such date; and

FIFTH, subject to the foregoing paragraphs, the balance of any moneys remaining after making the foregoing deposits shall be first deposited into the Assessment Area One Costs of Issuance Account upon the written request of the Issuer to cover any deficiencies in the amount allocated to pay the cost of issuing the Series 2024 Bonds and next, any balance in the Assessment Area One Revenue Account shall remain on deposit in such Assessment Area One Revenue Account, unless needed to be transferred to the Assessment Area One Prepayment Subaccount for the purposes of rounding the principal amount of an Series 2024 Bond subject to extraordinary mandatory redemption pursuant to Sections 4.01(f) or 4.01(i) hereof to an Authorized Denomination, or unless pursuant to the Arbitrage Certificate, it is necessary to make a deposit into the Assessment Area One Rebate Fund, in which case, the Issuer shall direct the Trustee to make such deposit thereto.

**SECTION 4.03.** Power to Issue Series 2024 Bonds and Create Lien. The Issuer is duly authorized under the Act and all applicable laws of the State to issue the Series 2024 Bonds, to execute and deliver the Assessment Area One Indenture and to pledge the Assessment Area One Pledged Revenues for the benefit of the Series 2024 Bonds to the extent set forth herein. The Assessment Area One Pledged Revenues are not and shall not be subject to any other lien senior to or on a parity with the lien created in favor of the Series 2024 Bonds, except as otherwise permitted under the Master Indenture and in Section 5.04 hereof. The Series 2024 Bonds and the provisions of the Assessment Area One Indenture are and will be valid and legally enforceable obligations of the Issuer in accordance with their respective terms. The Issuer shall, at all times, to the extent permitted by law and without waiving any sovereign immunity or limitation of liability afforded by Section 768.28, Florida Statutes, or other law, defend, preserve and protect the pledge created by the Assessment Area One Indenture and all the rights of the Holders of the Series 2024 Bonds under the Assessment Area One Indenture against all claims and demands of all persons whomsoever.



**SECTION 4.04.** Assessment Area One Project to Conform to the Engineer's Report. Simultaneously with the issuance of the Series 2024 Bonds, the Issuer will promptly proceed to construct and/or acquire the Assessment Area One Project, as described in Exhibit A hereto and in the Engineer's Report relating thereto, all pursuant to the terms and provisions of the Acquisition Agreement.

**SECTION 4.05.** Prepayments; Removal of Assessment Area One Special Assessment Liens.

(a) At any time any owner of property subject to the Assessment Area One Special Assessments may, at its option, or as a result of acceleration of the Assessment Area One Special Assessments because of non-payment thereof, shall, or by operation of law, require the Issuer to reduce or release and extinguish the lien upon its property by virtue of the levy of the Assessment Area One Special Assessments by paying or causing there to be paid, to the Issuer all or a portion of the Assessment Area One Special Assessment, which shall constitute Assessment Area One Prepayment Principal, plus, except as provided below, accrued interest to the next succeeding Quarterly Redemption Date (or the first succeeding Quarterly Redemption Date that is at least forty-five (45) days after such Prepayment, if such Prepayment is made within forty-five (45) calendar days before the next succeeding Quarterly Redemption Date, as the case may be), attributable to the property subject to Assessment Area One Special Assessments owned by such owner. To the extent that such Prepayments are to be used to redeem Series 2024 Bonds pursuant to Section 3.01(b)(i) hereof, in the event the amount on deposit in the Assessment Area One Reserve Account will exceed the Assessment Area One Reserve Requirement for the Series 2024 Bonds as a result of a Prepayment in accordance with this Section 4.05(a) and the resulting extraordinary mandatory redemption in accordance with Section 3.01(b)(i) of this First Supplemental Trust Indenture of Series 2024 Bonds, the excess amount shall be transferred from the Assessment Area One Reserve Account to the Assessment Area One Prepayment Subaccount, as a credit against the Assessment Area One Prepayment Principal otherwise required to be paid by the owner of such lot or parcel, upon written instructions of the Issuer to the Trustee together with a certificate of a Responsible Officer of the Issuer, upon which the Trustee may conclusively rely, stating that, after giving effect to such transfers sufficient moneys will be on deposit in the Assessment Area One Reserve Account to equal or exceed the Assessment Area One Reserve Requirement.

(b) Upon receipt of Assessment Area One Prepayment Principal as described in paragraph (a) above, subject to satisfaction of the conditions set forth therein, the Issuer shall immediately pay the amount so received to the Trustee, and the Issuer shall take such action as is necessary to record in the official improvement lien book of the District that the Assessment Area One Special Assessment has been paid in whole or in part and that such Assessment Area One Special Assessment lien is thereby reduced, or released and extinguished, as the case may be.

The Trustee may conclusively rely on the Issuer's determination of what moneys constitute Prepayments. The Trustee shall calculate the amount available for the extraordinary mandatory redemption of the applicable Series 2024 Bonds pursuant to Section 3.01(b)(i) forty-five (45) days prior to each Quarterly Redemption Date.

[END OF ARTICLE IV]

**ARTICLE V**  
**COVENANTS AND DESIGNATIONS OF THE ISSUER**

**SECTION 5.01.** Collection of Assessment Area One Special Assessments. The Assessment Area One Special Assessments levied for each full year on platted lots shall be collected pursuant to the uniform method provided for in Sections 197.3632 and 197.3635 Florida Statutes, (the "Uniform Method") unless the District determines that it is in its best interest to collect directly. The Assessment Area One Special Assessments levied on unplatted lots or lands shall be billed and collected directly by the District pursuant to the Act and Chapters 170 and 197, Florida Statutes, and not pursuant to the Uniform Method unless the District determines that it is in its best interest to do so. Prior to an Event of Default, the election to collect and enforce Assessment Area One Special Assessments in any year pursuant to any one method shall not, to the extent permitted by law, preclude the District from electing to collect and enforce Assessment Area One Special Assessments pursuant to any other method permitted by law in any subsequent year. Following an Event of Default, Assessment Area One Special Assessments levied on platted lots shall be collected pursuant to the Uniform Method and Assessment Area One Special Assessments levied on unplatted lots or lands shall be billed and collected directly by the District pursuant to the Act and Chapters 170 and 197, Florida Statutes, and not pursuant to the Uniform Method, in each case unless the Trustee, acting at the direction of the Majority Holders of the Series 2024 Bonds Outstanding, provides written consent/direction to a different method of collection. All Assessment Area One Special Assessments that are billed and collected directly by the District and not via the Uniform Method shall be due and payable by the landowner no later than thirty (30) days prior to each Interest Payment Date; provided, however, that such Assessment Area One Special Assessments shall not be deemed to be delinquent unless and until they are not paid by the applicable Interest Payment Date with respect to which they have been billed. The applicable assessment methodology report shall not be materially amended without the written consent of the Majority Holders, which consent shall be deemed given if no response is received within sixty (60) days of a written request therefor.

**SECTION 5.02.** Continuing Disclosure. Contemporaneously with the execution and delivery hereof, the Issuer and the Assessment Area One Landowner have executed and delivered a Continuing Disclosure Agreement in order to assist the Underwriter in complying with the requirements of Rule 15c2-12 promulgated under the Securities and Exchange Act of 1934. The Issuer covenants and agrees to comply with the provisions of the Continuing Disclosure Agreement applicable to it; however, as set forth therein, failure to so comply shall not constitute an Event of Default hereunder, but shall instead be enforceable by mandamus or any other means of specific performance.

**SECTION 5.03.** Investment of Funds and Accounts. The provisions of Section 7.02 of the Master Indenture shall apply to the investment and reinvestment of moneys in the Funds, Accounts and subaccounts therein created hereunder.

**SECTION 5.04.** Additional Obligations. The Issuer covenants not to issue any other Bonds or other debt obligations secured by the Assessment Area One Special Assessments. In addition, the Issuer covenants not to issue any other Bonds or debt obligations, secured by Special Assessments on the assessable lands within the District that are subject to the Assessment Area One Special Assessments, until such time as the Assessment Area One Special Assessments are

Substantially Absorbed or the Majority Holders have consented in writing. The District shall present the Trustee with a certification that the Assessment Area One Special Assessments are Substantially Absorbed and the Trustee may rely conclusively upon such certification and shall have no duty to verify if the Assessment Area One Special Assessments are Substantially Absorbed. In the absence of such written certification, the Trustee is entitled to assume that the Assessment Area One Special Assessments have not been Substantially Absorbed. Such covenant shall not prohibit the Issuer from issuing refunding Bonds or any Bonds or other obligations secured by Special Assessments levied on District Lands not subject to the Assessment Area One Special Assessments, or to finance any other capital project that is necessary to remediate any natural disaster, catastrophic damage or failure with respect to the Assessment Area One Project.

**SECTION 5.05.**     Requisite Owners for Direction or Consent. Anything in the Master Indenture to the contrary notwithstanding, any direction or consent or similar provision which requires greater than fifty percent (50%) of the Owners, shall in each case be deemed to refer to, and shall mean, the Majority Holders.

**SECTION 5.06.**     Acknowledgement Regarding the Moneys in the Assessment Area One Acquisition and Construction Accounts Following an Event of Default. In accordance with the provisions of the Assessment Area One Indenture, the Series 2024 Bonds are payable solely from the Assessment Area One Pledged Revenues and any other moneys held by the Trustee under the Assessment Area One Indenture for such purpose. Anything in the Assessment Area One Indenture to the contrary notwithstanding, the Issuer hereby acknowledges that the Assessment Area One Pledged Revenues include, without limitation, all amounts on deposit in the respective Assessment Area One Acquisition and Construction Accounts then held by the Trustee and upon the occurrence of an Event of Default with respect to the Series 2024 Bonds, (i) the Assessment Area One Pledged Revenues may not be used by the Issuer (whether to pay costs of the Assessment Area One Project or otherwise) without the consent of the Majority Holders and (ii) the Assessment Area One Pledged Revenues may be used by the Trustee, at the direction or with the approval of the Majority Holders, to pay costs and expenses incurred in connection with the pursuit of remedies under the Assessment Area One Indenture, provided, however notwithstanding anything herein to the contrary the Trustee is also authorized to utilize the Assessment Area One Pledged Revenues to pay fees and expenses as provided in Section 10.12 of the Master Indenture.

[END OF ARTICLE V]

**ARTICLE VI**  
**THE TRUSTEE; THE PAYING AGENT AND REGISTRAR**

**SECTION 6.01.** Acceptance of Trust. The Trustee accepts and agrees to execute the trusts hereby created and agrees to perform such trusts upon the terms and conditions set forth in the Assessment Area One Indenture. The Trustee agrees to act as Paying Agent, Registrar and Authenticating Agent for the Series 2024 Bonds.

**SECTION 6.02.** Trustee's Duties. The Trustee shall not be responsible in any manner for the due execution of this First Supplemental Trust Indenture by the Issuer or for the recitals contained herein (except for the certificate of authentication on the Series 2024 Bonds), all of which are made solely by the Issuer. Nothing contained herein shall limit the rights, benefits, privileges, protection and entitlement inuring to the Trustee under the Master Indenture.

[END OF ARTICLE VI]

**ARTICLE VII**  
**MISCELLANEOUS PROVISIONS**

**SECTION 7.01.** Interpretation of First Supplemental Trust Indenture. This First Supplemental Trust Indenture amends and supplements the Master Indenture with respect to the Series 2024 Bonds, and all of the provisions of the Master Indenture, to the extent not inconsistent herewith, are incorporated in this First Supplemental Trust Indenture by reference. To the maximum extent possible, the Master Indenture and the First Supplemental Trust Indenture shall be read and construed as one document.

**SECTION 7.02.** Amendments. Any amendments to this First Supplemental Trust Indenture shall be made pursuant to the provisions for amendment contained in the Master Indenture.

**SECTION 7.03.** Counterparts. This First Supplemental Trust Indenture may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall together constitute but one and the same instrument.

**SECTION 7.04.** Appendices and Exhibits. Any and all schedules, appendices or exhibits referred to in and attached to this First Supplemental Trust Indenture are hereby incorporated herein and made a part of this First Supplemental Trust Indenture for all purposes.

**SECTION 7.05.** Payment Dates. In any case in which an Interest Payment Date or the maturity date of the Series 2024 Bonds or the date fixed for the redemption of any Series 2024 Bonds shall be other than a Business Day, then payment of interest, principal or Redemption Price need not be made on such date but may be made on the next succeeding Business Day, with the same force and effect as if made on the due date, and no interest on such payment shall accrue for the period after such due date if payment is made on such next succeeding Business Day.

**SECTION 7.06.** No Rights Conferred on Others. Nothing herein contained shall confer any right upon any Person other than the parties hereto and the Holders of the Series 2024 Bonds, and no other person is intended to be a third-party beneficiary hereof to be entitled to assert or preserve any claim hereunder.

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**IN WITNESS WHEREOF**, Willowbrook Community Development District has caused this First Supplemental Trust Indenture to be executed by the Chair of its Board of Supervisors and its corporate seal to be hereunto affixed and attested by the Secretary of its Board of Supervisors and U.S. Bank Trust Company, National Association has caused this First Supplemental Trust Indenture to be executed by one of its authorized signatories, all as of the day and year first above written.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

[SEAL]

Attest:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chair, Board of Supervisors

By: \_\_\_\_\_  
Name: Jill Burns  
Title: Secretary, Board of Supervisors

**U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION,  
as Trustee, Paying Agent and Registrar**

By: \_\_\_\_\_  
Name: Scott A. Schuhle  
Title: Vice President

**EXHIBIT A**  
**DESCRIPTION OF ASSESSMENT AREA ONE PROJECT**

The Assessment Area One Project includes, but is not limited to, the following onsite and offsite improvements, including, but not limited to the "North Phase 1 Project" and "South Phase 1 Project" described below, and in more detail in the 2024 Supplemental Engineer's Report for the Willowbrook Community Development District dated March 2024, prepared by Sloan Engineering Group, Inc.:

	<b>North Phase 1 Project</b>	<b>South Phase 1 Project</b>	<b>Total 2024 Project</b>
Number of Lots	235	121	356
<b>Infrastructure</b> <sup>(1)(6)(9)(10)</sup>			
Offsite Improvements <sup>(5)</sup>	\$ 94,362	\$ 184,081	\$ 278,443
Stormwater Management <sup>(2)(3)</sup>	3,251,119	1,664,479	4,915,598
Utilities (Water, Sewer, Reuse)	4,069,881	2,274,065	6,343,946
Lighting <sup>(8)</sup>	105,750	54,450	160,200
Roadway <sup>(4)</sup>	1,746,049	1,225,632	2,971,681
Landscape/Hardscape/Irrigation/Entry Features <sup>(7)</sup>	434,750	224,044	658,794
Parks and Recreation (Amenities)	1,127,200	580,800	1,708,000
Professional Services/Permitting	477,050	245,630	722,680
Contingency	1,922,048	1,097,041	3,019,088
<b>Total</b>	<b>\$13,228,209</b>	<b>\$7,550,221</b>	<b>\$20,778,430</b>

1. Infrastructure consists of public roadway improvements, stormwater management facilities, master sanitary sewer lift station and utilities, entry feature, landscaping and signage, and parks and recreational facilities.
2. Excludes grading of each lot both for initial pad construction and in conjunction with home construction, which will be provided by developer or homebuilder.
3. Includes stormwater pond excavation. Costs do not include transportation to or placement of fill on private property.
4. Includes sub-grade, base, asphalt paving, and curbing.
5. Offsite Improvements include turn lanes and any offsite roadways currently owned and maintained by the City will remain owned and maintained by the City.
6. Estimates are based actual current bids for site development work and other costs based on 2024 cost with common costs allocated to each phase.
7. Includes entry features, signage, hardscape, landscape, irrigation and fencing.
8. CDD will enter into a Lighting Agreement with Electric Company for the street light poles and lighting service. Only the incremental cost of undergrounding of wire in public right-of-way and on District land is included.
9. The developer reserves the right to finance any of the improvements outlined above, and have such improvements owned and maintained by a property owner's or homeowner's association (in which case such items would not be funded by the District), or a third-party.
10. The District will only fund professional and permitting costs that are allocable to improvements funded by the District.



**EXHIBIT B**

[FORM OF SERIES 2024 BOND]

R-\_\_

\$ \_\_\_\_\_

**UNITED STATES OF AMERICA  
STATE OF FLORIDA  
CITY OF WINTER HAVEN, FLORIDA  
POLK COUNTY, FLORIDA  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT BOND, SERIES 2024  
(ASSESSMENT AREA ONE PROJECT)**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issuance</u>	<u>CUSIP</u>
_____ %	May 1, 20__	[_____] __, 2024	_____ - _____

Registered Owner: CEDE & CO.

Principal Amount:

KNOW ALL PERSONS BY THESE PRESENTS that the Willowbrook Community Development District (the "Issuer"), for value received, hereby promises to pay to the Registered Owner shown above or registered assigns, on the maturity date set forth above, from the sources hereinafter mentioned, the principal amount set forth above (with interest thereon at the Interest Rate per annum set forth above, computed on 360-day year of twelve 30-day months). Principal of and interest on this Bond are payable by U.S. Bank Trust Company, National Association, in Fort Lauderdale, Florida, as paying agent (said U.S. Bank Trust Company, National Association and/or any bank or trust company to become successor paying agent being herein called the "Paying Agent") made payable to the Registered Owner and mailed on each Interest Payment Date commencing November 1, 2024, to the address of the Registered Owner as such name and address shall appear on the registry books of the Issuer maintained by U.S. Bank Trust Company, National Association, as Registrar (said U.S. Bank Trust Company, National Association and any successor Registrar being herein called the "Registrar") at the close of business on the fifteenth day of the calendar month preceding each Interest Payment Date or the date on which the principal of a Bond is to be paid (the "Record Date"), provided however presentation is not required for payment while the Series 2024 Bonds are registered in book-entry only form. Such interest shall be payable from the most recent Interest Payment Date next preceding the date of authentication hereof to which interest has been paid, unless the date of authentication hereof is a May 1 or November 1 to which interest has been paid, in which case from the date of authentication hereof, or unless such date of authentication is prior to November 1, 2024, in which case from the date of initial delivery, or unless the date of authentication hereof is between a Record Date and the next succeeding Interest Payment Date, in which case from such Interest Payment Date. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Registered Owner on such Record Date and may be paid to the person in whose name this Bond is registered at the close of business on a Special Record Date for the payment of such defaulted interest to be fixed by the

Paying Agent, notice whereof shall be given to Bondholders of record as of the fifth (5th) day prior to such mailing, at their registered addresses, not less than ten (10) days prior to such Special Record Date, or may be paid, at any time in any other lawful manner, as more fully provided in the Assessment Area One Indenture (defined below). Any capitalized term used in this Bond and not otherwise defined shall have the meaning ascribed to such term in the Assessment Area One Indenture.

THE SERIES 2024 BONDS ARE LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY OUT OF THE ASSESSMENT AREA ONE PLEDGED REVENUES PLEDGED THEREFOR UNDER THE ASSESSMENT AREA ONE INDENTURE AND NEITHER THE PROPERTY, THE FULL FAITH AND CREDIT, NOR THE TAXING POWER OF THE ISSUER, CITY OF WINTER HAVEN, FLORIDA (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 SERIES 2024 BONDS, EXCEPT THAT THE ISSUER IS OBLIGATED UNDER THE ASSESSMENT AREA ONE INDENTURE TO LEVY AND TO EVIDENCE AND CERTIFY, OR CAUSE TO BE CERTIFIED, FOR COLLECTION, ASSESSMENT AREA ONE SPECIAL ASSESSMENTS (AS DEFINED IN THE ASSESSMENT AREA ONE INDENTURE) TO SECURE AND PAY THE SERIES 2024 BONDS. THE SERIES 2024 BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER, THE CITY, THE COUNTY, THE STATE, OR ANY OTHER POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION.

This Bond is one of an authorized issue of Series 2024 Bonds of the Willowbrook Community Development District, a community development district duly created, organized and existing under Chapter 190, Florida Statutes (the Uniform Community Development District Act of 1980), as amended (the "Act"), to Ordinance No. O-23-58 (Revised) enacted by the City Commission of the City of Winter Haven, Florida (the ":City") on November 13, 2023, which became effective on [November 13, 2023], designated as "Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One Project)" (the "Series 2024 Bonds"), in the aggregate principal amount of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) of like date, tenor and effect, except as to number. The Series 2024 Bonds are being issued under authority of the laws and Constitution of the State, including particularly the Act, to pay, among other things, the costs of constructing and/or acquiring a portion of the Assessment Area One Project (as defined in the herein referred to First Supplemental Trust Indenture). The Series 2024 Bonds shall be issued as fully registered Series 2024 Bonds in Authorized Denominations, as set forth in the Assessment Area One Indenture. The Series 2024 Bonds are issued under and secured by a Master Trust Indenture dated as of [\_\_\_\_\_ 1, 2024] (the "Master Indenture"), as supplemented by a First Supplemental Trust Indenture dated as of [\_\_\_\_\_ 1, 2024] (the "First Supplemental Trust Indenture" and together with the Master Indenture, the "Assessment Area One Indenture"), each by and between the Issuer and the Trustee, executed counterparts of which are on file at the designated corporate trust office of the Trustee in Fort Lauderdale, Florida.

Reference is hereby made to the Assessment Area One Indenture for the provisions, among others, with respect to the custody and application of the proceeds of the Series 2024 Bonds issued under the Assessment Area One Indenture, the operation and application of the Assessment Area

One Reserve Account within the Reserve Fund and other Funds, Accounts and subaccounts (each as defined in the Assessment Area One Indenture) charged with and pledged to the payment of the principal of and the interest on the Series 2024 Bonds, the levy and the evidencing and certifying for collection, of the Assessment Area One Special Assessments, the nature and extent of the security for the Series 2024 Bonds, the terms and conditions on which the Series 2024 Bonds are issued, the rights, duties and obligations of the Issuer and of the Trustee under the Assessment Area One Indenture, the conditions under which such Assessment Area One Indenture may be amended without the consent of the Registered Owners of the Series 2024 Bonds, the conditions under which such Assessment Area One Indenture may be amended with the consent of the Registered Owners of a majority in aggregate principal amount of the Series 2024 Bonds outstanding, and as to other rights and remedies of the Registered Owners of the Series 2024 Bonds.

It is expressly agreed by the Registered Owner of this Bond that such Registered Owner shall never have the right to require or compel the exercise of the ad valorem taxing power of the Issuer, the City, the County, the State or any other political subdivision thereof, or taxation in any form of any real or personal property of the Issuer, the City, the County, the State or any other political subdivision thereof, for the payment of the principal of and interest on this Bond or the making of any other sinking fund and other payments provided for in the Assessment Area One Indenture, except for Assessment Area One Special Assessments to be assessed and levied by the Issuer as set forth in the Assessment Area One Indenture.

By the acceptance of this Bond, the Registered Owner hereof assents to all the provisions of the Assessment Area One Indenture.

This Bond is payable from and secured by Assessment Area One Pledged Revenues, as such term is defined in the Assessment Area One Indenture, all in the manner provided in the Assessment Area One Indenture. The Assessment Area One Indenture provides for the levy and the evidencing and certifying, of non-ad valorem assessments in the form of Assessment Area One Special Assessments to secure and pay the Series 2024 Bonds.

The Series 2024 Bonds are subject to redemption prior to maturity in the amounts, at the times and in the manner provided below. All payments of the redemption price of the Series 2024 Bonds shall be made on the dates specified below. Upon any redemption of Series 2024 Bonds other than in accordance with scheduled mandatory sinking fund redemption amounts, the Issuer shall cause to be recalculated and delivered to the Trustee revised mandatory sinking fund redemption amounts recalculated so as to amortize the Outstanding principal amount of Series 2024 Bonds in substantially equal annual installments of principal and interest (subject to rounding to Authorized Denominations of principal) over the remaining term of the Series 2024 Bonds. The mandatory sinking fund redemption amounts as so recalculated shall not result in an increase in the aggregate of the mandatory sinking fund redemption amounts for all Series 2024 Bonds in any year. In the event of a redemption or purchase occurring less than forty-five (45) days prior to a date on which a mandatory sinking fund redemption payment is due, the foregoing recalculation shall not be made to the mandatory sinking fund redemption amounts due in the year in which such redemption or purchase occurs, but shall be made to the mandatory sinking fund redemption amounts for the immediately succeeding and subsequent years.

### Optional Redemption

The Series 2024 Bonds maturing after May 1, 20\_\_ may, at the option of the Issuer be called for redemption prior to maturity as a whole or in part, at any time, on or after May 1, 20\_\_ (less than all Series 2024 Bonds of a maturity to be selected by lot), at a Redemption Price equal to the principal amount of Series 2024 Bonds to be redeemed, plus accrued interest from the most recent Interest Payment Date through which interest has been paid to the redemption date from moneys on deposit in the Assessment Area One Optional Redemption Subaccount of the Assessment Area One Bond Redemption Account. If such optional redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be optionally redeemed from each maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

### Extraordinary Mandatory Redemption in Whole or in Part

The Series 2024 Bonds are subject to extraordinary mandatory redemption prior to maturity by the Issuer in whole or in part, on any date (other than in the case of clause (i) below, which extraordinary mandatory redemption in part must occur on a Quarterly Redemption Date), at a Redemption Price equal to 100% of the principal amount of the Series 2024 Bonds to be redeemed, plus interest accrued to the redemption date, as follows:

(i) from Assessment Area One Prepayment Principal deposited into the Assessment Area One Prepayment Subaccount of the Assessment Area One Bond Redemption Account following the payment in whole or in part of Assessment Area One Special Assessments on any assessable property within the District in accordance with the provisions of Section 4.05(a) of the First Supplemental Trust Indenture, together with any excess moneys transferred by the Trustee from the Assessment Area One Reserve Account to the Assessment Area One Prepayment Subaccount as a result of such Prepayment and pursuant to Sections 4.01(f) and 4.05(a) of the First Supplemental Trust Indenture. If such redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be redeemed from each maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

(ii) from moneys, if any, on deposit in the Funds, Accounts and subaccounts held by the Trustee under the First Supplemental Trust Indenture (other than the Assessment Area One Rebate Fund and the Assessment Area One Acquisition and Construction Accounts) sufficient to pay and redeem all Outstanding Series 2024 Bonds and accrued interest thereon to the redemption date or dates in addition to all amounts owed to Persons under the Master Indenture.

(iii) upon the Completion Date, from any funds remaining on deposit in the Assessment Area One Acquisition and Construction Accounts in accordance with the provisions of the First Supplemental Trust Indenture, not otherwise reserved to complete the Assessment Area One Project and transferred to the Assessment Area One General Redemption Subaccount of the Assessment Area One Bond Redemption Account, together with moneys deposited therein in accordance with the provisions of the First Supplemental Trust Indenture, as a result of the reduction of the Assessment Area One Reserve Requirement. If such redemption shall be in part, the Issuer shall select such principal amount of Series 2024 Bonds to be redeemed from each

maturity so that debt service on the remaining Outstanding Series 2024 Bonds is substantially level.

Mandatory Sinking Fund Redemption

The Series 2024 Bonds maturing on May 1, 20\_\_ are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>	<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>
	\$		\$
		*	

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\* Maturity.

The Series 2024 Bonds maturing on May 1, 20\_\_ are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>	<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>
	\$		\$
		*	

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\* Maturity.

The Series 2024 Bonds maturing on May 1, 20\_\_ are subject to mandatory sinking fund redemption from the moneys on deposit in the Assessment Area One Sinking Fund Account on May 1 in the years and in the mandatory sinking fund redemption amounts set forth below at a Redemption Price of 100% of their principal amount plus accrued interest to the date of redemption.

<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>	<b>Year</b>	<b>Mandatory Sinking Fund Redemption Amount</b>
	\$		\$

\*

\* Maturity.

Except as otherwise provided in the Assessment Area One Indenture, if less than all of the Series 2024 Bonds subject to redemption shall be called for redemption, the particular such Series 2024 Bonds or portions of such Series 2024 Bonds to be redeemed shall be selected by lot by the Registrar as provided in the Assessment Area One Indenture.

Notice of each redemption of the Series 2024 Bonds is required to be sent by Electronic Means or mailed by the Registrar, postage prepaid, not less than thirty (30) nor more than sixty (60) days prior to the redemption date to each Registered Owner of the Series 2024 Bonds to be redeemed at the address of such Registered Owner recorded on the bond register maintained by the Registrar. The Issuer may provide that the any optional redemption of Series 2024 Bonds issued under the Assessment Area One Indenture may be subject to certain conditions; provided that the notice of such conditional optional redemption must expressly state that such optional redemption is conditional and describe the conditions for such redemption. On the date designated for redemption, notice having been given and money for the payment of the Redemption Price being held by the Paying Agent, all as provided in the Assessment Area One Indenture, the Series 2024 Bonds or such portions thereof so called for redemption shall become and be due and payable at the Redemption Price provided for the redemption of such Series 2024 Bonds or such portions thereof on such date, interest on such Series 2024 Bonds or such portions thereof so called for redemption shall cease to accrue, such Series 2024 Bonds or such portions thereof so called for redemption shall cease to be entitled to any benefit or security under the Assessment Area One Indenture and the Registered Owners thereof shall have no rights in respect of such Series 2024 Bonds or such portions thereof so called for redemption except to receive payments of the Redemption Price thereof so held by the Paying Agent. Further notice of redemption shall be given by the Registrar to certain registered securities depositories and information services as set forth in the Assessment Area One Indenture, but no defect in said further notice nor any failure to give all or any portion of such further notice shall in any manner defeat the effectiveness of a call for redemption if notice thereof is given as above prescribed.

The Registered Owner of this Bond shall have no right to enforce the provisions of the Assessment Area One Indenture or to institute action to enforce the covenants therein, or to take

any action with respect to any Event of Default under the Assessment Area One Indenture, or to institute, appear in or defend any suit or other proceeding with respect thereto, except as provided in the Assessment Area One Indenture.

In certain events, on the conditions, in the manner and with the effect set forth in the Assessment Area One Indenture, the principal of all the Series 2024 Bonds then Outstanding under the Assessment Area One Indenture may become and may be declared due and payable before the stated maturity thereof, with the interest accrued thereon.

Modifications or alterations of the Assessment Area One Indenture or of any Assessment Area One Indenture supplemental thereto may be made only to the extent and in the circumstances permitted by the Assessment Area One Indenture.

Any moneys held by the Trustee or Paying Agent in trust for the payment and discharge of any Bond which remain unclaimed for two (2) years after the date when such Bond has become due and payable, either at its stated maturity date or by call for earlier redemption shall be paid to the Issuer, thereupon and thereafter no claimant shall have any rights against the Trustee or Paying Agent to or in respect of such moneys.

If the Issuer deposits or causes to be deposited with the Trustee funds or Government Obligations (as defined in the Master Indenture) sufficient to pay the principal or Redemption Price of any the Series 2024 Bonds becoming due at maturity or by call for redemption in the manner set forth in the Assessment Area One Indenture, together with the interest accrued to the due date or date of redemption as applicable, the lien of such Series 2024 Bonds as to the trust estate with respect to the Series 2024 Bonds shall be discharged, except for the rights of the Registered Owners thereof with respect to the funds so deposited as provided in the Assessment Area One Indenture.

This Bond 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.

This Bond shall initially be issued in the name of Cede & Co. as nominee for DTC, and so long as this Bond is held in book-entry-only form Cede & Co. shall be considered the Registered Owner for all purposes hereof, including the payment of the principal of and interest on this Bond. Payment to Direct Participants shall be the responsibility of DTC. Payments by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to individual Beneficial Owners shall be the responsibility of Direct Participants and Indirect Participants and not of DTC, the Issuer, or the Trustee.

The Issuer shall keep books for the registration of the Series 2024 Bonds at the designated corporate trust office of the Registrar in Fort Lauderdale, Florida. Subject to the restrictions contained in the Assessment Area One Indenture, and except when the Series 2024 Bonds are registered in book-entry only form, the Series 2024 Bonds may be transferred or exchanged by the Registered Owner thereof in person or by his attorney duly authorized in writing only upon the books of the Issuer kept by the Registrar and only upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his

duly authorized attorney. In all cases in which the privilege of transferring or exchanging Series 2024 Bonds is exercised, the Issuer shall execute and the Trustee shall authenticate and deliver a new Bond or Series 2024 Bonds in authorized form and in like aggregate principal amount in accordance with the provisions of the Assessment Area One Indenture. Every Bond presented or surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Trustee, Paying Agent or the Registrar, duly executed by the Bondholder or his attorney duly authorized in writing. Transfers and exchanges shall be made without charge to the Bondholder, except that the Issuer or the Trustee may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Series 2024 Bonds. Neither the Issuer nor the Registrar on behalf of the Issuer shall be required (i) to issue, transfer or exchange any Series 2024 Bond during a period beginning at the opening of fifteen (15) days before the day of mailing of a notice of redemption of Series 2024 Bonds selected for redemption and ending at the close of business on the day of such mailing, or (ii) to transfer or exchange any Series 2024 Bond so selected for redemption in whole or in part.

The Issuer, the Trustee, the Paying Agent, and the Registrar shall deem and treat the person in whose name any Bond shall be registered upon the books kept by the Registrar as the absolute owner thereof (whether or not such Bond shall be overdue and notwithstanding any notation of ownership or other writing thereon made by anyone other than the Issuer, the Trustee, any Paying Agent, the Registrar, or the Authenticating Agent) for the purpose of receiving payment of or on account of the principal of, premium, if any, and interest on such Bond as the same becomes due, and for all other purposes. All such payments so made to any such Registered Owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid, and neither the Issuer, the Trustee, the Paying Agent, nor the Registrar shall be affected by any notice to the contrary.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen, and to be performed, precedent to and in the issuance of this Bond exist, have happened and have been performed in regular and due form and time as required by the laws and Constitution of the State of Florida applicable thereto, including particularly the Act, and that the issuance of this Bond, and of the issue of the Series 2024 Bonds of which this Bond is one, is in full compliance with all constitutional and statutory limitations or provisions.

This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Assessment Area One Indenture until it shall have been authenticated by execution of the Trustee, or such other authenticating agent as may be appointed by the Trustee under the Assessment Area One Indenture, of the certificate of authentication endorsed hereon.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE  
FOLLOWS]



**IN WITNESS WHEREOF**, Willowbrook Community Development District has caused this Bond to be signed by the manual signature of the Chair of its Board of Supervisors and a manual seal to be imprinted hereon, and attested by the manual signature of the Secretary of its Board of Supervisors, all as of the date hereof.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Chair, Board of Supervisors

(SEAL)

Attest:

By: \_\_\_\_\_  
Secretary, Board of Supervisors

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Series 2024 Bonds delivered pursuant to the within mentioned Assessment Area One Indenture.

Date of Authentication: \_\_\_\_\_

**U.S. BANK TRUST COMPANY,  
NATIONAL ASSOCIATION,  
as Trustee**

By: \_\_\_\_\_  
Authorized Signatory

**STATEMENT OF VALIDATION**

This Bond is one of a series of Bonds which were validated by judgment of the Circuit Court of the Tenth Judicial Circuit of Florida, in and for Hardee, Highlands and Polk Counties, rendered on the 31<sup>st</sup> day of January, 2024.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Chair, Board of Supervisors

(SEAL)

Attest:

By: \_\_\_\_\_  
Secretary, Board of Supervisors

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Bond, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common  
TEN ENT - as tenants by the entireties  
JT TEN - as joint tenants with rights of survivorship and  
not as tenants in common

UNIFORM TRANSFER MIN ACT - \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
Under Uniform Transfer to Minors Act \_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

**ASSIGNMENT AND TRANSFER**

FOR VALUE RECEIVED the undersigned sells, assigns and transfers unto

---

**(please print or typewrite name and address of assignee)**

---

the within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

Attorney to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Signature Guarantee:

\_\_\_\_\_  
**NOTICE:** Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company

\_\_\_\_\_  
**NOTICE:** The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

\_\_\_\_\_  
Please insert social security or other identifying number of assignee.

**EXHIBIT C**

**FORMS OF REQUISITIONS**

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
SPECIAL ASSESSMENT BONDS, SERIES 2024  
(ASSESSMENT AREA ONE PROJECT)  
(Acquisition and Construction)**

The undersigned, a Responsible Officer of the Willowbrook Community Development District (the "District") hereby submits the following requisition for disbursement under and pursuant to the terms of the Master Trust Indenture by and between the District and U.S. Bank Trust Company, National Association, as trustee, dated as of [\_\_\_\_\_] 1, 2024], as supplemented by that certain First Supplemental Trust Indenture dated as of [\_\_\_\_\_] 1, 2024] (collectively, the "Assessment Area One Indenture") (all capitalized terms used herein shall have the meaning ascribed to such term in the Assessment Area One Indenture):

- (A) Requisition Number:
- (B) Identify Acquisition Agreement, if applicable;
- (C) Name of payee pursuant to Acquisition Agreement:
- (D) Amount Payable:
- (E) Purpose for which paid or incurred (refer also to specific contract if amount is due and payable pursuant to a contract involving progress payments):
- (F) Fund or Account and subaccount, if any, from which disbursement to be made:

*[Phase 1 North Acquisition and Construction Account of the Acquisition and Construction Fund] [Phase 1 South Acquisition and Construction Account of the Acquisition and Construction Fund]*

The undersigned hereby certifies that:

- 1. obligations in the stated amount set forth above have been incurred by the District,
- 2. each disbursement set forth above is a proper charge against the:

*[Phase 1 North Acquisition and Construction Account of the Acquisition and Construction Fund.] [Phase 1 South Acquisition and Construction Account of the Acquisition and Construction Fund.]; and*

3. each disbursement set forth above was incurred in connection with:  
the Costs of the Assessment Area One Project.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage which the District is at the date of such certificate entitled to retain.

Attached hereto or on file with the District are copies of the invoice(s) or applicable contracts from the vendor of the property acquired or the services rendered, as well as applicable conveyance instruments (e.g., deed(s), bill(s) of sale, easement(s), etc.) with respect to which disbursement is hereby requested.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Responsible Officer

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

**CONSULTING ENGINEER'S APPROVAL FOR  
NON-COST OF ISSUANCE OR [NON-OPERATING COSTS REQUESTS ONLY]**

The undersigned Consulting Engineer hereby certifies that this disbursement is for a Cost of the Assessment Area One Project and is consistent with: (i) the applicable acquisition or construction contract; (ii) the plans and specifications for the portion of the Assessment Area One Project with respect to which such disbursement is being made; and (iii) the report of the Consulting Engineer, as such report shall have been amended or modified on the date hereof. The Consulting Engineer further certifies and agrees that for any acquisition (a) the portion of the Assessment Area One Project that is the subject of this requisition is complete, and (b) the purchase price to be paid by the District for the portion of the Assessment Area One Project to be acquired with this disbursement is no more than the lesser of (i) the fair market value of such improvements and (ii) the actual cost of construction of such improvements.

\_\_\_\_\_  
Consulting Engineer

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

## FORMS OF REQUISITIONS

### WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT SPECIAL ASSESSMENT BONDS, SERIES 2024 (ASSESSMENT AREA ONE PROJECT) (Costs of Issuance)

The undersigned, a Responsible Officer of the Willowbrook Community Development District (the "District") hereby submits the following requisition for disbursement under and pursuant to the terms of the Master Trust Indenture by and between the District and U.S. Bank Trust Company, National Association, as trustee, dated as of [\_\_\_\_\_] 1, 2024], as supplemented by that certain First Supplemental Trust Indenture dated as of [\_\_\_\_\_] 1, 2024] (collectively, the "Assessment Area One Indenture") (all capitalized terms used herein shall have the meaning ascribed to such term in the Assessment Area One Indenture):

- (A) Requisition Number:
- (B) Amount Payable:
- (C) Purpose for which paid or incurred: Costs of Issuance
- (D) Fund or Account and subaccount, if any, from which disbursement to be made:

*Assessment Area One Costs of Issuance Account of the Acquisition and Construction Fund*

The undersigned hereby certifies that:

1. this requisition is for Costs of Issuance payable from the Assessment Area One Costs of Issuance Account that have not previously been paid;
2. each disbursement set forth above is a proper charge against the Assessment Area One Costs of Issuance Account;
3. each disbursement set forth above was incurred in connection with the issuance of the Series 2024 Bonds; and
4. each disbursement represents a cost of issuance which has not previously been paid.

The undersigned hereby further certifies that there has not been filed with or served upon the District notice of any lien, right to lien, or attachment upon, or claim affecting the right to receive payment of, any of the moneys payable to the payee set forth above, which has not been released or will not be released simultaneously with the payment hereof.

The undersigned hereby further certifies that such requisition contains no item representing payment on account of any retained percentage which the District is at the date of such certificate entitled to retain.



Attached hereto or on file with the District are copies of the invoice(s) from the vendor of the services rendered, with respect to which disbursement is hereby requested.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

By: \_\_\_\_\_  
Responsible Officer

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

**EXHIBIT D**  
**FORM OF INVESTOR LETTER**

[Date]

FMSbonds, Inc.  
20660 W. Dixie Highway  
North Miami Beach, FL 33180

Re: \$\_\_\_\_\_ Willowbrook Community Development District Special  
Assessment Bonds, Series 2024 (Assessment Area One Project)

Ladies and Gentlemen:

The undersigned is authorized to sign this letter [on behalf of Name of Non-Individual Investor], as the beneficial owner (the "Investor") of \$\_\_\_\_\_ of the above-referenced Bonds [maturing on \_\_\_\_\_, \_\_\_\_\_, bearing interest at the rate of \_\_\_% per annum and CUSIP #] (herein, the "Investor Bonds").

In connection with the purchase of the Investor Bonds by the Investor, the Investor hereby makes the following representations upon which you may rely:

1. The Investor has authority to purchase the Investor Bonds and to execute this letter, any other instruments and documents required to be executed by the Investor in connection with the purchase of the Investor Bonds.

2. The Investor meets the criteria of an "accredited investor" as described in one or more of the categories derived from Rule 501(a) under Regulation D of the Securities Act of 1933, as amended (the "Securities Act") summarized below, and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations including those which are not rated or credit-enhanced, to be able to evaluate the risks and merits of the investment represented by the Bonds. Please check the appropriate box below to indicate the type of accredited investor:

a bank, registered broker, dealer or investment adviser (or investment adviser exempt from registration under Section 203(l) or (m) within the meaning of the Investment Advisers Act of 1940), insurance company, registered investment company, business development company, small business investment company; or rural business investment company;

an employee benefit plan, within the meaning of the Employee Retirement Income Security Act of 1974, if a bank, insurance company, or registered investment adviser makes the investment decisions, or if the employee benefit plan has total assets in excess of \$5 million;

an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, corporation, Massachusetts or similar business trust partnership, or

limited liability company, not formed for the specific purpose of acquiring the Investor Bonds with assets exceeding \$5 million;

- a business in which all the equity owners are "accredited investors";
- a natural person who has individual net worth, or joint net worth with the person's spouse or spousal equivalent, that exceeds \$1 million at the time of the purchase, excluding the value of the primary residence of such person, except that mortgage indebtedness on the primary residence shall not be included as a liability;
- a natural person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse or spousal equivalent exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;
- a trust with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Investor Bonds whose purchase is directed by a sophisticated person;
- an entity, of a type other than those set forth above, that owns investments in excess of \$5,000,000 and that was not formed for the specific purpose of acquiring the Investor Bonds;
- a natural person holding in good standing one or more professional certifications or designations or credentials from a designated accredited educational institution qualifying an individual for "accredited investor" status;
- a "family office" with at least \$5,000,000 in assets under management, that was not formed for the specific purpose of acquiring the Investor Bonds, and whose prospective investment is directed by a person capable of evaluating the merits and risks of the prospective investment; or
- a "family client" of a family office described in the prior bullet point whose prospective investment is directed by that family office.

3. The Investor has been supplied with an (electronic) copy of the Preliminary Limited Offering Memorandum dated [\_\_\_\_], 2024 of the Issuer and relating to the Bonds (the "Offering Document") and has reviewed the Offering Document and represents that such Offering Document has provided full and meaningful disclosure in order to make an informed decision to invest in the Investor Bonds.

Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Assessment Area One Indenture.

Very truly yours,

[Name], [Type of Entity]

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

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

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

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

Or

---

[Name], an Individual

**EXHIBIT B**

**FORM OF BOND PURCHASE CONTRACT**

**EXHIBIT C**

**FORM OF PRELIMINARY LIMITED OFFERING MEMORANDUM**

**EXHIBIT D**

**FORM OF RULE 15c2-12 CERTIFICATE**

**Willowbrook Community Development District  
\$ \_\_\_\_\_\* Special Assessment Bonds,  
Series 2024  
(Assessment Area One Project)**

The undersigned hereby certifies and represents to FMSbonds, Inc. ("Underwriter") that he is the Chair of the Board of Supervisors of Willowbrook Community Development District (the "District") is authorized to execute and deliver this Certificate, and further certifies on behalf of the District to the Underwriter as follows:

1. This Certificate is delivered to enable the Underwriter to comply with Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") in connection with the offering and sale of the above captioned bonds (the "Series 2024 Bonds").

2. In connection with the offering and sale of the Series 2024 Bonds, there has been prepared a Preliminary Limited Offering Memorandum, dated the date hereof, setting forth information concerning the Series 2024 Bonds and the District (the "Preliminary Limited Offering Memorandum").

3. As used herein, "Permitted Omissions" shall mean the offering price, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, the identity of the Underwriter and other terms of the Series 2024 Bonds depending on such matters.

4. The undersigned hereby deems the Preliminary Limited Offering Memorandum "final" as of its date, within the meaning of the Rule, except for the Permitted Omissions, and the information therein is accurate and complete except for the Permitted Omissions.

5. If, at any time prior to the execution of a Bond Purchase Contract, any event occurs as a result of which the Preliminary Limited Offering Memorandum might include an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the District will promptly notify the Underwriter thereof.

**IN WITNESS WHEREOF**, the undersigned has hereunto set his hand this \_\_\_\_ day of \_\_\_\_\_, 2024.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
\* Preliminary, subject to change.

**EXHIBIT E**

**FORM OF CONTINUING DISCLOSURE AGREEMENT**



# SECTION X

# SECTION A

This instrument was prepared by and upon recording should be returned to:

(This space reserved for Clerk)

Jennifer Kilinski, Esq.  
Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301

**AGREEMENT BY AND BETWEEN THE WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT AND KRPC WILLOWBROOK, LLC, REGARDING THE TRUE-UP AND PAYMENT OF ASSESSMENTS**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of April 2024, by and between:

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in Winter Haven, Florida, with a mailing address c/o Governmental Management Services – Central Florida, LLC, 219 East Livingston Street, Orlando, Florida 32801 (the “**District**”), and

**KRPC WILLOWBROOK, LLC**, a Florida limited liability company, the landowner and/or developer of certain lands within Assessment Area One of the District, with a mailing address of 121 Garfield Avenue, Winter Park, Florida 32789, and its successors and assigns (together with its successors and assigns, the “**Developer**” and, together with the District, each a “**Party**” and collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, the District was established by ordinance enacted by the City Commission of the City of Winter Haven, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (the “**Act**”), for the purpose of planning, financing, constructing, acquiring, operating and/or maintaining certain public infrastructure improvements within or without the boundary of the District; and

**WHEREAS**, the Act authorizes the District to issue bonds for the purposes, among others, of planning, financing, constructing, operating and/or maintaining certain public infrastructure, including but not limited to stormwater management facilities, roadways, water and sewer utilities, underground electric, wetland mitigation, off-site improvements, entry features, landscape and hardscape, irrigation, and other infrastructure within or without the boundaries of the District; and

**WHEREAS**, the Developer is currently the primary owner of certain lands located within the boundaries of the District and generally described in the attached **Exhibit A** (“**Assessment Area One**”); and

**WHEREAS**, a Final Judgment was issued on February 1, 2024, validating the authority of the District to issue up to \$43,615,000 in aggregate principal amount of Willowbrook Community Development District Special Assessment Bonds in one or more series (the “**Bonds**”) to finance the design, acquisition, construction, and installation of community development facilities, services and improvements within and without the boundaries of the District as authorized by the Act and as set forth in the District’s previously adopted *Engineer’s Report for the Willowbrook Community Development District*, dated November 16, 2023 (the “**Master Engineer’s Report**”) and the improvements detailed therein, the “**Capital Improvement Plan**”), as supplemented by that certain *2024 Supplemental Engineer’s Report for the Willowbrook Community Development District*, dated March 26, 2024 (the “**Supplemental Engineer’s Report**”) and the project detailed therein, the “**Assessment Area One Project**” and together with the Master Engineer’s Report, the “**Engineer’s Report**”); and

**WHEREAS**, the District intends to issue its \$ [REDACTED] Special Assessment Revenue Bonds, Series 2024 (Assessment Area One) (the “**Series 2024 Bonds**”) for the purpose of financing a portion of the Assessment Area One Project; and

**WHEREAS**, the District's special assessments securing the Series 2024 Bonds include the Series 2024 Special Assessments to secure repayment of the Series 2024 Bonds (the “**Series 2024 Special Assessments**”) imposed on Assessment Area One within the District, all as more specifically described in Resolutions 2024-42, 2024-\_\_ and 2024-\_\_ (collectively, the “**Assessment Resolutions**”); and

**WHEREAS**, Developer agrees that all developable lands within the District, including Assessment Area One, benefit from the timely design, construction, or acquisition of the improvements that make up the Assessment Area One Project; and

**WHEREAS**, Developer agrees that the Series 2024 Assessments which were imposed on Assessment Area One have been validly imposed and constitute valid, legal and binding liens upon Assessment Area One, which Series 2024 Special Assessments remain unsatisfied; and

**WHEREAS**, to the extent permitted by law, Developer waives any defect in notice or publication or in the proceedings to levy, impose and collect the Series 2024 Special Assessments, including the Series 2024 Special Assessments levied on Assessment Area One within the District; and

**WHEREAS**, the Assessment Area One Project will benefit all lands within the District, as described in the District’s *Master Special Assessment Methodology Report*, dated November 16, 2023 (the “**Master Assessment Report**”), as supplemented by the District’s *Final First Supplemental Special Assessment Methodology Report*, dated March 26, 2024 (the “**Supplemental Assessment Report**”) and together with the Master Assessment Report, the “**Assessment Report**”); and

**WHEREAS**, the Assessment Report provides that as the Assessment Area One lands are platted (or re-platted) or site plans are to be approved (or re-approved), the plat or site plan (either, hereinafter, a “**Proposed Plat**”) shall be presented to the District for a “true up” calculation; and

**WHEREAS**, allocation of the amounts assessed to and constituting a lien upon Assessment Area One will be calculated based upon certain density assumptions relating to the number of each type of residential unit to be constructed within Assessment Area One, which assumptions were provided by Developer; and

**WHEREAS**, Developer intends that the District will be platted, planned and developed based on then-existing market conditions, and the actual densities developed may be at some density less (or more) than the densities assumed in the Assessment Report; and

**WHEREAS**, the District's Assessment Report anticipates a mechanism by which certain payments will be made to the District in order to satisfy, in whole or in part, the assessments allocated and the liens imposed pursuant to the Assessment Resolutions on Assessment Area One, the amount of such payments being determined generally by a calculation of the remaining unallocated debt prior to the approval of the final site plan for a parcel or tract, as described in the Assessment Report (which payments shall collectively be referenced as the “**True-Up Payment**”); and

**WHEREAS**, Developer and the District desire to enter into an agreement to confirm Developer’s intention and obligation, if required, to make or cause to be made the True-Up Payment related to the Series 2024 Special Assessments for Assessment Area One, subject to the terms and conditions contained herein.

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

**SECTION 1. RECITALS.** The recitals so stated are true and correct and by this reference are incorporated into and form a material part of this Agreement.

**SECTION 2. VALIDITY OF ASSESSMENTS.** Developer agrees that the Assessment Resolutions have been legally and duly adopted by the District. Developer further agrees that the Series 2024 Special Assessments imposed as a lien by the District are legal, valid, and binding liens running with the land against which assessed until paid, coequal with the liens of all state, county, district, and municipal taxes, and superior in dignity to all other liens, titles, and claims. Developer hereby waives and relinquishes any rights it may have to challenge, object to or otherwise fail to pay such Series 2024 Special Assessments.

**SECTION 3. PAYMENT OF ASSESSMENTS.**

A. Developer agrees that to the extent Developer fails to timely pay all Series 2024 Special Assessments collected by mailed notice of the District for Assessment Area

One, said unpaid Series 2024 Special Assessments (including True-Up Payments) may be placed on the tax roll by the District for collection by the Tax Collector pursuant to Section 197.3632, *Florida Statutes*, in any subsequent year or may be foreclosed on as provided for in Florida law.

- B. Developer agrees that the provisions of this Agreement shall constitute a covenant running with Assessment Area One and shall remain in full force and effect and be binding upon Developer, its legal representatives, estates, successors, grantees, and assigns until released pursuant to the terms herein.

#### **SECTION 4. SPECIAL ASSESSMENT REALLOCATION.**

- A. ***Assumptions as to the Series 2024 Special Assessments.*** As of the date of the execution of this Agreement, Developer has informed the District that Developer anticipates that a total of [REDACTED] residential units, as more specifically described by unit size/number in the Assessment Report (the “**2024 Anticipated Units**”), will be constructed within Assessment Area One of the District.

- B. ***Process for Reallocation of Assessments.***

- i. For unapproved tracts not subject to a Proposed Plat (as defined herein and in the Assessment Report), the Series 2024 Special Assessments will initially be levied on all acreage within Assessment Area One and will be allocated as lands are approved and subject to a Proposed Plat (or re-plat) (the “**Allocation**” or “**Reallocation**”). At such time as lands are to be approved (or re-approved), the Proposed Plat shall be presented to the District for a “true up” calculation and the Series 2024 Special Assessments imposed on the acreage subject to such Proposed Plat will be allocated based upon the actual number of units within each product type subject to the same. In furtherance thereof, at such time as acreage is subject to a Proposed Plat, Developer covenants that such Proposed Plat shall be presented to the District. The District shall allocate the Series 2024 Special Assessments to the product types subject to the Proposed Plat and any remaining property in accordance with the Assessment Report and cause such Reallocation to be recorded in the District’s Improvement Lien Book. If a Proposed Plat results in the same amount of ERUs (and thus Series 2024 Special Assessments) able to be imposed on the “**Remaining Undeveloped Lands**” (i.e., those remaining lands not subject to a Proposed Plat after the Proposed Plat is accepted by the District) as compared to what was originally contemplated for the 2024 Anticipated Units, then the District shall allocate the Series 2024 Special Assessments to the product types subject to the Proposed Plat and the remaining property in accordance with the Assessment Report, and cause the Series 2024 Special Assessments to be recorded in the District’s Improvement Lien Book.

- ii. If a Proposed Plat results in a greater amount of ERUs (and thus Series 2024 Special Assessments) able to be imposed on the Remaining Undeveloped Lands as compared to what was originally contemplated for the 2024 Anticipated Units, then the District may undertake a pro rata reduction of Series 2024 Special Assessments for all assessed properties within Assessment Area One or may otherwise address such net decrease as permitted by law.
- iii. If a Proposed Plat results in a lower amount of ERUs (and thus Series 2024 Special Assessments) able to be imposed on the Remaining Undeveloped Lands as compared to what was originally contemplated for the 2024 Anticipated Units, then the District shall require the landowner(s) of the lands encompassed by the Proposed Plat to pay a “True-Up Payment” equal to the difference between: (i) the Series 2024 Special Assessments originally contemplated to be imposed on the lands subject to the Proposed Plat, and (ii) the Series 2024 Special Assessments able to be imposed on the lands subject to the Proposed Plat, after the Proposed Plat has been approved (plus applicable interest, collection costs, penalties, etc.). With respect to the foregoing true-up analysis, the District, through the District’s Assessment Consultant, in consultation with the District Engineer, District Counsel and the District’s Bond Counsel, shall determine in its sole discretion what amount of ERUs (and thus Series 2024 Special Assessments) are able to be imposed on the Remaining Undeveloped Lands, taking into account a Proposed Plat, by reviewing: a) the original, overall development plan showing the number and type of units reasonably planned for Assessment Area One, b) the revised, overall development plan showing the number and type of units reasonably planned for the remainder of Assessment Area One, c) proof of the amount of entitlements for the Remaining Undeveloped Lands, d) evidence of allowable zoning conditions that would enable those entitlements to be placed in accordance with the revised development plan, and e) documentation that shows the feasibility of implementing the proposed development plan.
- iv. Developer covenants to comply, or cause others to comply, with this requirement for the Reallocation. The District agrees that no further action by the Board shall be required. The District’s review of the Proposed Plat shall be limited solely to the Reallocation of Series 2024 Special Assessments and enforcement of the District’s assessment lien. Nothing herein shall in any way operate to or be construed as providing any other Proposed Plat, plat or plan approval or disapproval powers to the District.
- v. If at the time the True-Up calculation is performed, it is determined that less than the 2024 Anticipated Units are to be subject to a Proposed Plat within Assessment Area One, a True-Up Payment shall become due and payable by Developer. Any such True-Up Payment determined to be due by

Developer shall be paid in full prior to approval of the Proposed Plat. Such True-Up Payment shall be in addition to the regular installment payable for Series 2024 Special Assessments levied on Assessment Area One owned by Developer. The District will take all necessary steps to ensure that True-Up Payments are made in a timely fashion to ensure its debt service obligations are met, and in all cases, Developer agrees that such payments shall be made in order to ensure the District's timely payment of the debt service obligations on the Series 2024 Bonds. The District shall record all True-Up Payments in its Improvement Lien book. If such True-Up Payment is made at least forty-five (45) days prior to an interest payment date on the Series 2024 Bonds, Developer shall include accrued interest as part of the True-Up Payment to such interest payment date. If such True-Up Payment becomes due within forty-five (45) days of the next interest payment date, accrued interest shall be calculated to the next succeeding interest payment date.

- vi. The foregoing is based on the District's understanding with Developer that Developer will develop or cause to be developed, as evidenced by a Proposed Plat, at least the 2024 Anticipated Units within Assessment Area One as identified in the Assessment Report and Engineer's Report. However, the District agrees that nothing herein prohibits more or fewer than the anticipated units from being developed. In the event Developer ultimately develops, as evidenced by a Proposed Plat(s), fewer than the 2024 Anticipated Units within Assessment Area One, the Developer may either make a True-Up Payment or leave unassigned Series 2024 Special Assessments on lands within Assessment Area One not subject to a Proposed Plat, provided the maximum debt allocation per acre as set forth in the Assessment Resolutions and Assessment Report is not exceeded. In no event shall the District collect Series 2024 Special Assessments pursuant to the Assessment Resolutions in excess of the total debt service related to the Series 2024 Bonds, including all costs of financing and interest. The District, however, may collect Series 2024 Special Assessments in excess of the annual debt service related to the Series 2024 Bonds, including all costs of financing and interest, which shall be applied to prepay the Series 2024 Bonds. If the strict application of the True-Up methodology to any Reallocation for any Proposed Plat pursuant to this paragraph would result in Series 2024 Special Assessments collected in excess of the District's total debt service obligation for the Series 2024 Bonds, the District agrees to take appropriate action by resolution to equitably Reallocate the Series 2024 Special Assessments.

**SECTION 5. ENFORCEMENT.** This Agreement is intended to be a method of enforcement of Developer's obligation to abide by the requirements of the Reallocation of Series 2024 Special Assessments to units subject to a Proposed Plat, including the making of the True-Up Payment, as set forth in the Assessment Resolutions. A default by either Party under this Agreement shall



entitle the other Party to all remedies available at law or in equity, which shall include, but not be limited to, the right of actual damages (not consequential, special or punitive damages), injunctive relief, and specific performance.

## SECTION 6. ASSIGNMENT.

- A. **Agreement Runs with Land** – This Agreement shall constitute a covenant running with title to Assessment Area One, binding upon Developer and its successors and assigns as to Assessment Area One or portions thereof, and any transferee of any portion of Assessment Area One as set forth in this Section, except as permitted by subsection 6.B., below, or subject to the conditions set forth in subsection 6.C., below.
- B. **Exceptions** – Developer shall not transfer any portion of Assessment Area One to any third-party without complying with the terms of subsection 6.C. herein, other than:
- i. Land sales to landowners in the ordinary course of business restricted from re-platting;
  - ii. Platted and fully developed units to end users; and
  - iii. Portions of Assessment Area One which are exempt from assessments to the County, the District, a homeowners’ association, or other governmental agencies.

Any transfer of any portion of Assessment Area One pursuant to subsections (i), (ii) or (iii) listed above shall constitute an automatic release of such portion of Assessment Area One from the scope and effect of this Agreement, provided however that any True-Up Payment owing is paid prior to such transfer.

- C. **Transfer Conditions** – Developer shall not transfer any portion of Assessment Area One to any third-party, except as permitted by Section 6.B. above, without satisfying the following condition (“**Transfer Condition**”): delivering a recorded copy of this Agreement to such third-party and satisfying any True-Up Payment that results from any true-up determinations made by the District incident to such transfer. Any transfer that is consummated pursuant to this Section shall operate as a release of Developer from its obligations under this Agreement as to such portion of Assessment Area One only arising from and after the date of such transfer and satisfaction of the Transfer Condition including payment of any True-Up Payments due, and the transferee, which by recording or causing to be recorded in the Official Records of the County, the deed transferring such portion to the transferee shall be deemed to assume Developer’s obligations in accordance herewith and shall be deemed the “Developer” from and after such transfer for all purposes as to such portion of Assessment Area One so transferred. Regardless of whether the conditions of this subsection are met, any transferee, other than those specified in subsection 6.B. herein, shall take title subject to the terms of this Agreement.

**SECTION 7. RECOVERY OF COSTS AND FEES.** In the event either Party is required to enforce this Agreement by court proceedings or otherwise, then the prevailing Party, as determined by the applicable court or other dispute resolution provider, shall be entitled to recover from the non-prevailing Party all fees and costs incurred, including reasonable attorneys' fees and costs incurred prior to or during any litigation or other dispute resolution and including all fees and costs incurred in appellate proceedings.

**SECTION 8. NOTICE.** All notices, requests, consents, and other communications hereunder (the "Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid or hand delivered to the Parties, as follows:

- A. If to the District: Willowbrook CDD  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager
- With a copy to: Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301  
Attn: District Counsel
- B. If to Developer: KRPC Willowbrook, LLC  
121 Garfield Avenue  
Winter Park, Florida 32789  
Attn: Steve Rosser

Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address set forth herein. If mailed as provided above, Notices shall be deemed delivered on the third business day unless actually received earlier. Notices hand 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.

Notwithstanding the foregoing, to the extent Florida law requires notice to enforce the collection of assessments placed on property by the District, then the provision of such notice shall be in lieu of any additional notice required by this Agreement.

**SECTION 9. AMENDMENT.** This Agreement shall constitute the entire agreement between the Parties as to the matters set forth herein and may be modified in writing only by the

mutual agreement of the Parties and with the prior written consent of the Trustee of the Series 2024 Bonds, acting at the direction of the Bondholders owning a majority of the aggregate principal amount of the Series 2024 Bonds then outstanding.

**SECTION 10. TERMINATION.** This Agreement shall continue in effect until it is rescinded in writing by the mutual assent of the Parties, or until the earlier of the date on which the Series 2024 Special Assessments are fully allocated to units subject to a Proposed Plat. In any event, this Agreement shall be deemed terminated automatically as to any lot sold to an end-user. This Agreement shall also be deemed terminated automatically on Assessment Area One or portion of Assessment Area One reflected in a Release of Lien as recorded by the District, so long as conditions for such recorded release are met and are consistent with the terms of this Agreement.

**SECTION 11. NEGOTIATION AT ARM'S LENGTH.** This Agreement has been negotiated fully between the Parties 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, the Parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either Party.

**SECTION 12. BENEFICIARIES.** Except as provided below, 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. Except as provided below, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, corporation, or entity 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. Notwithstanding the foregoing, the Trustee for the Series 2024 Bonds, on behalf of the Majority Owners (as defined in the First Supplemental Trust Indenture, dated as of April 1, 2024) of the Series 2024 Bonds, shall be a direct third-party beneficiary of the terms and conditions of this Agreement and shall be entitled to cause the District to enforce the Developer's obligations hereunder. The Trustee has not assumed any obligations hereunder.

**SECTION 13. 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 statute or 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 under the Doctrine of Sovereign Immunity or by operation of law.

**SECTION 14. APPLICABLE LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Florida. The Parties agree and consent that proper venue for any dispute arising out of this Agreement, whether in or out of court, shall be in Polk County, Florida.

**SECTION 15. EXECUTION IN COUNTERPARTS.** This instrument may be executed in any number of counterparts, each of which, when executed and delivered, shall constitute an original, and such counterparts together shall constitute 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.

**SECTION 16. EFFECTIVE DATE.** This Agreement shall become effective after execution by the Parties hereto on the date reflected above.

**SECTION 17. PUBLIC RECORDS.** The Developer 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.

*[Signatures on Following Page]*

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

**WITNESSES:**

**KRPC WILLOWBROOK, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

\_\_\_\_\_  
By: Steve Rosser  
Its: Manager

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

STATE OF FLORIDA        )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of April 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, for and on behalf of said entity. He  is personally known to me or  produced \_\_\_\_\_ as identification.

**NOTARY STAMP:**

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

**WITNESSES:**

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairperson

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

STATE OF FLORIDA                    )  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of April 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors of the Willowbrook Community Development District, for and on behalf of the District. He  is personally known to me or  produced \_\_\_\_\_ as identification.

**NOTARY STAMP:**

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

**Exhibit A: Assessment Area One**

**Exhibit A**  
**Assessment Area One**

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# SECTION B



**AGREEMENT BY AND BETWEEN THE WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT AND KRPC WILLOWBROOK, LLC REGARDING THE  
ACQUISITION OF WORK PRODUCT, IMPROVEMENTS & REAL PROPERTY**

THIS AGREEMENT (the “**Agreement**”) is made and entered into this \_\_\_ day of April 2024, by and between:

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in Winter Haven, Florida, with a mailing address of c/o Governmental Management Services – Central Florida, LLC, 219 East Livingston Street, Orlando, Florida 32801 (the “**District**”); and

**KRPC WILLOWBROOK, LLC**, a Florida limited liability company, the landowner and/or developer of certain lands within Assessment Area One of the District, with a mailing address of 121 Garfield Avenue, Winter Park, Florida 32789, and its successors and assigns (together with its successors and assigns, the “**Developer**” and, together with the District, each a “**Party**” and collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, the District was established for the purposes of planning, financing, constructing, acquiring, operating and/or maintaining certain public infrastructure, as authorized by Chapter 190, *Florida Statutes*; and

**WHEREAS**, the District has adopted an improvement plan for the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities and services within and without the boundaries of the District, which plan is detailed in its *Engineer’s Report for the Willowbrook Community Development District*, dated November 16, 2023 (the “**Master Engineer’s Report**” and the improvements detailed therein, the “**Capital Improvement Plan**”), as supplemented by that certain *2024 Supplemental Engineer’s Report for the Willowbrook Community Development District*, dated March 26, 2024 (the “**Supplemental Engineer’s Report**” and the project detailed therein, the “**Assessment Area One Project**” and the improvements described therein, the “**Improvements**”, and together with the Master Engineer’s Report, the “**Engineer’s Report**”), attached hereto as **Exhibit A**; and

**WHEREAS**, the Developer is the developer and/or owner of certain lands located within the boundaries of the District identified in the Engineer’s Report and further described in **Exhibit B** (“**Assessment Area One**”) within which a portion of the Assessment Area One Project will be located; and

**WHEREAS**, the District intends to finance all or a portion of the Assessment Area One Project through the anticipated issuance of its \$ [REDACTED] Special Assessment Bonds, Series 2024 (Assessment Area One) (the “**Series 2024 Bonds**”) and may further issue bonds in the future; and

**WHEREAS**, because the Series 2024 Bonds have not yet been issued, the District has not had sufficient monies on hand to allow the District to fund the cost of preparation of the necessary surveys, reports, drawings, plans, permits, specifications, and related documents which would allow the timely commencement and completion of construction of the Assessment Area One Project (“**Work Product**”); and

**WHEREAS**, the District acknowledges the Developer needs to have the Improvements, including the Assessment Area One Project, constructed in an expeditious and timely manner in order to develop the District lands including the lands encompassing Assessment Area One; and

**WHEREAS**, the District agrees that it will not have sufficient monies to proceed with either the preparation of the Work Product or the commencement of construction of the Improvements described in **Exhibit A** until such time as the District has closed on the sale of the Series 2024 Bonds; and

**WHEREAS**, to avoid a delay in the commencement of the construction of the Improvements, the Developer has advanced, funded, commenced, and completed and/or will complete certain work to enable the District to expeditiously provide the Improvements; and

**WHEREAS**, the District desires to commence the acquisition of certain Work Product and the Improvements, and may accept assignment of certain agreements regarding the same; and

**WHEREAS**, in conjunction with the acquisition of the Work Product and/or Improvements, the Developer may desire to convey to the District interests in real property sufficient to allow the District to own, operate, maintain, construct, or install the Improvements, if any such conveyances are appropriate, and such conveyances shall be in fee simple, perpetual easement, or other interest as may be in the best interests of the District (the “**Real Property**”); and

**WHEREAS**, the Developer and the District desire to enter into this Agreement to set forth the process by which the District may acquire the Work Product, Improvements, and/or Real Property.

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

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

**SECTION 2. WORK PRODUCT.** The District agrees to pay the lesser of actual cost incurred by the Developer or fair market value, for preparation of the Work Product in accordance with the provisions of this Agreement. The Developer shall provide copies of any and all invoices, bills, receipts, or other evidence of costs incurred by the Developer for the Work Product. 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 as the Parties may jointly agree upon (the “**Acquisition Date**”). The Parties agree that separate or multiple Acquisition Dates may

be established for any portion of the acquisitions contemplated by this Agreement. The District Engineer shall review all evidence of cost and shall certify to the District's Board of Supervisors (the "**Board**") the total actual amount of cost, which, in the District Engineer's sole opinion, is reasonable for the Work Product. 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 trustee for the Series 2024 Bonds (the "**Trustee**"). In the event that the Developer disputes the District Engineer's opinion as to cost, the District and the Developer agree to use good faith efforts to resolve such dispute. If the Parties are unable to resolve any such dispute, the Parties agree to jointly select a third-party engineer whose decision as to any such dispute shall be binding upon the Parties. Such decision by a third-party engineer shall be set forth in an Engineer's Affidavit which shall accompany the requisition for the funds from the Trustee. The Parties acknowledge that the Work Product is being acquired for use by the District in connection with the construction and/or ongoing ownership and operation of the Improvements.

**A.** The Developer agrees to convey to the District, and solely to the extent permitted by the terms of the Work Product, the Work Product upon payment of the sums determined to be acceptable by the District Engineer and approved by the District's Board pursuant to and as set forth in this Agreement.

**B.** The Developer agrees to release to the District all right, title, and interest which the Developer may have in and to the above described Work Product, 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, however, that the District agrees and acknowledges that the Developer shall retain the right, title and interest to use the Work Product, and the District shall grant the Developer a license to use the Work Product to the extent reasonably required by the Developer in connection with the ownership, construction, development, and management of the Assessment Area One Project or other lands owned by Developer to which such Work Product pertains. To the extent determined necessary by the District, the Developer shall use commercially reasonable efforts to 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. Such releases may include, but are not limited to, any architectural, engineering, or other professional services.

**C.** Except as otherwise separately agreed by the Parties with respect to any particular acquisition of Work Product, and without intending to modify any of the other terms of this Agreement, any conveyance of Work Product shall be on an "AS-IS" basis, and without any representation or warranty from the Developer to the District in respect thereto.

**D.** The Developer agrees to make reasonable good faith efforts, but without imposing any requirement on Developer to pay for additional warranty rights on behalf of the District, to provide or cause to be provided to the District, either by assignment or directly from such third parties as may be necessary and desirable to the mutual satisfaction

of the Parties hereto, a warranty that the Work Product is fit for the purposes to which it will be put by the District, as contemplated by the Engineer's Report.

**E.** The District agrees 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 District to incur any cost or expense, such as copying costs, the Developer agrees to pay such cost or expense.

**SECTION 3. IMPROVEMENTS.** The Developer has or is anticipated to prior to issuance of the Series 2024 Bonds, expend certain funds on behalf of the District relating to the Improvements. The District agrees to acquire or otherwise reimburse the Developer for those portions of the Improvements which commenced or were completed prior to the issuance of the Series 2024 Bonds. When a portion of the Improvements is ready for conveyance by the Developer to the District, the Developer shall notify the District in writing, describing the nature of the improvement, its general location, and its estimated cost. 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 special warranty bills of sale or such other instruments as may be reasonably requested by the District; and (iii) any other releases, indemnifications, or documentation as may be reasonably requested by the District. Any real property interests necessary for the functioning of the Improvements to be acquired under this paragraph shall be reviewed and conveyed in accordance with the provisions of Section 5 herein. The District Engineer in consultation with District Counsel shall determine in writing whether the infrastructure to be conveyed is a part of the Improvements contemplated by the Engineer's Report, and if so, shall provide Developer with a list of items necessary to complete the acquisition. Each such acquisition shall also be subject to the engineering review and certification process described in Section 2 above. The District Manager shall determine, in writing, whether the District has, based on the Developer's estimate of cost, sufficient unencumbered funds to acquire the improvement.

**A.** All documentation of any acquisition (e.g., bills of sale, receipts, maintenance bonds, as-builts, evidence of costs, deeds or easements, etc.) shall be to the reasonable satisfaction of the District. If any item acquired is to be conveyed to a third-party governmental entity, then the Developer agrees to cooperate and provide such certifications, warranties, representations or other items as may be required by that governmental entity, if any.

**B.** The District Engineer shall certify as to the actual cost of any improvement built or constructed by or at the direction of the Developer, and the District shall pay no more than the actual cost incurred, or the fair market value of the improvement, whichever is less, as determined by the District Engineer.

**C.** The Developer agrees to cooperate in the transfer of any permits to the District or another governmental entity with maintenance obligations for any Improvements conveyed pursuant to this Agreement.

**D.** Nothing herein shall require the District to accept any Work Product and/or Improvements unless the District Engineer, in his or her professional opinion, is able to

certify that, in addition to any other requirements of law: (i) the Work Product and/or Improvements are as set forth in the Engineer's Report; (ii) the price for such Work Product and/or Improvements is equal to or less than each of (a) the cost actually paid to develop and/or install the Work Product and/or Improvements by the Developer and (b) the reasonable fair market value 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.

**SECTION 4. ASSIGNMENT OF CONTRACTS.** The District may 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*, or the Developer providing adequate alternative security in compliance with Section 255.05, *Florida Statutes*, if required; and (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, *Florida Statutes*, if any, and waiving any and all claims against the District arising as a result of or connected with such assignment. Until such time as the Series 2024 Bonds are actually issued, the Developer agrees to provide such funds as are needed by the District to make all payments for any such assigned contracts when and as needed by the District.

**SECTION 5. CONVEYANCE OF REAL PROPERTY.**

**A. Conveyance.** In the event that real property interests are to be conveyed by the Developer and acquired by the District in connection with the acquisition of the Improvements, and as mutually agreed upon by the District and the Developer, then in such event, the Developer agrees that it will convey to the District at or prior to the Acquisition Date by a special warranty deed, or non-exclusive easement, as reasonably acceptable to the District together with a metes and bounds or other legal description, the Real Property upon which the Improvements are constructed or which are necessary for the operation and maintenance of, and access to the Improvements. The Parties agree that in no event shall the purchase price for the Real Property exceed the lesser of the actual cost to the Developer or the value of 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 District. The District may determine in its reasonable discretion that fee title 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 reasonably acceptable. Such 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 construct any Improvements and any future improvements to such area for any related purposes (including, but not limited to, construction traffic relating to the construction of the development) not inconsistent with the District's use, occupation or enjoyment thereof. The Developer shall

pay the cost for recording fees and documentary stamps required, if any, for the conveyance of the lands upon which the Improvements are constructed. The Developer shall be responsible for all taxes and assessments levied on the lands upon which the Improvements are constructed until such time as the Developer conveys said lands to the District. At the time of conveyance, the District may require, at Developer's expense, an owner's title insurance policy in a form satisfactory to the District. In the event the title search reveals exceptions to title which render title unmarketable or which, in the District's reasonable discretion, would materially interfere with the District's use of such lands, the District shall not be required to accept such conveyance of Real Property and/or any related Improvements or Work Product.

**B. *Boundary or Other Adjustments.*** Developer and the District agree that reasonable future boundary adjustments may be made as deemed necessary and approved by both Parties in order to accurately describe lands conveyed to the District and lands which remain in Developer's ownership; provided, however, that such future boundary adjustments shall not affect the ability of the Developer to have the lots developed. The Parties agree that any land 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.

#### **SECTION 6. 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 Developer agrees to place in escrow with the Polk County Tax Collector an amount equal to the current ad valorem taxes and non-ad valorem assessments 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.

**1.** If and only to the extent the property acquired by the District is subject to ad valorem taxes or non-ad valorem assessments, the Developer 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.

**2.** 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 ten (10) 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 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 or costs, the Developer acknowledges the District's right to make such payment. If the District makes such payment, the Developer 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 Developer 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.

**SECTION 7. ACQUISITION IN ADVANCE OF RECEIPT OF PROCEEDS.** The District and Developer hereby agree that an acquisition by the District may be completed prior to the District obtaining proceeds from the Series 2024 Bonds (the "**Prior Acquisitions**"). The District agrees to pursue the issuance of the Series 2024 Bonds in good faith and, within thirty (30) days from the issuance of such Series 2024 Bonds, to make payment for any Prior Acquisitions completed pursuant to the terms of this Agreement; provided, however, that in the event 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 tax-exempt financing, the District shall not be obligated to make payment for such Prior 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 2024 Bonds within five (5) years from the date of this Agreement, and, thus does not make payment to the Developer for the Prior Acquisitions, the Parties agree that the District shall have no reimbursement obligation whatsoever. The Developer acknowledges that the District intends to convey some or all of the Improvements to Polk County and other public entities and consents to the District's conveyance of such improvements prior to payment for any Prior Acquisitions.

**SECTION 8. 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, but excluding special, consequential or punitive damages.

**SECTION 9. 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 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 Developer 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.

**SECTION 10. ENFORCEMENT OF AGREEMENT.** In the event that any 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(s) all fees and costs incurred, including reasonable attorneys' fees, paralegal fees and expert witness fees, and costs for trial, alternative dispute resolution, or appellate proceedings.

**SECTION 11. ENTIRE AGREEMENT.** This instrument shall constitute the final and complete expression of the agreement between the District and the Developer relating to the subject matter of this Agreement.

**SECTION 12. AMENDMENTS.** This Agreement shall constitute the entire agreement between the Parties regarding the subject matter hereof and may be modified in writing only by the mutual agreement of all Parties, and with regards to material amendments, with the prior written consent of the Trustee for the Series 2024 Bonds acting at the direction of the bondholders owning a majority of the aggregate principal amount of the Series 2024 Bonds then outstanding.

**SECTION 13. AUTHORIZATION.** The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Developer. The District and the Developer have complied with all the requirements of law. The District and the Developer have full power and authority to comply with the terms and provisions of this Agreement.

**SECTION 14. 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:

**A.** If to the District: Willowbrook CDD  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager

With a copy to: Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301  
Attn: District Counsel

**B.** If to Developer: KRPC Willowbrook, LLC  
121 Garfield Avenue  
Winter Park, Florida 32789  
Attn: Steve Rosser

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 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 District and counsel for the Developer may deliver Notice on behalf of the District and the Developer. 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 in this Agreement.

**SECTION 15. ARM'S LENGTH TRANSACTION.** This Agreement has been negotiated fully between the District 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 any Party hereto.

**SECTION 16. THIRD-PARTY BENEFICIARIES.** Subject to the next succeeding sentence, this Agreement is solely for the benefit of the District 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 entity other than the District 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 District and the Developer and their respective representatives, successors, and assigns. Notwithstanding the foregoing, nothing in this paragraph shall be construed as impairing or modifying the rights of any bondholders of Series 2024 Bonds issued by the District for the purpose of acquiring any Work Product, Improvements and/or Real Property. Also, notwithstanding anything herein to the contrary, the Trustee for the Series 2024 Bonds, on behalf of the owners of the Series 2024 Bonds, shall be a direct third-party beneficiary acting at the direction of the bondholders owning more than 50% of an aggregate principal amount of the applicable Series 2024 Bonds then outstanding, be entitled to cause the District to enforce the Developer's obligations hereunder. The Trustee has not assumed any obligations hereunder.

**SECTION 17. ASSIGNMENT.** This Agreement may be assigned, in whole or in part, by either Party only upon the written consent of the other, which consent shall not be unreasonably withheld, and the Trustee acting on behalf of the Bondholders owning a majority of the aggregate principal amount of the Series 2024 Bonds then outstanding. Such consent shall not be required in the event of a sale of the majority of the Assessment Area One Project then-owned by the Developer pursuant to which the unaffiliated purchaser agrees to assume any remaining obligations of the Developer under this Agreement. Upon the merger, amendment, or name change of the District, the Agreement will be assumed by operation of law by the District's successor in interest and no consent to such assumption shall be required.

**SECTION 18. 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 exclusive venue for any litigation arising out of or related to this Agreement shall be in a court of appropriate jurisdiction, in and for Polk County, Florida.

**SECTION 19. EFFECTIVE DATE.** This Agreement shall be effective upon its execution by the District and the Developer.

**SECTION 20. TERMINATION.** This Agreement may be terminated by the District without penalty in the event that the District does not issue its proposed Series 2024 Bonds within five (5) years from the date of this Agreement.

**SECTION 21. PUBLIC RECORDS.** The Developer understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records and will be treated as such in accordance with Florida law.

**SECTION 22. 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.

**SECTION 23. 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 statute, 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 under the Doctrine of Sovereign Immunity or by operation of law.

**SECTION 24. 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.

**SECTION 25. 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.

*[Remainder of this page left intentionally blank]*

**IN WITNESS WHEREOF**, the Parties (District Signature Page) execute this Acquisition Agreement the day and year first written above.

Attest:

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Secretary/Assistant Secretary

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairperson

DRAFT

**IN WITNESS WHEREOF**, the Parties (Developer Signature Page) execute this Acquisition Agreement the day and year first written above.

Attest:

**KRPC WILLOWBROOK, LLC**  
a Florida limited liability company

\_\_\_\_\_  
Secretary/Assistant Secretary

\_\_\_\_\_  
By: Steve Rosser  
Its: Manager

**Exhibit A:** Engineer's Report  
**Exhibit B:** Assessment Area One

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**Exhibit A**  
**Engineer's Report**

*[attached beginning at following page]*

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**Exhibit B**  
**Assessment Area One**

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# SECTION C

**AGREEMENT BY AND BETWEEN THE WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT AND KRPC WILLOWBROOK, LLC REGARDING THE  
COMPLETION OF CERTAIN IMPROVEMENTS**

THIS AGREEMENT (the “**Agreement**”) is made and entered into this \_\_\_ day of April 2024, by and between:

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located entirely within the City of Winter Haven, Florida, with a mailing address c/o Governmental Management Services – Central Florida, LLC, 219 East Livingston Street, Orlando, Florida 32801 (the “**District**”), and

**KRPC WILLOWBROOK, LLC**, a Florida limited liability company, and the developer and/or owner of certain lands within the District, hereinafter called Assessment Area One, with a mailing address of 121 Garfield Avenue, Winter Park, Florida 32789, and its successors and assigns (the “**Developer**” and, together with the District, each a “**Party**” and collectively, the “**Parties**”).

**RECITALS**

**WHEREAS**, the District was established by an ordinance adopted by the City Commission of the City of Winter Haven, Florida, 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, operating and/or maintaining certain infrastructure, including stormwater management facilities, roadways, water and sewer utilities, underground electric, wetland mitigation, off-site improvements, entry features, landscape and hardscape, irrigation, and other infrastructure within or without the boundaries of the District; and

**WHEREAS**, the Developer is the owner and/or developer of certain lands in Winter Haven, Florida, located within the boundaries of the District as described in **Exhibit A** (the “**Assessment Area One**”) which is attached hereto and incorporated by reference; and

**WHEREAS**, the District has adopted an improvement plan for the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities and services within and without the boundaries of the District, which plan is detailed in its *Engineer’s Report for the Willowbrook Community Development District*, dated November 16, 2023 (the “**Master Engineer’s Report**” and the improvements detailed therein, the “**Capital Improvement Plan**”), as supplemented by that certain *2024 Supplemental Engineer’s Report for the Willowbrook Community Development District*, dated March 26, 2024 (the “**Supplemental Engineer’s Report**” and the project detailed therein, the “**Assessment Area One Project**” and together with the Master Engineer’s Report, the “**Engineer’s Report**”), attached hereto as **Exhibit B**; and



**WHEREAS**, the estimated cost of the Assessment Area One Project is \$20,778,430; and

**WHEREAS**, a Final Judgment was issued on February 1, 2024, validating the authority of the District to issue up to \$43,615,000 in aggregate principal amount of Willowbrook Community Development District Special Assessment Bonds to finance certain improvements and facilities within and without the District boundaries; and

**WHEREAS**, the District is presently in the process of issuing its \$\_\_\_\_\_ Special Assessment Bonds, Series 2024 (Assessment Area One) (the “**Series 2024 Bonds**”) to finance all or a portion of the Assessment Area One Project and such bonds are being issued pursuant to that certain Master Trust Indenture dated as of April 1, 2024 (the “**Master Indenture**”), between the District and U.S. Bank Trust Company, National Association, as trustee (the “**Trustee**”), as supplemented by a First Supplemental Trust Indenture dated as of April 1, 2024 (the “**First Supplemental Indenture**”, together with the Master Indenture, the “**Indenture**”); and

**WHEREAS**, the Assessment Area One Project will benefit all lands within the District, as described in the District’s *Master Special Assessment Methodology Report*, dated November 16, 2023 (the “**Master Assessment Report**”), as supplemented by the District’s *Final First Supplemental Special Assessment Methodology Report*, dated March 26, 2024 (the “**Supplemental Assessment Report**” and together with the Master Assessment Report, the “**Assessment Report**”) as well as set forth in the Engineer’s Report; and

**WHEREAS**, in order to ensure that the Assessment Area One Project is completed and funding is available in a timely manner to provide for completion, the Developer will make provision for any additional funds that may be needed in the future for the completion of the Assessment Area One Project over and above the Series 2024 Bonds, including, but not limited to, all reasonable and customary administrative, legal, warranty, engineering, permitting or other related soft costs.

**NOW, THEREFORE**, based upon good and valuable consideration and the mutual covenants of the Parties, the receipt 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 herein and form a material part of this Agreement.

**2. COMPLETION OF IMPROVEMENTS.** The Developer and District agree and acknowledge that the District’s proposed Series 2024 Bonds will provide only a portion of the funds necessary to complete the Assessment Area One Project. Therefore, as more particularly set forth in paragraphs 2(a) and 2(b) below, the Developer hereby agrees to complete, cause to be completed, provide funds or cause funds to be provided to the District in an amount sufficient to allow the District to complete or cause to be completed those portions of the Assessment Area One Project which remain unfunded including, but not limited to, all reasonable and customary administrative, legal, warranty, engineering, permitting or other related soft costs (the “**Remaining Project**”) whether pursuant to existing contracts, including change orders thereto, or future contracts. While the District may issue a second series of bonds for purposes of financing a portion of the Remaining

Project, nothing herein shall cause or be construed to require the District to issue additional bonds or indebtedness to provide funds for any portion of the Remaining Project nor shall anything in this Agreement be construed as prohibiting the District from doing so in the future. The District and Developer hereby acknowledge and agree that the District's execution of this Agreement constitutes the manner and means by which the District has elected to provide any and all portions of the Remaining Project not funded by District bonds or other indebtedness.

(a) When all or any portion of the Remaining Project is the subject of a District contract, the Developer shall provide funds or cause funds to be provided directly to the District in an amount sufficient to complete the Remaining Project under such contract pursuant thereto, including change orders thereto, upon written notice from the District.

(b) When any portion of the Remaining Project is not the subject of a District contract, the Developer may choose to: (i) complete, cause to be completed, provide funds or cause funds to be provided to the District in an amount sufficient to allow the District to complete or cause to be completed the Remaining Project; or (ii) have the District enter into a contract and proceed under Section 2(a) above, subject, in each case to a formal determination by the District's Board of Supervisors that the option selected by the Developer will not adversely impact the District, and is in the District's best interests.

(c) Future Bonds – The Parties agree that any funds provided by Developer to fund the Remaining Project may be later payable from, and the District's acquisition of the Remaining Project may be payable from, the proceeds of a future issuance of bonds by the District (i.e., other than the Series 2024 Bonds). Within forty-five (45) days of receipt of sufficient funds by the District for the District's improvements and facilities and from the issuance of such future bonds, the District shall reimburse Developer in full, exclusive of interest, for the funds and/or improvements provided pursuant to this Agreement; provided, however, that no such obligation shall exist where the Developer is in default on the payment of any debt service assessments due on any property owned by the Developer, and, further, in the event the District's bond counsel 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. Nothing herein shall cause or be construed to require the District to issue additional bonds or indebtedness – other than the Series 2024 Bonds – to provide funds for any portion of the Remaining Project. The Developer shall be required to meet its obligations hereunder and complete the Assessment Area One Project regardless of whether the District issues any future bonds (other than the Series 2024 Bonds) or otherwise pays the Developer for any of the Remaining Project. Interest shall not accrue on any amounts owed hereunder. If within five (5) years of the date of this Agreement, the District does not or cannot issue such future bonds, and, thus does not reimburse the Developer for the funds or improvements advanced hereunder, then the Parties agree that the District shall have no reimbursement obligation whatsoever. Notwithstanding the foregoing, the Developer acknowledges that at this time the District does not intend to issue additional bonds to finance the Remaining Project.

### **3. OTHER CONDITIONS AND ACKNOWLEDGMENTS**

(a) The District and the Developer agree and acknowledge that the exact location, size, configuration and composition of the Assessment Area One Project may change from that described in the Supplemental Engineer's Report, depending upon final design of the development, permitting or other regulatory requirements over time, or other factors. Material changes to the Assessment Area One Project shall be made by a written amendment to the Supplemental Engineer's Report, which shall include an estimate of the cost of the changes. Material changes to the Assessment Area One Project shall require the prior written consent of the Trustee acting at the direction of the bondholders holding a majority of the aggregate principal amount of the Series 2024 Bonds then outstanding; however, such consent is not necessary when the scope, configuration, size and/or composition of the improvements making up the Assessment Area One Project are materially changed in response to a requirement imposed by a regulatory agency.

(b) The District and Developer agree and acknowledge that any and all portions of the Remaining Project which are constructed, or caused to be constructed, by the Developer shall be conveyed to the District or such other appropriate unit of local government or public utility as is designated in the Engineer's Report or required by governmental regulation or development approval. All conveyances to another governmental entity shall be in accordance with and in the same manner as provided in any agreement between the District and the appropriate unit of local government.

(c) Notwithstanding anything to the contrary contained in this Agreement, the payment or performance by Developer of its obligations hereunder is expressly subject to, dependent and conditioned upon: (a) the issuance of the Series 2024 Bonds and use of the proceeds thereof to fund a portion of the Assessment Area One Project, and (b) the scope, configuration, size and/or composition of the Assessment Area One Project not materially changing without the consent of the Developer; however, such consent is not necessary and the Developer must meet its completion obligations when the scope, configuration, size and/or composition of the improvements that make up the Assessment Area One Project are materially changed in response to a requirement imposed by a regulatory agency. In the event of a material change to the scope, configuration, size and/or composition of the Assessment Area One Project in response to a requirement imposed by a regulatory agency, the Developer shall not consent to such material change without the prior written consent of the District.

**4. DEFAULT AND PROTECTION AGAINST THIRD-PARTY INTERFERENCE.** 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 actual damages (excluding punitive, special or consequential damages) and/or specific performance.

**5. ENFORCEMENT OF AGREEMENT.** In the event that either of the Parties 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.

6. **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 the District and the Developer.

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

8. **NOTICES.** All notices, requests, consents and other communications under this Agreement (the “**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:

A. If to the District: Willowbrook CDD  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager

With a copy to: Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301  
Attn: District Counsel

B. If to the Developer: KRPC Willowbrook, LLC  
121 Garfield Avenue  
Winter Park, Florida 32789  
Attn: Steve Rosser

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 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 District and counsel for the Developer may deliver Notice on behalf of the District and the Developer. 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.

9. **ARM’S LENGTH TRANSACTION.** This Agreement has been negotiated fully between the District and the Developer as an arm’s length transaction. Both 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 Developer.

**10. THIRD-PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the District 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 District 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 District and the Developer and their respective representatives, successors, and assigns.

Notwithstanding anything in this Agreement to the contrary, the Trustee for the Series 2024 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 2024 Bonds outstanding, shall be entitled to cause the District to enforce the Developer's obligations hereunder. The Trustee shall not be deemed to have assumed any obligations under this Agreement.

**11. ASSIGNMENT.** Neither the District nor the Developer may assign this Agreement or any monies to become due hereunder without the prior written approval of the other; provided that such consent shall not be unreasonably withheld by the District in the event of a sale of the majority of Assessment Area One then owned by the Developer pursuant to which the unaffiliated purchaser agrees to assume any remaining obligations of the Developer under this Agreement.

**12. 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.

**13. EFFECTIVE DATE.** This Agreement shall be effective upon the later of the execution by the District and the Developer.

**14. PUBLIC RECORDS.** The Developer 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.

**15. 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.

**16. 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 statute, 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 under the Doctrine of Sovereign Immunity or by operation of law.

**17. 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.

**18. 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.

**19. TERMINATION.** This Agreement shall continue in effect until completion of the Remaining Project, as evidenced by a Notice of Completion from the District Engineer.

*[Signatures on following page]*

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

Attest:

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Secretary/Assistant Secretary

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairperson

DRAFT

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

WITNESS:

**KRPC WILLOWBROOK, LLC,**  
a Florida limited liability company

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

By: Steve Rosser  
Its: Manager

**Exhibit A:** Assessment Area One  
**Exhibit B:** Engineer's Report



**Exhibit A**  
**Assessment Area One**

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**Exhibit B**  
**Master Engineer's Report**

*[attached beginning at following page]*

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# SECTION D

This instrument was prepared by and upon recording should be returned to:

(This space reserved for Clerk)

Jennifer Kilinski, Esq.  
Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301

**COLLATERAL ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT RIGHTS**

This Collateral Assignment and Assumption of Development Rights (the “Assignment”) is made and entered into this \_\_\_ day of April 2024, by and between:

**KRPC WILLOWBROOK, LLC**, a Florida limited liability company, and the developer and/or Developer of certain lands within the District, hereinafter called the Assessment Area One , with a mailing address of 121 Garfield Avenue, Winter Park, Florida 32789 (together with its successors and assigns, the “Developer” or “Assignor”); and

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located within the City of Winter Haven, Florida, with a mailing address c/o Governmental Management Services – Central Florida, LLC, 219 East Livingston Street, Orlando, Florida 32801 (the “District” or “Assignee” together with the Developer, each a “Party” and collectively, the “Parties”).

**RECITALS**

**WHEREAS**, the District was established by ordinance enacted by the City Commission of the City of Winter Haven, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (the “Act”), and for the purposes, among others, of planning, financing, constructing, operating and/or maintaining certain public infrastructure improvements; and

**WHEREAS**, the Developer is the developer and/or owner of certain lands in Winter Haven, Florida, located within the boundaries of the District, upon which the District plans to construct a portion of its Assessment Area One Project as defined herein, which property description is attached hereto as **Exhibit A** and is incorporated herein by this reference (the “Assessment Area One ”); and

**WHEREAS**, the District has adopted an improvement plan for the planning, design, acquisition, construction, and installation of certain infrastructure improvements, facilities and services within and without the boundaries of the District, which plan is detailed in its *Engineer’s Report for the Willowbrook Community Development District*, dated November 16, 2023 (the “**Master Engineer’s Report**” and the improvements detailed therein, the “**Capital Improvement Plan**”), as supplemented by that certain *2024 Supplemental Engineer’s Report for the Willowbrook Community Development District*, dated March 26, 2024 (the “**Supplemental Engineer’s**

**Report**” and the project detailed therein, the “**Assessment Area One Project**” and together with the Master Engineer’s Report, the “**Engineer’s Report**”); and

**WHEREAS**, the Assessment Area One Project is estimated to cost a total amount of approximately \$20,778,430; and

**WHEREAS**, a Final Judgment was issued on February 1, 2024, validating the authority of the District to issue up to \$43,615,000 in aggregate principal amount of Willowbrook Community Development District Special Assessment Bonds to finance certain improvements and facilities within and without the District boundaries; and

**WHEREAS**, the District is presently in the process of issuing its \$ [REDACTED] Special Assessment Bonds, Series 2024 (Assessment Area One ) (the “**Series 2024Bonds**”) to finance all or a portion of the Assessment Area One Project and such bonds are being issued pursuant to that certain Master Trust Indenture dated as of April 1, 2024 (the “**Master Indenture**”), between the District and U.S. Bank Trust Company, National Association, as trustee (the “**Trustee**”), as supplemented by a First Supplemental Trust Indenture dated as of April 1, 2024 (the “**First Supplemental Indenture** and with the Master Indenture, the “**Indenture**”); and

**WHEREAS**, the Assessment Area One Project will benefit all lands within the District, as described in the District’s *Master Special Assessment Methodology Report*, dated November 16, 2023 (the “**Master Assessment Report**”), as supplemented by the District’s *First Supplemental Special Assessment Methodology Report*, dated March 26, 2024 (the “**Supplemental Assessment Report**” and together with the Master Assessment Report, the “**Assessment Report**”) as well as set forth in the Engineer’s Report; and

**WHEREAS**, the District has taken the steps necessary to impose special assessments upon the benefitted lands within the District pursuant to Chapters 170, 190 and 197, *Florida Statutes*, as security for the Series 2024 Bonds; and

**WHEREAS**, the District's special assessments securing the Series 2024Bonds (the “**Series 2024 Special Assessments**”) are imposed on lands within the Assessment Area One as more specifically described in Resolutions 2024-27, 2024-35, and 2024-42 (collectively, the “**Assessment Resolutions**”); and

**WHEREAS**, Assignor has acquired, or hereafter may acquire, certain rights (the “**Development and Contract Rights**”) in, to, under, or by virtue of certain contracts, agreements, and other documents, which now or hereafter affect the Assessment Area One or the Assessment Area One Project (collectively, the “**Contract Documents**”); and

**WHEREAS**, the District and the Developer anticipate development of the Assessment Area One, and the allocation of Series 2024 Special Assessments thereon, consistent with the Engineer’s Report and the Assessment Report relating to the Assessment Area One Project until such time as the final platting of the Assessment Area One (and the payment of any true-up amounts due and securing the Series 2024 Bonds) is completed (the “**Development Completion**”); and

**WHEREAS**, in the event of default in the payment of the Series 2024 Special Assessments securing the Series 2024 Bonds, the District has certain remedies with respect to the lien of the Series 2024 Special Assessments as more particularly set forth herein, including certain foreclosure rights provided by Florida law (the “**Remedial Rights**”); and

**WHEREAS**, as inducement to the District to issue the Series 2024 Bonds, it is necessary to require the collateral assignment of the Development and Contract Rights for the Assessment Area One to complete the Assessment Area One Project as anticipated by and at substantially the densities and intensities envisioned in the Engineer’s Report and the Assessment Report allocable to the Assessment Area One ; and

**WHEREAS**, this Assignment is not intended to impair or interfere with the development of the Assessment Area One Project, as anticipated by and at substantially the densities and intensities envisioned in the Engineer’s Report and the Assessment Report and shall only be inchoate and shall become an effective and absolute assignment and assumption of the Development and Contract Rights upon failure of the Assignor to pay the Series 2024 Special Assessments levied against the Assessment Area One owned by the Assignor; provided, however, that such assignment shall only be effective and absolute to the extent that this Assignment has not been terminated earlier pursuant to the term of this Assignment; and

**WHEREAS**, in the event of a transfer, conveyance or sale of any portion of the Assessment Area One , successors-in-interest (including successors in interest that are affiliates of Developer) to the Assessment Area One shall be subject to this Assignment, which shall be recorded in the Official Records of Polk County, Florida, except as to Prior Transfers (defined below); and

**WHEREAS**, the rights assigned to the District hereunder shall be exercised in a manner which will not materially affect the intended development of the Capital Improvement Plan, including the Assessment Area One Project; and

**WHEREAS**, absent this Assignment becoming effective and absolute, it shall automatically terminate upon the occurrence of certain events described herein.

**NOW, THEREFORE**, in consideration of the above recitals which the Parties hereby agree are true and correct and are hereby incorporated by reference and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee 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 Assignment.

**2. COLLATERAL ASSIGNMENT.**

(a) In the event of Assignor’s default in the payment of the Series 2024 Special Assessments securing the Series 2024 Bonds, the Assignee shall be entitled to exercise its Remedial Rights to secure control and/or title to the Assessment Area One. Such exercise of Remedial Rights by Assignee may include foreclosure proceedings, acceptance of a deed in lieu of foreclosure and the establishment of a special-purpose entity to hold title to the Assessment

Area One , as designee of the Assignee. The Assignor hereby agrees to unconditionally collaterally assign to Assignee or its designee, to the extent assignable, and to the extent that they are owned or controlled by Assignor, all of its Development and Contract Rights as security for Assignor's payment and performance and discharge of its obligation to pay the Series 2024 Special Assessments levied against the Assessment Area One . Notwithstanding any contrary terms in this Assignment: the Development and Contract Rights exclude (x) any portion of the Development and Contract Rights which relates solely to lands which have been conveyed to third-party end users effective as of such conveyance in the course of ordinary business, and (y) any portion of the Development and Contract Rights which relates solely to any portion of the Assessment Area One which has been transferred, dedicated and/or conveyed, or is in the future conveyed, to Polk County, Florida, Assignee, any utility provider, any governmental or quasi-governmental entity, any applicable homeowner's or property owner's association, or any other governing entity or association as may be required by the applicable permits, approvals, entitlements or regulations affecting the District, if any, and the Development and Contract Rights, in each case effective as of such transfer, conveyance and/or dedication, as applicable (each a "**Prior Transfer**"). Subject to the foregoing, the Development and Contract Rights shall include the items listed in subsections (i) through (ix), but not be limited to, the following:

- i. Any declaration of covenants of a homeowner's association governing the Assessment Area One , as recorded in the Official Records of Polk County, Florida, and as the same may be amended and restated from time to time, including, without limitation, all of the right, title, interest, powers, privileges, benefits and options of the "Developer" or "Declarant" thereunder.
- ii. Engineering and construction plans and specifications for grading, traffic capacity analyses, roadways, site drainage, storm water drainage, signage, water distribution, wastewater collection, and other improvements to or affecting the Assessment Area One .
- iii. Preliminary and final plats and/or site plans for the Assessment Area One .
- iv. Architectural plans and specifications for public buildings and other improvements to the Assessment Area One , other than those associated with homebuilding and home construction.
- v. Permits, approvals, agreements, resolutions, variances, licenses, and franchises and applications therefor whether approved or in process pending before or granted by governmental authorities, or any of their respective agencies, for or affecting the development of the Assessment Area One and construction of improvements thereon.
- vi. Contracts with engineers, architects, land planners, landscape architects, consultants, contractors, and suppliers for or relating to the development of the Assessment Area One or the construction of improvements thereon, together with all warranties, guaranties and indemnities of any kind or nature associated therewith.

- vii. Franchise or other agreements for the provision of water and wastewater service to the Assessment Area One , and all hookup fees and utility deposits paid by Assignor in connection therewith.
- viii. Permit fees, impact fees, deposits and other assessments and impositions paid by Assignor to any governmental authority or utility and capacity reservations, impact fee credits and other credits due to Assignor from any governmental authority or utility provider, including credit for any dedication or contribution of the Assessment Area One by Assignor in connection with the development of the Assessment Area One or the construction of improvements thereon.
- ix. All future creations, changes, extensions, revisions, modifications, substitutions, and replacements of any of the foregoing and any guarantees of performance of obligations to Assignor arising thereunder by any means, including, but not limited to, pursuant to governmental requirements, administrative or formal action by third-parties, or written agreement with governmental authorities or third-parties.

(b) This Assignment is not intended to and shall not impair or interfere with the development of lands within the District, and shall only be inchoate and shall become an effective and absolute assignment and assumption of the Development and Contract Rights upon failure of the Assignor to pay the Series 2024 Special Assessments levied against the Assessment Area One owned by the Assignor, if such failure remains uncured after passage of any applicable cure period; provided, however, that such assignment shall only be effective and absolute to the extent that this Assignment has not been terminated earlier pursuant to the term of this Assignment. Further, this Assignment is not intended to restrict nor shall it be construed as restricting Assignor's ability to assign Development and Contract Rights in the ordinary course of business, and the Assignor expressly retains the right and a license to use, enforce, sue upon, make claim under and upon and otherwise exercise all rights and remedies of the Assignor related to or arising from the Development and Contract Rights in the event an assignment of Development and Contract Rights under this Assignment becomes effective. However, to the extent the Developer's exercise of rights set forth above causes the district to incur any cost, the Developer agrees to pay such cost. Moreover, the Developer agrees not to exercise any rights provided for herein in a manner adverse to the District's interests.

(c) If this Assignment has not become absolute, any portion not previously terminated and/or property released in connection with a Prior Transfer shall automatically terminate upon the earliest to occur of the following events (herein, the "**Term**"): (i) payment of the Series 2024 Bonds in full; or (ii) completion of the Assessment Area One Project. At Developer's request and the District's confirmation that the provisions of the foregoing have been satisfied, District and Developer will record a notice or other appropriate instrument in the Public Records of Polk County, Florida, confirming the end of the Term. Without limiting the foregoing, upon a Prior Transfer, the portion of the Assessment Area One so transferred shall be deemed released automatically from the terms, scope and encumbrance of this Assignment whether or not the Term has expired as to any other portion of the Assessment Area One and without any written



release or certification being required from the District or any other person or entity, and any transferee and title examiner may rely on the foregoing automatic release in insuring title to such portion of the Assessment Area One so transferred without making exception for this Assignment.

**3. ASSIGNOR WARRANTIES.** Assignor represents and warrants to Assignee that:

(a) Other than in connection with the sale of land to purchasers located within the Assessment Area One and in the ordinary course of business, Assignor has made no assignment of the Development and Contract Rights to any person other than Assignee.

(b) To the actual knowledge of Assignor and except as permitted or stated herein, Assignor has not done any act or omitted to do any act which will prevent Assignee from, or limit Assignee in, acting under any of the provisions hereof.

(c) To the actual knowledge of Assignor, there is no material default under the terms of the existing Contract Documents and all such Contract Documents remain in full force and effect.

(d) Assignor is not prohibited under agreement with any other person or under any judgment or decree from the execution, delivery and performance of this Assignment.

(e) No action has been brought or threatened which would in any way interfere with the right of Assignor to execute this Assignment and perform all of Assignor's obligations herein contained.

(f) Any transfer, conveyance or sale of the Assessment Area One, shall subject any and all affiliated entities or successors-in-interest of the Developer to this Assignment (including successors-in-interest that are affiliates of Developer), except to the extent constituting a Prior Transfer.

**4. ASSIGNOR COVENANTS.** Assignor covenants with Assignee that during the Term:

(a) Assignor will use commercially reasonable efforts to: (i) fulfill, perform, and observe each and every material condition and covenant of Assignor relating to the Development and Contract Rights, including, but not limited to, any material changes in the Development and Contract Rights; and (ii) give notice to Assignee of any claim of material default relating to the Development and Contract Rights given to or by Assignor, together with a complete copy of any such claim.

(b) In the event of the institution of any involuntary bankruptcy, reorganization or insolvency proceedings against the Assignor or the appointment of a receiver or a similar official with respect to all or a substantial part of the properties of the Assignor, Assignor shall endeavor in good faith to have such proceedings dismissed or such appointment vacated within a period of one hundred twenty (120) days.

**5. ASSIGNEE OBLIGATIONS.** Nothing herein shall be construed as an obligation on the part of the Assignee to accept any liability for all or any portion of the Development and

Contract Rights unless it chooses to do so in its sole discretion. Nor shall any provision hereunder be construed to place any liability or obligation on Assignee for compliance with the terms and provisions of all or any portion of the Development and Contract Rights.

**6. EVENT(S) OF DEFAULT.** Any material breach of the Assignor's warranties contained in Section 3 hereof or breach of covenants contained in Section 4 hereof, shall, after the giving of notice and after failure to cure within a reasonable cure period in light of the default (which cure period shall not be less than sixty (60) days (and shall not be construed to extend any other cure periods provided hereunder) unless Assignee, in its sole discretion, agrees to a longer cure period) constitute an Event of Default (the "**Event of Default**"). Additionally, the failure to timely pay the Series 2024 Special Assessments levied and imposed upon the Assessment Area One owned by Assignor shall constitute an Event of Default.

**7. REMEDIES UPON EVENT OF DEFAULT.** Upon an Event of Default, Assignee or Assignee's designee may, as Assignee's sole and exclusive remedies under this Assignment (and separate and apart from any Remedial Rights or other rights provided by law), take any or all of the following actions, at Assignee's option:

(a) Perform any and all obligations of Assignor relating to the Development and Contract Rights and exercise any and all rights of Assignor therein as fully as Assignor could;

(b) Initiate, appear in, or defend any action arising out of or affecting the Development and Contract Rights;

(c) Sue for, or otherwise collect and receive, monies due under the Contract Documents, including those past due and unpaid, and apply the same against all costs and expenses of collection and then against all costs and expenses of operation of the Assessment Area One or the performance of Assignor's obligations under the Contract Documents. Neither entry upon and taking possession of the Assessment Area One nor the collection of monies due under the Contract Documents shall in any way operate to cure or waive any default under any instrument given by Assignor to Assignee, or prohibit the taking of any other action by Assignee under any such instrument, or at law or in equity, to enforce payment of the obligations secured hereby or to realize on any other security; and/or

(d) Demand, effective upon the occurrence of an Event of Default, and after Assignor's receipt of a demand notice from Assignee following an Event of Default, that Assignor use commercially reasonable efforts: (i) at the sole cost and expense of Assignor, to enforce the performance and observance of each and every material covenant and condition of the Contract Documents to be performed or observed; and (ii) appear in and defend any action involving the Contract Documents or the obligations or liabilities of Assignor or any guarantor thereunder. Also to be effective upon the occurrence of an Event of Default, and after Assignor's receipt of a demand notice following an Event of Default, Assignor will neither modify the terms of the Contract Documents in any material respect (unless required so to do by the terms thereof or to comply with documents executed in connection with the issuance of the Series 2024 Bonds) nor waive or release any third-party from the performance of any obligation to be performed or liability assumed under the terms of the Contract Documents or from liability on account of any warranty given by such third-party, without the prior consent of Assignee, which consent shall not be unreasonably

withheld, conditioned or delayed. Notwithstanding the foregoing, Assignor will not at any time knowingly take any action (or omit to take any action) with respect to the Development and Contract Rights that materially and adversely affect the rights of the District or the District's bondholders.

**8. AUTHORIZATION OF PERFORMANCE.** Upon the occurrence and during the continuation of an Event of Default, Assignor does hereby authorize and shall direct any party to any agreement relating to the Development and Contract Rights to tender performance thereunder to Assignee upon written notice and request from Assignee. Any such performance in favor of Assignee shall constitute a full release and discharge to the extent of such performance as fully as though made directly to Assignor.

**9. SECURITY AGREEMENT.** Subject to the terms of this Assignment, this Assignment shall be a security agreement between Assignor, as the debtor, and Assignee, as the secured party, covering the Development and Contract Rights and Contract Documents that constitute personal property governed by the Florida Uniform Commercial Code, and Assignor grants to Assignee a security interest in such Development and Contract Rights and Contract Documents. Notwithstanding the foregoing, Assignee shall not be entitled to exercise any right as a secured party, including, without limitation, the filing of any and all financing statements, until the occurrence of an Event of Default hereunder, subject to any applicable notice and cure period.

**10. SUCCESSORS; THIRD-PARTY BENEFICIARIES.** This Assignment is solely for the benefit of the District 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 Assignment. Nothing in this Assignment expressed or implied is intended or shall be construed to confer upon any person or entity other than the District and the Developer any right, remedy, or claim under or by reason of this Assignment or any of the provisions or conditions of this Assignment; and all of the provisions, representations, covenants, and conditions contained in this Assignment shall inure to the sole benefit of and shall be binding upon the District and the Developer and their respective representatives, successors, and assigns, subject to the provisions hereof regarding the automatic release of portions of the Assessment Area One here from upon a Prior Transfer.

Notwithstanding the foregoing, the Trustee, acting at the direction of the Majority Holders of the Series 2024 Bonds, shall have the right to directly enforce the provisions of this Assignment. The Trustee shall not be deemed to have assumed any obligations under this Assignment. This Assignment may not be assigned or materially amended without the consent of the Trustee, acting at the direction of the Majority Holders of the Series 2024 Bonds, which consent shall not be unreasonably withheld.

**11. ENFORCEMENT.** In the event that either Party is required to enforce this Assignment 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.

**12. AMENDMENTS.** Subject to the second paragraph of Section 10 herein, amendments to and waivers of the provisions contained in this Assignment may be made only by an instrument in writing which is executed by both the District and the Developer.

**13. AUTHORIZATION OF EXECUTION.** The execution of this Assignment has been duly authorized by the appropriate body or official of the District and the Developer; both the District and the Developer have complied with all the requirements of law with respect to the execution of this Assignment; and both the District and the Developer have full power and authority to comply with the terms and provisions of this Assignment.

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

- A. If to the District: Willowbrook CDD  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager
- With a copy to: Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, FL 32301  
Attn: District Counsel
- B. If to the Developer: KRPC Willowbrook, LLC  
121 Garfield Avenue  
Winter Park, Florida 32789  
Attn: Steve Rosser

Except as otherwise provided in this Assignment, any Notice shall be deemed received only upon actual delivery to 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 Assignment 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 District and counsel for the Developer may deliver Notice on behalf of the District and the Developer. 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.

**15. ARM’S LENGTH TRANSACTION.** This Assignment has been negotiated fully between the District and the Developer as an arm’s length transaction. Both Parties participated fully in the preparation of this Assignment and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Assignment, 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 Developer.

**16. APPLICABLE LAW AND VENUE.** This Assignment 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 Assignment shall be in Polk County, Florida.

**17. PUBLIC RECORDS.** The Developer understands and agrees that all documents of any kind provided to the District in connection with this Assignment 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 Assignment shall not affect the validity or enforceability of the remaining portions of this Assignment, or any part of this Assignment not held to be invalid or unenforceable.

**19. LIMITATIONS ON GOVERNMENTAL LIABILITY.** Nothing in this Assignment 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 statute, and nothing in this Assignment 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 Assignment are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Assignment.

**21. COUNTERPARTS.** This Assignment 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. TERMINATION.** This Assignment shall continue in effect until it is rescinded in writing by the mutual assent of the Parties. This Assignment shall also be terminated upon full payment of the Series 2024 Special Assessments securing the Series 2024 Bonds, as evidenced by a Termination of Assignment recorded by the District.

**23. EFFECTIVE DATE.** This Assignment shall be effective after execution by both the District and the Developer.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK, SIGNATURES FOLLOW]

IN WITNESS WHEREOF, the Developer and the District have caused this Assignment to be executed and delivered on the day and year first written above.

WITNESSES:

**KRPC WILLOWBROOK, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

\_\_\_\_\_  
By: Steve Rosser  
Its: Manager

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

STATE OF FLORIDA     )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of April 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, for and on behalf of said entity. He  is personally known to me or  produced \_\_\_\_\_ as identification.

NOTARY STAMP:

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

**WITNESSES:**

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairperson

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of April 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors of the Willowbrook Community Development District, for and on behalf of the District. He [ ] is personally known to me or [ ] produced \_\_\_\_\_ as identification.

NOTARY STAMP:

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

**Exhibit A:** Assessment Area One Lands

**Exhibit A**  
**Assessment Area One Lands**

DRAFT



# SECTION E

This instrument was prepared by and upon recording should be returned to:

(This space reserved for Clerk)

Jennifer Kilinski, Esq.  
Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301

**DECLARATION OF CONSENT TO THE JURISDICTION OF  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
AND TO IMPOSITION OF SERIES 2024 SPECIAL ASSESSMENTS**

\_\_\_\_\_, a Florida corporation (the “**Landowner**”), is the primary owner and/or developer of those lands described in **Exhibit A** attached hereto (the “**Assessment Area One**”) located within the boundaries of the Willowbrook Community Development District (the “**District**”). The Landowner, intending that it and its respective successors in interest and assigns shall be legally bound by this Declaration, hereby declares, acknowledges and agrees as follows:

1. The District is, and has been at all times, on and after November 13, 2023, a legally created, duly organized, and validly existing community development district under the provisions of the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (the “**Act**”). Without limiting the generality of the foregoing, the Landowner acknowledges that: (a) the petition filed with the City of Winter Haven, Florida (the “**City**”), relating to the creation of the District contained all matters required by the Act to be contained therein and was filed in the manner and by the persons authorized by the Act; (b) City Ordinance 2023-58, adopted and effective November 13, 2023, was duly and properly adopted by the City in compliance with all applicable requirements of law; and (c) the members of the Board of Supervisors of the District were duly and properly designated pursuant to the Act to serve in their capacities, and had the authority and right to authorize, approve and undertake all actions of the District approved and undertaken from November 13, 2023, to and including the date of this Declaration.

2. The Landowner understands and acknowledges that the District has adopted Resolution Nos. 2024-27, 2024-35, and 2024-42 (collectively, the “**Assessment Resolutions**”) that levied and imposed a debt service special assessment lien on Assessment Area One (the “**Series 2024 Special Assessments**”). Such Series 2024 Special Assessments are legal, valid and binding first liens upon Assessment Area One, coequal with the lien of all state, County, City, district and municipal taxes, and superior in dignity to all other liens, titles and claims, until paid. Landowner hereby agrees and acknowledges that the Assessment Resolutions provide that the lien for assessments remains inchoate until the District issues bonds and, without the need for further resolution, the lien attaches at the time of issuance of bonds, including the Series 2024 Bonds hereinafter defined.

3. The Landowner hereby expressly: (i) acknowledges, represents and agrees that the Series 2024 Special Assessments, the Assessment Resolutions, and the terms of the financing documents related to the District’s issuance of its \$ \_\_\_\_\_ Special Assessment Bonds, Series 2024 (Assessment Area One Project) (herein, the “**Series 2024 Bonds**”), or securing payment thereof (together the documents executed by Landowner in conjunction with the issuance of the Series 2024 Bonds, hereinafter the “**Financing Documents**”), are, to the extent of the Landowner’s obligations thereunder and with respect thereto, valid and binding obligations enforceable in accordance with their terms; (ii) represents that the Landowner has no claims or offsets whatsoever against, or defenses or counterclaims whatsoever to, payments of the Series 2024 Special Assessments and/or amounts due under the Financing Documents, and

the Landowner expressly waives any such claims, offsets, defenses or counterclaims; (iii) agrees that the Landowner hereby waives any and all rights, remedies, and other actions now or hereafter contemplated to contest, challenge, or otherwise dispute or objection to the Assessment Resolutions, the Series 2024 Special Assessments, the Financing Documents, and all proceedings undertaken by the District in connection therewith; (iv) agrees that the Landowner expressly waives and relinquishes any argument, claim or defense that foreclosure proceedings cannot be commenced until one (1) year after the date of the Landowner's default and agrees that immediate use of remedies in Chapter 170, *Florida Statutes*, is an appropriate and available remedy, notwithstanding the provisions of Section 190.026, *Florida Statutes*; and (v) acknowledges that, to the extent the Landowner fails to timely pay any special assessments collected by mailed notice of the District, such unpaid special assessments and future special assessments may be placed on the tax roll by the District for collection by the Tax Collector pursuant to Section 197.3632, *Florida Statutes*, in any subsequent year.

4. The Landowner hereby waives the right granted in Section 170.09, *Florida Statutes*, to prepay the Series 2024 Special Assessments within thirty (30) days after the improvements are completed, without interest, in consideration of, among other things, rights granted by the District to prepay the Series 2024 Special Assessments in full at any time, but with interest, under the circumstances set forth in the Assessment Resolutions.

5. This Declaration shall represent a lien of record for purposes of Chapter 197, *Florida Statutes*, including, without limitation, Section 197.573, *Florida Statutes*. Other information regarding the Series 2024 Special Assessments is available from the District Manager (Governmental Management Services – Central Florida, LLC), whose mailing address is 219 East Livingston Street, Orlando, Florida 32801; Ph: (407) 841-5524.

**THE DECLARATIONS, ACKNOWLEDGEMENTS AND AGREEMENTS CONTAINED HEREIN SHALL RUN WITH THE LAND DESCRIBED IN EXHIBIT A HERETO AND SHALL BE BINDING ON THE LANDOWNERS AND ON ALL PERSONS (INCLUDING BUT NOT LIMITED TO INDIVIDUALS AS WELL AS CORPORATIONS, ASSOCIATIONS, TRUSTS, AND OTHER LEGAL ENTITIES) TAKING TITLE TO ALL OR ANY PART OF THE LAND, AND THEIR SUCCESSORS IN INTEREST, WHETHER OR NOT THE LAND IS PLATTED AT SUCH TIME. BY TAKING SUCH TITLE, SUCH PERSONS SHALL BE DEEMED TO HAVE CONSENTED AND AGREED TO THE PROVISIONS OF THIS DECLARATION TO THE SAME EXTENT AS IF THEY HAD EXECUTED IT AND BY TAKING SUCH TITLE, SUCH PERSONS SHALL BE ESTOPPED FROM CONTESTING, IN COURT OR OTHERWISE, THE VALIDITY, LEGALITY AND ENFORCEABILITY OF THIS DECLARATION.**

Effective the \_\_\_ day of April, 2024.

*[Signature on following page]*

**WITNESSES:**

**KRPC WILLOWBROOK, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

\_\_\_\_\_  
By: Steve Rosser  
Its: Manager

\_\_\_\_\_  
Witness Signature  
Printed name: \_\_\_\_\_

STATE OF FLORIDA        )  
CITY OF                    )

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of April 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, for and on behalf of said entity. He  is personally known to me or  produced \_\_\_\_\_ as identification.

**NOTARY STAMP:**

\_\_\_\_\_  
Signature of Notary Public

\_\_\_\_\_  
Printed Name of Notary Public

**Exhibit A**

# SECTION F

This instrument was prepared by and upon recording should be returned to:

(This space reserved for Clerk)

Jennifer Kilinski, Esq.  
Kilinski | Van Wyk PLLC  
517 East College Avenue  
Tallahassee, Florida 32301

**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT  
NOTICE OF LIEN OF SPECIAL ASSESSMENTS FOR  
SPECIAL ASSESSMENT BONDS, SERIES 2024**

**PLEASE TAKE NOTICE** that the Board of Supervisors of the Willowbrook Community Development District (the “District”) in accordance with Chapters 170, 190, and 197, *Florida Statutes*, adopted Resolution Nos. 2024-42, 2024-\_\_ and 2024-\_\_ (the “Assessment Resolutions”), confirming and certifying the lien of non ad-valorem special assessments on certain real property located within the boundaries of the District that will be specially benefitted by the Assessment Area One Project described in such Assessment Resolutions. Said assessments are pledged to secure the Willowbrook Community Development District Special Assessment Bonds, Series 2024 (Assessment Area One) (the “Series 2024 Bonds”). The legal description of the lands on which said special assessments are imposed is attached to this Notice (the “Notice”), as **Exhibit A**. The special assessments are imposed on benefitted property within the District as described in the *Master Special Assessment Methodology Report*, dated November 16, 2023, as supplemented by that certain *Final First Supplemental Special Assessment Methodology Report*, dated March 26, 2024 (together, the “Assessment Report”), approved by the District. A copy of the Assessment Report and the Assessment Resolutions may be obtained by contacting the District at: Willowbrook Community Development District, c/o Governmental Management Services – Central Florida, LLC, 219 East Livingston Street, Orlando, Florida 32801; Ph: (407) 841-5524. The non ad-valorem special assessments provided for in the Assessment Resolutions were legally and validly determined and levied in accordance with all applicable requirements of Florida law, and these non-ad valorem special assessments constitute and will at all relevant times in the future constitute, legal, valid, and binding first liens on the land against which assessed until paid, coequal with the lien of all state, county, district, and municipal taxes, and superior in dignity to all other liens, titles, and claims. The District may collect assessments on any of the lands described in the attached **Exhibit A** by any method authorized by law, which method may change from year to year.

The District is a special-purpose form of local government established pursuant to and governed by Chapter 190, *Florida Statutes*. Pursuant to Section 190.048, *Florida Statutes*, you are hereby notified that: **THE WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT MAY IMPOSE AND LEVY TAXES OR ASSESSMENTS, OR BOTH TAXES AND ASSESSMENTS, ON THIS PROPERTY. THESE TAXES AND ASSESSMENTS PAY THE CONSTRUCTION, OPERATION, AND MAINTENANCE COSTS OF CERTAIN PUBLIC FACILITIES AND SERVICES OF THE DISTRICT. THE SERIES 2024 SPECIAL ASSESSMENTS ARE SET AT THE RATES SET FORTH IN THE METHODOLOGY REFERENCED HEREIN. THE OPERATION AND MAINTENANCE**

**ASSESSMENTS VARY AND ARE SET ANNUALLY BY THE GOVERNING BOARD OF THE DISTRICT. THESE TAXES AND ASSESSMENTS ARE IN ADDITION TO COUNTY AND OTHER LOCAL GOVERNMENTAL TAXES AND ASSESSMENTS AND ALL OTHER TAXES AND ASSESSMENTS PROVIDED FOR BY LAW.**

**THE LIEN FOR THE SPECIAL ASSESSMENTS IS STATUTORY AND NO FILING IS NECESSARY IN ORDER TO PERFECT OR PROVIDE RECORD NOTICE THEREOF. THIS NOTICE IS FOR INFORMATION PURPOSES. IN ADDITION TO THE MINUTES, RECORDS AND OTHER MATERIAL OF THE DISTRICT AVAILABLE FROM THE DISTRICT, THIS ALSO CONSTITUTES A LIEN OF RECORD FOR PURPOSES OF SECTION 197.573 OF THE FLORIDA STATUTES AND ALL OTHER APPLICABLE PROVISIONS OF THE FLORIDA STATUTES AND ANY OTHER APPLICABLE LAW.**

*[Signature page follows]*



**IN WITNESS WHEREOF**, this Notice has been executed and effective as of the \_\_\_\_ day of April 2024, and recorded in the Official Records of Polk County, Florida.

**WILLOWBROOK COMMUNITY  
DEVELOPMENT DISTRICT**

\_\_\_\_\_  
McKenzie Terrill  
Chairperson, Board of Supervisors

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

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

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization, this \_\_\_\_ day of April 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors for the Willowbrook Community Development District.

\_\_\_\_\_  
(Official Notary Signature)

Name: \_\_\_\_\_  
Personally Known \_\_\_\_\_  
OR Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_

[notary seal]

**EXHIBIT A - LEGAL DESCRIPTION**

DRAFT

# SECTION XI

Prepared By and Return To

Jennifer Kilinski, Esq.  
Kilinski | Van Wyk PLLC  
517 E. College Avenue  
Tallahassee, Florida 32301

**TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**THIS TEMPORARY CONSTRUCTION AND ACCESS EASEMENT AGREEMENT (“Agreement”)** is made and entered into this \_\_\_ day of March 2024, by and between **KRPC WILLOWBROOK, LLC**, a Florida limited liability company, whose address is 121 Garfield Avenue, Winter Park, Florida 32789 (“**Grantor**”) in favor of **WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, whose address is c/o Governmental Management Services-Central Florida, LLC, 219 E. Livingston Street, Orlando, Florida 32801 (“**Grantee**” or the “**District**”) (Grantor and Grantee are sometimes together referred to herein as the “**Parties**”, and separately as the “**Party**”).

**WITNESSETH:**

**WHEREAS**, Grantor is the owner in fee simple of certain real property located in the District, being more particularly described on **Exhibit “A”** attached hereto, and by this reference incorporated herein (the “**Easement Area**”); and

**WHEREAS**, Grantee intends to complete within the Easement Area, the design, installation and construction of roadway improvements, water, stormwater management facilities, sanitary sewer utilities, signage, neighborhood parks and recreational facilities, and other such improvements as authorized by law (collectively, the “**Improvements**”); and

**WHEREAS**, Grantor desires to grant to Grantee a temporary, non-exclusive construction and access easement on, upon, over, under, across, and through the Easement Area for the sole purpose of constructing the Improvements, until either construction of the Improvements is completed, or the Grantee acquires the Easement Area, whichever occurs first.

**NOW, THEREFORE**, for and in consideration of Ten and No/100 Dollars (\$10.00) in hand paid by the Grantee to the Grantor, the mutual covenants and agreements herein set forth and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties do hereby agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Temporary Construction Easement.** Grantor does hereby grant, bargain, sell and convey to Grantee a temporary, non-exclusive easement on, upon, over, under, across and

through the Easement Area for access, ingress, egress and to allow Grantee to complete the design, construction and installation of the Improvements (collectively, the “**Easement**”).

3. **Term of Easement.** Upon the earlier of (i) the completion of all Improvements and the acceptance of such by the District’s Board of Supervisors, or (ii) recordation of a release of the Easement in the Public Records of Polk County, Florida, then this Agreement shall automatically terminate and be extinguished and all rights in the Easement granted by this Agreement shall immediately revert to the Grantor, its successors, transferees and assigns, without further action of the Grantor or Grantee being required with respect to such Easement Area. Alternatively, (iii) upon recordation of a plat, this Agreement shall partially and automatically terminate and be extinguished over the platted residential lots (“Lots”), and all rights in the Easement upon such Lots granted by this Agreement shall immediately revert to the Grantor, its successors, transferees and assigns, without further action of the Grantor or Grantee being required with respect to such Lots in the Easement Area. Upon termination of this Agreement, as provided herein, and upon request by Grantor, Grantee shall promptly execute and deliver to Grantor a document in recordable form confirming termination of this Agreement and the Easement granted herein. Should the Grantee acquire the Easement Area from the Grantor prior to the occurrence of events (i), (ii) and (iii) enumerated herein, this Agreement shall automatically terminate and be extinguished and all rights in the Easement granted by this Agreement shall immediately vest in the Grantee, its successors, transferees and assigns, without further action of the Grantor or Grantee being required with respect to such Easement Area.

4. **Insurance and Indemnity.** Grantee and/or any contractors performing work for Grantee on the Easement Area, shall at all times maintain general public liability insurance to afford protection against any and all claims for personal injury, death or property damage arising directly or indirectly out of the exercise of the rights and privileges granted. Said insurance maintained by any contractors performing work for Grantee on the Easement Area shall be issued by solvent, reputable insurance companies authorized to do business in the State of Florida, naming Grantee and Grantor as insured, as their interests may appear, in a combined-single limit of not less than \$1,000,000.00 with respect to bodily injury or death and property damage. Said insurance shall also be primary, and not contributory, as to any insurance coverage maintained by Grantor. To the extent permitted by law and without waiving any of the protections afforded by section 768.28, *Florida Statutes*, Grantee hereby agrees to indemnify and hold harmless Grantor from and against any and all liability arising out of Grantee’s construction activities within the Easement Area.

5. **Obligations of Grantor and Grantee.** The Parties acknowledge and agree that any rights granted hereunder shall be exercised by the Parties only in accordance and compliance with any and all applicable laws, ordinances, rules, regulations, permits and approvals, and any future modifications or amendments thereto. The Parties covenant and agree that neither party shall discharge into or within the Easement Area, any hazardous or toxic materials or substances, any pollutants, or any other substances or materials prohibited or regulated under any federal, state or local law, ordinance, rule, regulations or permit, except in accordance with such laws, ordinances, rules, regulations and permits. To the extent permitted by law and without waiving any of the protections afforded by section 768.28, *Florida Statutes*, each Party hereby agrees to indemnify and hold harmless the other Party from and against any and all liability arising out of

such Party's breach of any provision of this Agreement, including, without limitation, the matters set forth in this paragraph.

6. **Beneficiaries of Easement Rights.** The Easement set forth in this Agreement shall be for the sole benefit and use of Grantee, its successors and assigns, and Grantee's agents, employees, consultants, representatives, contractors and providers of emergency services and utility services.

7. **Amendments and Waivers.** This Agreement may not be terminated or amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by the Parties and recorded in the Public Records of Polk County, Florida. No delay or omission of any Party in the exercise of any right accruing upon any default of any Party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by any Party of a breach of, or a default in, any of the terms and conditions of this Agreement by any other Party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement. No breach of the provisions of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any Party may have by reason of any breach of the provisions of this Agreement.

8. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given (i) three (3) days after depositing with the United States Postal Service, postage prepaid, (ii) one day after depositing with a nationally recognized overnight courier service, or (iii) on the day of hand delivery (provided such delivery occurs prior to 5:00 pm, E.S.T. or E.D.T., as applicable), to the address listed above or to such other address as either Party may from time to time designate by written notice in accordance with this paragraph.

9. **Use of Easement Area.** It is acknowledged and agreed that the Easement granted under this Agreement is not an exclusive easement and that Grantor shall have the right to use and enjoy the Easement Area in any manner not inconsistent with the easement rights created herein, and grant others the right to do so.

10. **Liens.** Grantee shall not permit (and shall promptly satisfy or bond) any construction, mechanic's lien or encumbrance against the Easement Area in connection with the exercise of rights hereunder.

11. **Effective Date.** The Effective Date of the Agreement shall be the last day that this Agreement is signed by either Party.

12. **Miscellaneous.** This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and no other agreement, oral or written, not set forth herein, nor any course of dealings of the Parties, shall be deemed to alter or affect the terms and conditions set forth herein. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to the extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such

provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement shall be construed in accordance with the laws of the State of Florida. Venue for any proceeding brought hereunder shall be in Polk County, Florida. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the predominantly prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal. The section headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part hereof. Where the sense of this Agreement requires, any reference to a term in the singular shall be deemed to include the plural of said term, and any reference to a term in the plural shall be deemed to include the singular of said term. Nothing in this Agreement shall be construed to make the Parties hereto partners or joint venturers or render either of said parties liable for the debts or obligations of the other. This Agreement may be executed in counterparts, each of which shall constitute an original, but all taken together shall constitute one and the same Agreement. Time is of the essence of this Agreement. This Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns. The rights, privileges and Easement granted and conveyed hereunder shall be a burden upon the Easement Area and shall exist for the benefit of and run with title to the Easement Area.

**[SIGNATURES CONTAINED ON FOLLOWING PAGES]**

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

**“GRANTOR”**

WITNESSES:

**KRPC WILLOWBROOK, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Print: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
By: Steve Rosser  
Its: Manager

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, on behalf of the company.

\_\_\_\_\_  
(Official Notary Signature & Seal)  
Name: \_\_\_\_\_  
Personally Known \_\_\_\_\_  
OR Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_



**“GRANTEE”**

**WILLOWBROOK  
COMMUNITY DEVELOPMENT  
DISTRICT**, a local unit of special-purpose  
government established pursuant to Chapter  
190, *Florida Statutes*

Signed, sealed and delivered  
in the presence of:

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

\_\_\_\_\_  
Chairperson, Board of Supervisors

**STATE OF FLORIDA  
COUNTY OF POLK**

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors of the Willowbrook Community Development District.

\_\_\_\_\_  
(Official Notary Signature & Seal)  
Name: \_\_\_\_\_  
Personally Known \_\_\_\_\_  
OR Produced Identification \_\_\_\_\_  
Type of Identification \_\_\_\_\_

**Exhibit A**  
**Legal Description of the District Boundary**

**SOUTH PARCEL:**

COMMENCE AT A 4" x 4" CONCRETE MONUMENT WITH A DISK LABELED LB7454, LYING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, SAID POINT HAVING A NORTHING OF 1,347,673.47 FEET, AND AN EASTING OF 752,255.25 FEET IN REFERENCE TO THE STATE PLANE COORDINATE SYSTEM OF FLORIDA, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT, AND RUN THENCE ALONG THE WEST BOUNDARY OF SAID SOUTHEAST 1/4 , N00°05'30"W A DISTANCE OF 1379.25 FEET TO A POINT MONUMENTED WITH A ONE HALF INCH IRON ROD WITH CAP READING "PESURV LB8112", LYING ON THE NORTHERN RIGHT OF WAY OF BUCKEYE LOOP ROAD / AVENUE T NE (AS DESCRIBED IN OFFICIAL RECORD BOOK 748, PAGE 608 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA), SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY, NON TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 924.93 FEET, A DELTA ANGLE OF 13°36'00", CHORD LENGTH OF 219.03 FEET, AND CHORD BEARING N70°42'22"W. THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE, AN ARC DISTANCE OF 219.55 FEET TO A POINT OF REVERSE CURVATURE ON A CURVE HAVING A RADIUS OF 984.93 FEET, A DELTA ANGLE OF 17°29'50", CHORD LENGTH OF 299.61 FEET AND CHORD BEARING OF N72°39'17"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 300.78 FEET TO THE POINT OF BEGINNING, SAID POINT ON A CURVE HAVING A RADIUS OF 984.93 FEET, A CENTRAL ANGLE OF 9°30'10", CHORD LENGTH OF 163.17 FEET, AND CHORD BEARING OF N86°09'17"W. CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 163.35 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE HAVING A RADIUS OF 602.96 FEET, A CENTRAL ANGLE OF 23°57'00", CHORD LENGTH OF 250.21 FEET, AND CHORD BEARING OF S77°07'08"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 252.04 FEET TO THE EAST BOUNDARY OF THAT PARCEL DESCRIBED BY WARRANTY DEED IN OFFICIAL RECORD BOOK 4476, PAGE 439, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; RUN THENCE ALONG SAID EAST BOUNDARY THE FOLLOWING (13 ) COURSES: (1) N03°00'59"W A DISTANCE OF 837.96 FEET; (2) N27°38'59"W A DISTANCE OF 151.06 FEET; (3) N17°11'59"W A DISTANCE OF 119.50 FEET; (4) N02°16'59"W A DISTANCE OF 150.00 FEET; (5) N05°12'01"E A DISTANCE OF 279.98 FEET; (6) N02°52'01"E A DISTANCE OF 174.28 FEET; (7) N05°58'59"W A DISTANCE OF 107.84 FEET; (8) N24°03'59"W A DISTANCE OF 270.00 FEET; (9) N29°03'59"W A DISTANCE OF 273.00 FEET; (10) N07°36'59"W A DISTANCE 122.34 FEET; (11) N20°38'59"W A DISTANCE OF 229.76 FEET; (12) S84°36'01"W A DISTANCE OF 253.80 FEET; (13) N02°38'59"W A DISTANCE OF 423.10 FEET MORE OR LESS TO THE SOVEREIGN SUBMERGED LAND LINE FOR LAKE SMART; THENCE ALONG SAID SOVEREIGN SUBMERGED LAND LINE MEANDERED BY THE FOLLOWING (2) COURSES: (1) N37°11'01"E A DISTANCE OF 612.27 FEET; (2) N19°04'35"E A DISTANCE OF 692.87 FEET TO THE NORTH BOUNDARY OF A PERPETUAL CANAL EASEMENT RECORDED IN OFFICIAL RECORDS BOOK 913, PAGE 237 AND CORRECTED IN OFFICIAL RECORDS BOOK

1003, PAGE 901 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S74°39'25"E A DISTANCE OF 424.92 FEET TO THE BOUNDARY OF WILLOWBROOK GOLF COURSE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1006, PAGE 150 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID BOUNDARY OF WILLOWBROOK GOLF COURSE THE FOLLOWING (5) COURSES: (1) S03°20'11"E A DISTANCE OF 590.08 FEET; (2) S31°53'40"E A DISTANCE OF 165.00 FEET; (3) S75°33'40"E A DISTANCE OF 700.00 FEET; (4) N59°06'20"E A DISTANCE OF 180.00 FEET; (5) N14°51'22"E A DISTANCE OF 530.00 FEET TO SAID NORTH BOUNDARY OF CANAL EASEMENT; THENCE ALONG SAID NORTH BOUNDARY S74°39'03"E A DISTANCE OF 656.11 FEET MORE OR LESS TO THE STATE SOVEREIGN SUBMERGED LAND LINE FOR LAKE FANNIE; THENCE ALONG STATE SOVEREIGN LAND LINE MEANDERED BY THE FOLLOWING (17 ) COURSES: (1) S22°54'12"W A DISTANCE OF 84.02 FEET; (2) S23°20'01"W A DISTANCE OF 77.13 FEET; (3) S01°56'35"W A DISTANCE OF 183.39 FEET; (4) S17°50'27"E A DISTANCE OF 156.71 FEET; (5) S03°23'58"W A DISTANCE OF 272.03 FEET; (6) S04°08'43"E A DISTANCE OF 136.28 FEET; (7) S01°04'00"W A DISTANCE OF 140.27 FEET; (8) S08°34'41"E A DISTANCE OF 72.00 FEET; (9) S08°34'41"E A DISTANCE OF 115.99 FEET; (10) S18°02'29"E A DISTANCE OF 188.98 FEET; (11) S06°24'25"W A DISTANCE OF 239.38 FEET; (12) S16°39'01"E A DISTANCE OF 139.88 FEET; (13) S04°16'33"W A DISTANCE OF 81.73 FEET; (14) S01°16'19"W A DISTANCE OF 240.92 FEET; (15) S08°50'46"W A DISTANCE OF 194.47 FEET; (16) S19°25'21"E A DISTANCE OF 131.16 FEET; (17) S30°20'43"E A DISTANCE OF 50.01 FEET TO THE NORTH BOUNDARY OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, ALSO BEING THE NORTH BOUNDARY OF POINSETTIA PARK UNIT 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK23, PAGE 5 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S89°11'18"W A DISTANCE OF 1183.64 FEET TO THE WEST BOUNDARY OF SAID NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15; THENCE ALONG SAID WEST BOUNDARY S00°05'30"E A DISTANCE OF 189.74 FEET; THENCE N48°21'56"W A DISTANCE OF 7.64 FEET TO THAT JURISDICTIONAL WETLAND LINE DESCRIBED BY ENVIRONMENTAL RESOURCE PERMIT 43029879.00 ; THENCE ALONG SAID JURISDICTIONAL WETLANDS LINE THE FOLLOWING (18) COURSES: (1) S09°32'52"W A DISTANCE OF 5.79 FEET; (2) S64°35'31"W A DISTANCE OF 42.41 FEET; (3) S53°10'36"W A DISTANCE OF 71.33 FEET; (4) S41°33'05"W A DISTANCE OF 99.64 FEET; (5) S39°51'13"W A DISTANCE OF 136.53 FEET; (6) S15°48'15"W A DISTANCE OF 93.60 FEET; (7) S11°37'15"E A DISTANCE OF 78.22 FEET; (8) S38°10'38"E A DISTANCE OF 89.25 FEET; (9) S22°39'08"W A DISTANCE OF 66.24 FEET; (10) S39°40'21"W A DISTANCE OF 32.28 FEET; (11) S23°39'36"E A DISTANCE OF 22.48 FEET; (12) N80°26'21"W A DISTANCE OF 32.38 FEET; (13) S61°11'23"W A DISTANCE OF 39.18 FEET; (14) S45°26'59"W A DISTANCE OF 69.06 FEET; (15) S57°05'32"W A DISTANCE OF 57.78 FEET; (16) S42°55'02"W A DISTANCE OF 46.01 FEET; (17) S21°40'16"W A DISTANCE OF 102.79 FEET; (18) S08°52'51"W A DISTANCE OF 67.76 FEET TO THE POINT OF BEGINNING

**TOGETHER WITH:**

**NORTH PARCEL:**

COMMENCE AT THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 28 SOUTH, RANGE 26 EAST; THENCE, ALONG THE EAST LINE OF SAID SECTION 10, RUN SOUTH 00°07'28" EAST A DISTANCE OF 137.45 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF STATE ROAD NO. 544 (LUCERNE PARK ROAD); THENCE, RUN SOUTH 89°53'19" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 1699.36 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 22°43'03", A CHORD BEARING SOUTH 78°31'48" WEST WITH A CHORD DISTANCE OF 726.69 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 731.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE AND ALONG THE FOLLOWING ONE HUNDRED SEVEN (107) COURSES AS DESCRIBED BY A SURVEY BY PESURV, INC., PROJECT NO. 1579, ROBERT E. LAZENBY IV, P.E. #52006, PSM #6389, RUN (1) SOUTH 24°14'34" EAST A DISTANCE OF 65.67 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 102.00 FEET, A CENTRAL ANGLE OF 22°30'16", A CHORD BEARING SOUTH 12°59'26" EAST WITH A CHORD DISTANCE OF 39.81 FEET; THENCE, ALONG SAID CURVE, RUN (2) A DISTANCE OF 40.06 FEET TO A POINT OF TANGENCY; THENCE RUN (3) SOUTH 01°44'19" EAST A DISTANCE OF 61.72 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 17.00 FEET, A CENTRAL ANGLE OF 90°00'03", A CHORD BEARING SOUTH 46°44'17" EAST WITH A CHORD DISTANCE OF 24.04 FEET; THENCE, ALONG SAID CURVE, (4) RUN A DISTANCE OF 26.70 FEET TO A POINT OF TANGENCY; THENCE RUN (5) NORTH 88°15'41" EAST A DISTANCE OF 29.84 FEET; THENCE RUN (6) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (7) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (8) NORTH 88°15'41" EAST A DISTANCE OF 191.46 FEET; THENCE RUN (9) SOUTH 21°47'55" WEST A DISTANCE OF 182.23 FEET; THENCE RUN (10) SOUTH 10°18'49" WEST A DISTANCE OF 111.02 FEET; THENCE RUN (11) SOUTH 06°20'28" EAST A DISTANCE OF 31.78 FEET; THENCE RUN (12) SOUTH 10°24'42" EAST A DISTANCE OF 54.63 FEET; THENCE RUN (13) SOUTH 05°19'55" EAST A DISTANCE OF 113.33 FEET; THENCE RUN (14) SOUTH 05°26'27" WEST A DISTANCE OF 49.92 FEET; THENCE RUN (15) SOUTH 01°21'11" EAST A DISTANCE OF 279.65 FEET; THENCE RUN (16) SOUTH 01°30'16" EAST A DISTANCE OF 33.99 FEET; THENCE RUN (17) SOUTH 01°07'03" WEST A DISTANCE OF 61.24 FEET; THENCE RUN (18) SOUTH 03°14'57" EAST A DISTANCE OF 61.33 FEET; THENCE RUN (19) SOUTH 09°38'37" EAST A DISTANCE OF 85.84 FEET; THENCE RUN (20) SOUTH 02°33'05" WEST A DISTANCE OF 82.31 FEET; THENCE RUN (21) SOUTH 00°59'55" WEST A DISTANCE OF 41.05 FEET; THENCE RUN (22) SOUTH 27°20'51" EAST A DISTANCE OF 119.34 FEET; THENCE RUN (23) SOUTH 21°55'15" EAST A DISTANCE OF 43.92 FEET; THENCE RUN (24) SOUTH 25°25'05" EAST A DISTANCE OF 46.73 FEET; THENCE RUN (25) SOUTH 29°18'59" EAST A DISTANCE OF 62.53 FEET; THENCE RUN (26) SOUTH 18°08'22" EAST A DISTANCE OF 69.12 FEET; THENCE RUN (27) SOUTH 25°45'05" EAST A DISTANCE OF 203.70 FEET; THENCE RUN (28) SOUTH 35°31'25" EAST A DISTANCE OF 129.37 FEET; THENCE RUN (29) SOUTH 39°05'37" EAST A DISTANCE OF 170.07 FEET; THENCE RUN

(30) SOUTH 62°35'36" EAST A DISTANCE OF 86.01 FEET; THENCE RUN (31) SOUTH 67°18'39" EAST A DISTANCE OF 81.88 FEET; THENCE RUN (32) SOUTH 65°17'05" EAST A DISTANCE OF 86.19 FEET; THENCE RUN (33) SOUTH 65°14'32" EAST A DISTANCE OF 160.88 FEET; THENCE RUN (34) SOUTH 42°25'05" EAST A DISTANCE OF 62.14 FEET; THENCE RUN (35) SOUTH 16°46'33" EAST A DISTANCE OF 71.63 FEET; THENCE RUN (36) SOUTH 31°17'48" EAST A DISTANCE OF 112.99 FEET; THENCE RUN (37) SOUTH 45°31'19" EAST A DISTANCE OF 123.81 FEET; THENCE RUN (38) SOUTH 33°31'02" EAST A DISTANCE OF 108.20 FEET; THENCE RUN (39) SOUTH 75°18'46" EAST A DISTANCE OF 30.67 FEET; THENCE RUN (40) SOUTH 18°52'36" EAST A DISTANCE OF 49.22 FEET; THENCE RUN (41) SOUTH 42°51'44" EAST A DISTANCE OF 44.94 FEET; THENCE RUN (42) SOUTH 18°43'34" EAST A DISTANCE OF 61.08 FEET; THENCE RUN (43) SOUTH 41°25'19" EAST A DISTANCE OF 99.47 FEET; THENCE RUN (44) SOUTH 10°00'58" EAST A DISTANCE OF 49.92 FEET; THENCE RUN (45) SOUTH 28°45'37" EAST A DISTANCE OF 128.89 FEET; THENCE RUN (46) SOUTH 22°27'37" EAST A DISTANCE OF 48.99 FEET; THENCE RUN (47) SOUTH 23°23'08" EAST A DISTANCE OF 168.86 FEET; THENCE RUN (48) SOUTH 18°38'33" EAST A DISTANCE OF 14.11 FEET; THENCE RUN (49) SOUTH 16°12'55" EAST A DISTANCE OF 173.77 FEET; THENCE RUN (50) SOUTH 26°02'45" EAST A DISTANCE OF 146.50 FEET; THENCE RUN (51) SOUTH 39°50'19" EAST A DISTANCE OF 74.25 FEET; THENCE RUN (52) SOUTH 27°05'27" EAST A DISTANCE OF 68.44 FEET; THENCE RUN (53) SOUTH 56°07'54" EAST A DISTANCE OF 30.87 FEET; THENCE RUN (54) SOUTH 13°44'32" EAST A DISTANCE OF 32.09 FEET; THENCE RUN (55) SOUTH 38°42'48" EAST A DISTANCE OF 90.93 FEET; THENCE RUN (56) SOUTH 17°00'26" EAST A DISTANCE OF 22.47 FEET; THENCE RUN (57) SOUTH 46°15'23" EAST A DISTANCE OF 70.76 FEET; THENCE RUN (58) SOUTH 47°18'33" EAST A DISTANCE OF 92.46 FEET; THENCE RUN (59) SOUTH 45°47'01" WEST A DISTANCE OF 27.26 FEET; THENCE RUN (60) NORTH 66°16'10" EAST A DISTANCE OF 19.12 FEET; THENCE RUN (61) SOUTH 72°14'50" EAST A DISTANCE OF 61.74 FEET; THENCE RUN (62) SOUTH 01°17'45" EAST A DISTANCE OF 47.33 FEET; THENCE RUN (63) SOUTH 34°55'37" EAST A DISTANCE OF 122.41 FEET; THENCE RUN (64) SOUTH 30°41'09" EAST A DISTANCE OF 115.62 FEET; THENCE RUN (65) SOUTH 31°51'50" EAST A DISTANCE OF 114.98 FEET; THENCE RUN (66) SOUTH 24°49'19" EAST A DISTANCE OF 108.73 FEET; THENCE RUN (67) SOUTH 20°40'07" EAST A DISTANCE OF 54.42 FEET; THENCE RUN (68) SOUTH 14°25'21" EAST A DISTANCE OF 60.74 FEET; THENCE RUN (69) SOUTH 30°18'00" EAST A DISTANCE OF 56.19 FEET; THENCE RUN (70) SOUTH 22°25'07" EAST A DISTANCE OF 66.79 FEET; THENCE RUN (71) SOUTH 23°19'46" EAST A DISTANCE OF 46.76 FEET; THENCE RUN (72) SOUTH 26°34'29" EAST A DISTANCE OF 120.05 FEET; THENCE RUN (73) SOUTH 04°03'40" WEST A DISTANCE OF 113.51 FEET; THENCE RUN (74) SOUTH 20°25'56" EAST A DISTANCE OF 30.41 FEET; THENCE RUN (75) SOUTH 56°12'51" EAST A DISTANCE OF 45.66 FEET; THENCE RUN (76) SOUTH 09°45'17" WEST A DISTANCE OF 42.32 FEET; THENCE RUN (77) SOUTH 13°18'50" WEST A DISTANCE OF 36.73 FEET; THENCE RUN (78) SOUTH 15°22'55" WEST A DISTANCE OF 17.85 FEET; THENCE RUN (79) SOUTH 00°57'02" WEST A DISTANCE OF 22.66 FEET; THENCE RUN (80) SOUTH 26°50'51" WEST A DISTANCE OF 32.66 FEET; THENCE RUN (81) NORTH 87°11'09" WEST A DISTANCE OF 56.18 FEET; THENCE RUN (82) NORTH 78°15'36" WEST A DISTANCE OF 21.13 FEET; THENCE RUN (83) NORTH 33°14'32" WEST A DISTANCE OF

45.29 FEET; THENCE RUN (84) SOUTH 47°47'36" WEST A DISTANCE OF 38.67 FEET; THENCE RUN (85) SOUTH 28°21'34" WEST A DISTANCE OF 5.10 FEET; THENCE RUN (86) SOUTH 45°31'50" WEST A DISTANCE OF 135.10 FEET; THENCE RUN (87) SOUTH 89°49'14" WEST A DISTANCE OF 202.62 FEET; THENCE RUN (88) NORTH 81°35'22" WEST A DISTANCE OF 200.26 FEET; THENCE RUN (89) NORTH 70°35'59" WEST A DISTANCE OF 144.18 FEET; THENCE RUN (90) NORTH 72°07'51" WEST A DISTANCE OF 111.39 FEET; THENCE RUN (91) NORTH 81°30'44" WEST A DISTANCE OF 137.41 FEET; THENCE RUN (92) SOUTH 86°56'56" WEST A DISTANCE OF 393.25 FEET; THENCE RUN (93) SOUTH 66°45'52" WEST A DISTANCE OF 199.31 FEET; THENCE RUN (94) SOUTH 23°20'01" WEST A DISTANCE OF 10.08 FEET TO A POINT ON THE NORTH LINE OF THAT PERPETUAL 100 FOOT WIDE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 OF THE PUBLIC RECORDS OF POLK COUNTY FLORIDA; THENCE RUN (95) NORTH 74°39'11" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 656.11 FEET; THENCE, DEPARTING SAID NORTH LINE, RUN (96) NORTH 14° 51'12" EAST A DISTANCE OF 540.08 FEET; THENCE RUN (97) NORTH 24°23'40" WEST A DISTANCE OF 380.00 FEET; THENCE RUN (98) NORTH 01°07'00" EAST A DISTANCE OF 629.14 FEET; THENCE RUN (99) NORTH 27°23'40" WEST A DISTANCE OF 800.00 FEET; THENCE RUN (100) NORTH 06°15'35" EAST A DISTANCE OF 680.00 FEET; THENCE RUN (101) NORTH 20°23'40" WEST A DISTANCE OF 735.00 FEET; THENCE RUN (102) NORTH 03°49'25" WEST A DISTANCE OF 140.00 FEET; THENCE RUN (103) NORTH 20°10'35" EAST A DISTANCE OF 130.00 FEET; THENCE RUN (104) NORTH 03°49'25" WEST A DISTANCE OF 125.00 FEET; THENCE RUN (105) NORTH 86°10'35" EAST A DISTANCE OF 150.00 FEET; THENCE RUN (106) NORTH 01°24'48" WEST A DISTANCE OF 941.77 FEET; THENCE RUN (107) NORTH 59°53'40" WEST A DISTANCE OF 70.00 FEET TO A POINT ON THE AFORESAID SOUTHERLY RIGHT OFWAY LINE OF STATE ROAD NO. 544, THENCE RUN NORTH 63°17'43" EAST A DISTANCE OF 75.21 FEET TO A POINT OF CURVATURE, ON SAID RIGHT-OF-WAY LINE, OF A CURVE TO THE RIGHT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 03°51'58", A CHORD BEARING NORTH 65°14'18" EAST WITH A CHORD DISTANCE OF 124.46 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 124.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

**TOGETHER, THE NORTH PARCEL PLUS THE SOUTH PARCEL IS 284.905 ACREAS, MORE OR LESS.**

# SECTION A

# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE) WILLOWBROOK NORTH “CONSTRUCTION PHASE 1”**

This Agreement is by and between KRPC Willowbrook, LLC (“Owner”) and Jon M Hall Company, LLC (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## **WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: All labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents, including but not limited to work related to earthwork/clearing, roadway improvements, drainage improvements, waterline and accessories, sewer system, irrigation and accessories, related miscellaneous work, and coordination efforts to support the development of Willowbrook North “Construction Phase 1” all as more particularly described in the Contract Documents.

## **THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Construction services generally related to construction of infrastructure improvements for Willowbrook North “Construction Phase 1”, as more fully described in the engineering documents and specifications contained within the Contract Documents.

## **ENGINEER**

3.01 The Owner has retained Sloan Engineering Group, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

## **CONTRACT TIMES**

4.01 *Time is 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. The Work to be performed under this Agreement shall be commenced no later than ten (10) calendar days, including Saturdays, Sundays, and holidays, from the date of the Notice to Proceed.



~~4.02 Contract Times: Dates~~

- ~~A. The Work will be substantially complete on or before **[date]**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **[date]**.~~

4.03 Contract Times: Days

- A. The Work will be substantially complete within \_\_\_ days after the date when the Contract 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 \_\_\_ days after the date when the Contract Times commence to run.

~~4.04 Milestones~~

- ~~A. Parts of the Work must 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]**~~
- ~~B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.~~
- ~~C. **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 **[\$number]** for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to **[\$number]**.~~

4.05 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 Contract Times, as duly modified. 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. The Owner and Contractor agree that an assessment of actual damages as of the date of this Agreement would be uncertain, and the amount of liquidated damages set forth herein is reasonable. Accordingly, instead of requiring any such proof of actual damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 \$750.00 for each day that expires after such time until the Work is completed

and ready for final payment for the first thirty (30) calendar days and \$1,000.00 for each day after the first 30 until final completion.

3. *Milestones:* Contractor shall pay Owner \$[number] 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, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. ~~*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 \$500.00 for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to \$\_\_\_\_\_.~~

#### 4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

## **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:

- A. For all Work other than Unit Price Work (priced for Change Orders as set forth herein), a lump sum not to exceed \$8,308,998.59 for the Willowbrook North "Construction Phase 1" improvements.

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					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

~~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) \$[number].~~
- D. For all Work, including additions or changes to the Work, payment shall be made in accordance with at the prices stated in Contractor's Bid, attached hereto as an exhibit. Unit Pricing, as shown in the Contractor's Bid attached hereto, shall be used in connection with pricing for change orders. No escalation for fuel, labor or materials shall be permitted whatsoever.

5.02 *Fuel Escalation*

~~The cost of fuel is volatile, and sudden, unforeseeable price increases have and could occur during the performance of the Work. As a result, this price adjustment provision shall apply throughout the Work to minimize the uncontrollable and uncertain cost impacts upon Contractor of rising fuel prices.~~

~~Contract price adjustments will be made on each applicable progress payment to reflect increases in the prices of gasoline and diesel fuels from those in effect on May 24, 2023, the month in which Contractor's initial bid proposal was prepared (the "Base Month").~~

~~The Contractor will certify the number of gallons of fuel (gasoline and/or diesel) used on this Contract during the period represented by each Application for Payment. Contract Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Florida Department of Transportation in the "Fuel and Bituminous Average Price Index" available at <https://www.fdot.gov/construction/fuel-Bit/Fuel-Bit.shtm> ("Fuel Prices").~~

~~When Fuel Prices have increased between the Base Month and the period represented by the Application for Payment, the Contract Price shall be adjusted and Contractor shall be paid an additional amount equal to the difference between the Fuel Prices in such month and the Fuel Prices in the Base Month, multiplied by the number of gallons of such fuel used during the period represented by such Application for Payment.~~

~~This Fuel Escalation provision shall be in effect throughout the life of the Contract and on every Application for Payment.~~

## 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 the basis of Contractor's Applications for Payment by the last day of each month during performance of the Work, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract, ~~on or about the [ordinal number, such as 5th] 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. Five percent (5%) of the amount of each progress payment shall be withheld as retainage until final completion of the Work, acceptance of the Work by the Owner, satisfaction of all punch list requirements, and submission of all documents required under Paragraph 15.06 of the General Conditions, subject to any offsets to which the Owner is entitled.

- ~~1. 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. [number] percent of the value of the Work completed (with the balance being retainage).~~

~~If 50 percent or more of the Work has been 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. [number] 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 [number] percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less [number]~~

~~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.~~

6.03 *Final Payment*

Upon final completion and acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and subject to final acceptance by the City of Winter Haven/Polk County, as applicable, the local utility provider, as applicable, and the Florida Department of Transportation ("FDOT"), as applicable Owner shall pay the remainder of the Contract Price as recommended by the Engineer and in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Intentionally Omitted*

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of eighteen percent (18%) per annum.

**CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement as modified herein.
  2. General Conditions as modified therein.
  3. Supplementary Conditions Relating to Insurance Requirements, Subsurface Conditions, and Hazardous Conditions.
  4. Contractor's Bid Form, including but not limited to Specifications as listed in the table of contents of the Project Manual (copy of list not attached), including technical specifications (by signing this Contract, Contractor acknowledges that he/she will conform all work to the latest standards and specifications of FDOT, Polk County, City of Winter Haven, all applicable utility authorities and other applicable codes, regulations and laws as applicable).
  5. Permits (to be provided by Owner upon receipt):
    - a. Southwest Florida Water Management District Permit ERP
    - b. Polk County Development Order (pending)
    - c. Florida Dept. of Health (pending)
    - d. Florida Dept. of Environmental Protection Wastewater Permit (pending)
    - e. Florida Dept. of Transportation Connection Permit (pending)
    - f. Florida Dept. of Transportation Drainage Connection Permit (pending)
    - g. Florida Dept. of Transportation Utility Permit (pending)
    - h. Army Corps of Engineers (pending)
    - i. Florida Dept. of Environmental Protection Notice of Intent – Contractor Responsibility

j. Site Development Plans for Willowbrook North dated May 26, 2023

k. Drawings as indicated on the Index of Drawings on page 1 of the Site Development Plans identified in Paragraph 7.01.A.5.k.

6. Exhibits to this Agreement (enumerated as follows):
  - a. Contractor's Bid for Willowbrook North "Construction Phase 1" (Exhibit A)
  - b. Geotechnical Report dated February 15, 2024 and as more specifically identified in the Supplemental Conditions.
  - c. Assignment of Contract package (Exhibit B), however Exhibit B and the documents contained therein are not and shall not be deemed to be "Contract Documents." The Addendum contained in Exhibit B shall only become a Contract Document upon execution thereof and assignment of the Contract as provided in Section 9.02.B herein.
7. 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 Contract Documents listed in Paragraph 7.01.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 7.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  1. Contractor has examined and carefully studied the Contract Documents, including Addenda, if any.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the

Supplementary Conditions, if any, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. ~~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.~~
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies that Contractor has been made aware of or has reasonably discovered between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. 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.
12. Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital (subject to payments by Owner required under this Agreement) to complete the Work required to be performed of it under this Contract.
13. Contractor is able to furnish (directly or by subcontract or through vendors) any plant, tools, materials, supplies, equipment and labor necessary to complete the services required of Contractor under this Contract and Contractor has sufficient experience and competence to perform the Work under the Contract.
14. Contractor is authorized to do business in the State of Florida and is properly licensed (to the extent required by law) by all necessary governmental authorities having jurisdiction over the Work.

## 8.02 *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 8.02:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of an individual in the bidding process or in the Contract execution;
  2. "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.

## 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are a modified version of EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), 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), and/or in the Supplementary Conditions.

## **MISCELLANEOUS**

### 9.01 Terms

- A. Terms used in the Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions unless otherwise stated herein.

### 9.02 Successors and Assigns; Assignment

- 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.
- B. Contractor acknowledges and agrees that Owner anticipates, and shall have the right to, assign the Contract to the Willowbrook Community Development District at any time after the Effective Date thereof by notice to Contractor and, if Owner has performed its obligations such that the representations therein are true and correct, Contractor shall execute an Acknowledgement and Acceptance of Assignment and Release, and the parties shall sign an Addendum to Contract, both in the form as attached in Exhibit B. A Change Order shall be



issued to Contractor to compensate Contractor for the cost and/or premium for such bonds and equitably adjusting the Contract Price accordingly.

9.03 Assignment of Warranties

A. Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Contractor shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner.

9.04 Construction Defects

A. CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.05 Restriction on Removal of Fill Dirt from Work Site

A. Contractor acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the Owner.

9.06 Counterparts; Electronic Signatures

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. Additionally, the parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions (e.g. via PDF) of an original signature, or signatures created in a digital format.

[Signatures on following page]

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

This Agreement will be effective on March \_\_\_\_\_, 2024 (which is the Effective Date of the Contract).

Owner:

KRPC Willowbrook, LLC  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: Steve Rosser  
*(typed or printed)*

Title: Manager  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

121 Garfield Avenue  
Winter Park, Florida 32789

Designated Authorized Representative:

Name: Steve Rosser  
*(typed or printed)*

Title: Manager  
*(typed or printed)*

Address:

121 Garfield Avenue  
Winter Park, Florida 32789

Phone: (407) 645-4400

Email: [srosser@keewin.net](mailto:srosser@keewin.net)

*(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Contractor:

Jon M Hall Company, LLC  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771

Designated Authorized Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771

Phone: (407) 215-0410

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: Florida

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**

**WILLOWBROOK NORTH “Construction Phase 1”**

Prepared by



Issued and Published Jointly by



Endorsed by



# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## 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 document prepared by Contractor, in a form acceptable to Engineer, to request 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, the project manual and any documents included or referenced therein, including but not limited to 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; 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

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EJCDC® C-700, Standard General Conditions of the Construction Contract.

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- Price or Contract Times; 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.
- 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.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment, other than a claim by Contractor for payment of amounts due.
  - d. 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), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, chemical, element, compound, solution, mixture, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, chemical, element, compound, solution, mixture, or material.
  12. *Contract*—The entire and integrated written contract between 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. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *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.
24. *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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, 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.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *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.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner or Engineer to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *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.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *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.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *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.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *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.
38. *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 or areas furnished by Owner which are designated for the use of Contractor.
39. *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.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

42. *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 of such Work. Notwithstanding anything to the contrary herein, “Substantial Completion” shall be considered to be on the date which all applicable governmental agencies having jurisdiction over the Work have issued unconditional certificates of completion and have signed off on all final inspections with respect to each portion of the work and the Owner is able to utilize each portion of the Work set forth in the Contract Documents for the intended purpose. Also notwithstanding anything to the contrary contained herein, Contractor shall be responsible for obtaining the final inspections and applicable written approvals from all governmental agencies with jurisdiction with respect to each portion of the Work, and in connection therewith, Owner and Engineer shall comply with all of its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable

television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *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.
50. *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 Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the ~~Bidding Requirements~~ or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: 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*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. 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 Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.

G. 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 Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: ~~After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 one ~~four~~ printed copy ~~copies~~ of the Contract (including one fully signed 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 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 *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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

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

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

### **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. 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.

### 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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer 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 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 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 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 in writing 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.
- 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 notify Owner and Contractor in writing 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 versions, 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 precludes 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 30th 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. No Work shall be performed before the issuance of a Notice to Proceed. ~~In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th 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 may be done at the Site prior to such date. Notwithstanding the foregoing, should any Work be performed at the Site prior to such date, such Work shall be deemed to have been performed pursuant to this Contract.

##### **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.
  - 1. 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 must 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 will 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 Contract Price or 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. The Owner, in its sole and absolute discretion, may divide the Work into phases, and prioritize those phases, or elect to terminate the Contract early and complete only a portion of the Work. If Owner divides the Work into phases or prioritizes those phases, Contractor shall be entitled to an equitable adjustment in the Contract Time and/or Contract Price. Such changes in Contract Time and/or Contract Price shall be as negotiated in good faith between the Parties and set forth in a separate change order provided that any changes in Contract Price shall be consistent with the schedule of values provided by Contractor.
- 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. Such an adjustment will 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 to~~ only the following:
1. Severe and unavoidable acts of God or natural catastrophes such as fires, floods, epidemics, and earthquakes;
  2. Adverse weather days: defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site: (a) precipitation (rain, snow, or ice) in excess of one-half inch (0.50") liquid measure ("standard baseline"); or (b) sustained wind in excess of twenty-five (25) m.p.h. The Contractor must document such Adverse Weather and notify the Owner promptly of its occurrence;
  3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  4. Acts of war or terrorism.

Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event, or such claim shall be waived. Contractor shall be required to provide documentation and evidence of the existence of the conditions enumerated above for any adverse weather day.

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); or
2. delays beyond the control of both Owner and Contractor, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work;

Nor shall Owner or Engineer of each of them 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 resulting from such delays.

Except for an adjustment to the Contract Times, the Contractor shall not be entitled to and hereby waives any and all damages that it may suffer by reason of such 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 such delays or hindrances that are avoidable by Contractor.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price for delay, disruption, or interference is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price 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. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect

of the delay, disruption, or interference on the critical path to completion of the Work. Such supporting documentation shall include, where appropriate, documentation of abnormal weather conditions and an explanation of their impact on Contract Price and/or Contract Times.

- F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses 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.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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 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. ~~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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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.

2. If a damage or injury claim is made by the owner or occupant of any such land or area 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 7.13, 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 in a court of competent jurisdiction; 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, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, 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 will 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, rubbish, debris, 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:
  1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site ~~that contain Technical Data~~ from which the Engineer prepared the Contract Drawings and Specifications;
  2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), ~~that contain Technical Data~~ from which the Engineer prepared the Contract Drawings and Specifications; and
  3. Technical Data contained in such reports and drawings, if any.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.



Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *No Reliance by Contractor on Technical Data:* Contractor may not 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 upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.~~ Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for Owner's benefit by third parties and accordingly, Owner cannot guarantee the quantity, quality, completeness or accuracy of that information. Contractor warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the character, quality 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 foreseeable and foreseen risks, hazards, and difficulties in connection therewith.
- D. *Limitations of Other Data and Documents:* 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;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or 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:
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;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  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 whether it is necessary for Owner to obtain 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; 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. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
  - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, 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 subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  - 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 submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - 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 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, then any such adjustment will be set forth in a Change Order.
  4. 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, 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.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Owner and Engineer do not warrant or guarantee the accuracy or completeness of any information or data regarding underground facilities provided by others. Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for, without additional compensation from the Owner:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations, including but not limited to notification of and cooperation with utility companies and agencies when the Contractor's operations are close to existing facilities in order to provide time for the utilities to stake the location of their existing facilities. This coordination effort shall be done in compliance with Florida Statutes Chapter 556, "Underground Facility Damage Prevention and Safety Act," latest revision.;
  3. locating or verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. 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 on the Drawings, or was not shown or indicated on the Drawings 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), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; 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
4. 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. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, 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. 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;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. 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, then any such adjustment will 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, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site, if any;
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site, if any; and
  3. Technical Data contained in such reports and drawings.
- B. *No Reliance by Contractor on Technical Data Authorized:* Contractor may not 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 Paragraph 1.01.A.46.b.~~ Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner's benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness or accuracy of that information. 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;
  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. Neither Contractor nor any of its successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives shall store, place, generate, manufacture, refine, handle, or locate on the Site a Constituent of Concern except those that are being used or to be used in the performance of the Work or are part of the routine and anticipated working conditions at the Site or in the performance of the Work and only in strict compliance with any state federal or local government handling and storage requirements for 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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, 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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- 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.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor and Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to an existing Hazardous Environmental Condition, provided that such existing 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.B, 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. ~~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, 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.B, 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 obligates 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 Indemnitees ~~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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, arising out of or relating to the wholly or partially negligent, reckless, or intentionally wrongful failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, including without limitation, Contractor's successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, or to a Hazardous Environmental Condition created in whole or in part by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates 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. Only if Contractor is expressly required to furnish payment and performance bonds in the Bidding Documents and the cost of payment and performance bonds are included as a separate line item in Contractor's Bid, excluding any required maintenance bond, Contractor shall furnish a performance bond and a payment bond, each in an amount equal to the original Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year (for the payment bond) and two years (for the performance 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 terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds, if any required, must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 must 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 upon assignment to the Willowbrook Community Development District: "This Bond is hereby amended so that the provisions and limitations of Section 255.05, including without limitation subsection (6) and the notice and time limitation provisions in subsections (2) and (10), or Sections 713.23 and 713.245, Florida Statutes, whichever are applicable, are incorporated by reference herein."
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. 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.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.



- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

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. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Prior to commencing the Work and entering any lands upon which the Work shall be performed, Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision. Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. 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, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. 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.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain 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.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 30 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 and Engineer.
- O. The fact that an entity or individual is named as an additional insured on a particular insurance 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. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, 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;
  - 4. apply with respect to the performance of the Work, whether such performance is 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; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective supervisors, officers, directors, members, partners, employees, agents, subcontractors, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  - 4. not seek contribution from insurance maintained by the additional insured; and
  - 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

### 6.04 *Builder's Risk and Other 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 Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- ~~C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.~~
- 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 advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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 6.04, it may do so at Contractor's expense.

6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer 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.
  - 1. ~~Owner and Contractor waives all rights against each other and the respective Owner and its 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, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waives all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.~~

2. None of the above waivers extends 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. ~~Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, 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, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~
1. ~~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 all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss .
- D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 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 6.04 shall maintain such proceeds in a segregated account, and 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, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

## **ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES**

### **7.01 Contractor’s Means and Methods of Construction**

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### **7.02 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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### **7.03 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 maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions.
- C. 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 will 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.

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.

7.04 *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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, 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 equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) 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) has a proven record of performance and availability of responsive service; and
      - 4) is not objectionable to Owner.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
    - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
    - 2) the item 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 will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 Substitutes

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material 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 equipment or material under the circumstances described below. To the extent possible such requests must 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 equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.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 equipment or material that Contractor seeks to furnish or use. The application:
    - a. will 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 the item specified; and
  - 3) be suited to the same use as the item 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 the item specified; and
  - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will 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 will be final and binding, and may not be reversed through an

appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, 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 or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *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 an 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 will be disclosed 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, defend and hold harmless Indemnitees ~~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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees or costs) whether monetary or otherwise, 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, to the extent such infringement is caused in whole or in part by the negligent, reckless, or intentionally wrongful actions of the Contractor or those for which Contractor is responsible including without limitation, Contractor's successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

## 7.09 Permits

- A. Except for permits related to the site and development obtained by Owner and/or Engineer, unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses necessary and required for Contractor's performance of its Work. 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~~ Contractor shall pay all charges and fees of utility owners for connections for providing permanent service to the Work, including without limitation water and electrical meters (if applicable), installation fees, electrical inspection fees, and temporary services and utilities. Contractor shall additionally provide all signage required by applicable permits and governmental authorities.
- B. Owner and Contractor acknowledge and agree that Owner intends to turn over all or a portion of the Work upon completion to a governmental entity for ownership and maintenance. To the extent that Owner intends to turn over any portion of the Work to another governmental entity for ownership or other purposes, Contractor agrees at its sole expense to take all actions necessary (including but not limited to providing all warranties, improvement bonds, and close-out documents required by the governmental entity even if such requirements are beyond what is required herein) to ensure that the recipient governmental entity accepts the Work.

## 7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes and assessments 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.

## 7.11 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. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor or those for whom Contractor is responsible 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 Indemnitees ~~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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees or costs) whether monetary or otherwise arising out of or relating to such Work or other action. ~~It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.~~
- C. Owner or Contractor may give written 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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *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.

#### 7.13 *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.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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).
- E. 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. Among

other requirements, the Contractor or Subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards.

- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will 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.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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 or foreseeable 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) 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
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Shop Drawing or Sample; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
- 1. *Shop Drawings*
    - a. Contractor shall be required to submit all Shop Drawings by the following Milestone dates:
      - (1) For all X, by Y.
      - (2) for all Y, by Z.
- Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must 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.C.
- 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.C.

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. Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals and in no event shall Engineer fail to review and provide comments or approval longer than 72 hours after Contractor submittal. 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, comply with the requirements of 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 will 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 or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 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, will 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 or Sample will 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.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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 within 3 business days, or longer if agreed to by Owner in writing, of receipt of such drawings by Engineer. 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 Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.
- E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. *Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.*

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 is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
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. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. 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 will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- F. 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.
- G. The warranties provided in this Contract 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 losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers,~~

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EJCDC® C-700, Standard General Conditions of the Construction Contract.

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~~architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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, and its supervisors, managers, attorneys, engineers, 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, fees, and costs (including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), arising out of or relating to the performance or lack of performance of the Work or in conjunction with entry on Owner's property and provided that such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of personal or tangible , but only 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 \$5,000,000.00 per occurrence, (or the amount of any applicable insurance coverage, if such amount is greater), 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 will 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 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 unless such actions should have been, or were capable of being, discovered by the Contractor; or
2. giving directions or instructions if that is the primary cause of the injury or damage unless the Contractor should have been, or was capable of knowing, such directions or instructions would cause the liability giving rise to a claim as set forth in this section.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work only by express delegation in, and to the extent specifically and expressly required by, the Contract Documents. Such delegation shall specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria in the Contract Documents that such services must satisfy.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  1. Checking for conformance with the requirements of this Paragraph 7.19;
  2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.

## 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 third-party utility work that Owner has arranged to take place or that is not a responsibility of the Contractor at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies reasonably discoverable 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

### 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*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. 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 will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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 or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 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.
1. 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 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 8.03.B.
  2. 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 Contractor.
- C. 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, recklessness, or intentional misconduct 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, defend, and hold harmless Indemnitees ~~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 claims, and against all costs, liabilities, suits, liens, demands, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, arising out of or relating to such damage, delay, disruption, or interference.

## **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 will 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 (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 will keep Owner informed of the progress of the Work and will endeavor 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 10.07. 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 *Resident 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 the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *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.

10.06 *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.

10.07 *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, will 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 Contractor under 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 10.07 also apply to the Resident Project Representative, if any.

#### 10.08 *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 of which Engineer has been informed.

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that 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, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order or a Work Change Directive.

#### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in 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 11.05, (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 that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. ~~If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.~~ If Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A.4, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 *Work Change Directives*

- A. 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 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
  1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. 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.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *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 including but not limited to for the purposes of achieving cost savings, and Owner reserves the right to delete portions of the Work and contract with third parties to provide any such deleted Work.

Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

- B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *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.C.2.

#### 11.07 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must 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);
  - 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 11.07.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 11.07.C).~~
- C. Contractor's Fee: The Contractor's fee allowed to Contractor for overhead and profit shall be included in the Cost of the Work and/or in the approved Schedule of Values and shall not be claimed after bid submittal. When applicable, the Contractor's fee for overhead and profit will 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 will be 15 percent;~~

- ~~b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 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 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.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 5 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 will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;~~
- ~~d. No fee will 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 of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and~~
- ~~f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.~~

#### 11.08 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: 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.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must 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.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its reasoned discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
  4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must 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.
  5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *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 are subject 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;
  - 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; and
  - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- 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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will 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 will 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 will 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 will resume as of the date 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 will 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 will 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 will be incorporated in a Change Order or other written document 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 *Intentionally Omitted.*

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 for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will 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 and/or the Contract Documents.
- 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  - 3. Adjusted unit prices will apply to all units of that item.

## **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 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 with such procedures and programs 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 other than any expressly required by the Contract Documents to be furnished and paid for by Contractor, except that costs incurred in connection with tests or inspections of covered Work will 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 will 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 will 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 written 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 will 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.

1. 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, 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 will 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 defective Work as required by Engineer, then Owner may, after 7 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. The equipment referenced in the foregoing sentence shall include only equipment that is intended solely for use and installation or incorporation in the Project as part of the Work and shall not include Contractor's tools, machinery, or construction equipment. 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 for 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 25 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.
  2. ~~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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that 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, and no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.~~
  3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications*
1. Engineer will, within 5 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;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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*

- 1. ~~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.~~ Twenty 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.

*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 based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. ~~Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work; 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; or

- k. Other items entitle 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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 7 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.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will 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 7 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.

#### 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 15.03.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 6.04 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 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must 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 duly pending Change Proposals and Claims or other disputes or items that Contractor believes are unresolved; 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 Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final 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 shall, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's reasoned opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability*: In support of, and at the same time as, its recommendation of payment of the final Application for Payment, Engineer shall also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *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 and issuance of notice of the acceptability of the Work. Without intending to limit any other requirements set forth herein for final payment, the Work shall not be deemed complete until the Engineer has certified that, among any other requirements herein, the Contractor has completed all of the Work; there is satisfactory operation of all equipment, by means of acceptance tests; all punch list items has been corrected to the satisfaction of Owner and Engineer; the Contractor has provided all evidence of all releases of all mechanics', materialmen's and like liens; all warranties, equipment operation and maintenance manuals, As-Built Drawings and other required documents have been delivered; the Work is ready for all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction; all rubbish, tools, and surplus materials and equipment from the Project Site have been removed; and a final affidavit and release of claims has been provided.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment. Final payment shall not be construed to mean acceptance of defective work or improper materials.
- 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 as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within two years after the date of Substantial Completion, or any common law warranty period, (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;

2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B.
- D. 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.
- E. 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.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to 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 directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.
- B. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and other protections reasonably necessary to protect the Work and the Site from foreseeable injury by the elements or otherwise.

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 any 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) 10 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) written 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. The equipment referenced in the foregoing sentence shall include only equipment that is intended solely for use and installation or incorporation in the Project as part of the Work and shall not include Contractor's tools, machinery, or construction equipment.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 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 will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 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, Owner, without waiving the provisions set forth in Section B below and in consideration for its ability to terminate for convenience, 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, for Work thereafter completed as specified in such notice, costs and expenses of demobilization including fair and reasonable overhead and profit on demobilization costs and expenses, as well as release and payment to Contractor of all retainage held by Owner related to the portion of the Work completed. ~~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.~~

- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, consequential damages of any kind, or other indirect economic loss arising out of or resulting from such termination.

C. Upon any such termination, Contractor shall:

1. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;
2. Place no further orders for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms reasonably satisfactory to Owner of all purchase orders and Subcontracts to the extent they relate to the performance of Work terminated or assign to Owner those orders and Subcontracts and revoke agreements specified in such notice;
4. Reasonably assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract, as may be necessary;
5. Complete performance of any Work which is not terminated; and

6. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors 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 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the eContract 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, 7 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, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise 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;
  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. In the event Owner or Contractor is required to enforce this Contract by court proceedings, alternative dispute resolution, appellate proceedings or otherwise, then venue for any such legal action shall be in Polk County, Florida, and the prevailing party shall be entitled to recover from the other party all fees and costs, including reasonable attorney's fees and costs,

paralegal fees, and expert witness fees, incurred in bringing or defending such action and/or enforcing any judgment granted in such action.

## ARTICLE 18—MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### 18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed ~~to~~ based on calendar days and shall 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 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 will not constitute a waiver of that provision, nor will 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 of the Contract or 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 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *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.

18.10 *Headings*

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

18.11 *No Third-Party Beneficiaries*

Except with respect to Contractor's indemnification of the Indemnitees as set forth herein, and except as otherwise specifically provided herein, this Contract is solely for the benefit of Owner and Contractor 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 Contract (specifically including but not limited to any design professionals, subcontractors, or material suppliers directly engaged by Contractor). Nothing in this Contract expressed or implied is intended or shall be construed to confer upon any person or corporation other than Owner and Contractor any right, remedy, or claim under or by reason of this Contract or any of the provisions or conditions of this Contract; and all of the provisions, representations, covenants, and conditions contained in this Contract shall inure to the sole benefit of and shall be binding upon Owner and Contractor and their respective representatives, successors, and assigns.

**SUPPLEMENTARY CONDITIONS RELATING TO INSURANCE REQUIREMENTS, SUBSURFACE CONDITIONS,  
AND HAZARDOUS CONDITIONS  
Willowbrook Phase 1**

The following supplements establish information supplementary to the *Standard General Conditions of the Construction Contract*, EJCDC Document No. C-700, 2018 Edition (the “**General Conditions**”), including establishing insurance limits and other requirements pursuant to Article 6, and identifying certain reports relating to subsurface conditions and hazardous conditions at the site pursuant to Article 5.

Other changes have been marked directly in underlined and strike-through text 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.

**SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS**

1. *Reports.* Pursuant to Paragraph 5.03.A.1. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

Geotechnical Engineering Services Report, dated February 15, 2024 and attached hereto.

OR

~~No reports related to physical conditions and subsurface structures at the Site are known to the Owner.~~

2. *Drawings.* Pursuant to Paragraph 5.03.A.2. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

No drawings related to physical conditions and subsurface structures at the Site are known to the Owner.

OR

~~No drawings related to physical conditions and subsurface structures at the Site are known to the Owner.~~

3. *Technical Data.* Pursuant to Paragraph 5.03.A.3. of the General Conditions, the following Technical Data is contained in the reports and drawings of subsurface and physical conditions:

N/A

OR

~~No reports or drawings related to physical conditions and subsurface structures at the Site are known to the Owner.~~

**SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE**

1. *Reports.* Pursuant to Paragraph 5.06.A.1. of the General Conditions, the following reports of Hazardous Environmental Conditions at or adjacent to the Site are known to Owner:

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

2. *Drawings.* Pursuant to Paragraph 5.06.A.2. of the General Conditions, the following drawings of Hazardous Environmental Conditions at or adjacent to the Site are known to Owner:

~~[Title of Drawing], prepared by [Preparing Entity], dated [date].~~

~~OR~~

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

3. *Technical Data.* Pursuant to Paragraph 5.06.A.3. of the General Conditions, the following Technical Data is contained in the reports and drawings of Hazardous Environmental Conditions:

~~[List Technical Data]~~

~~OR~~

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

**SC-6.01 PERFORMANCE, PAYMENT, AND OTHER BONDS**

No performance or payment bonds are required.

**SC-6.03 CONTRACTOR'S INSURANCE**

Pursuant to Paragraph 6.03.A. of the General Conditions, the limits of Contractor's required insurance shall be as follows.

A. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

1. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

2. *Commercial General Liability*

General Aggregate	\$3,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage*—Each Occurrence	\$2,000,000

*\*Property Damage liability shall provide explosion, collapse, and under-ground coverages where applicable.*

3. *Automobile Liability\**

<b>Bodily Injury</b>	
Each Person	\$1,000,000
Each Accident	\$1,000,000
<b>Property Damage</b>	
Each Accident	\$1,000,000
<b>AND</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

*\*Automobile liability insurance shall include coverage for all owned, non-owned, and hired vehicles.*

4. *Excess or Umbrella Liability*

Per Occurrence	\$5,000,000
General Aggregate	\$5,000,000

5. *Contractor’s Pollution Liability\**

Each Occurrence/Claim	\$1,000,000
General Aggregate	\$2,000,000

*\*Pollution liability shall cover third-party injury and property damage claims, including clean-up costs.*

6. *Builder’s Risk*

Completed Value	<i>Full insurable replacement value of the Work</i>
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- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days after notice has been received by the purchasing policyholder. Within three days of receipt of any such notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.
- C. Automobile liability insurance provided by Contractor will be written on an occurrence basis and provide coverage 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.

- D. Contractor's commercial general liability policy will be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and
  4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies will include and list Owner and its staff, officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds will provide primary coverage for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance will be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. The coverage afforded must be at least as broad as that of each and every one of the underlying policies. Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy.
- G. 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. This insurance shall:
1. include the Owner and Contractor as named 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.
  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.
- H. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.

- I. 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 15. Alternatively, the Owner has the right but not the obligation 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 Owner's obtaining the required insurance.

#### **SC-8.02 COORDINATION**

Pursuant to Paragraph 8.02 of the General Conditions, 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 adjected to the Site, the following information pertains to 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:

The authorized representatives and agents of KRPC Willowbrook, LLC, including but not limited to Steve Rosser, Allan Keen, Mckenzie Terrill and Steve Sloan.

2. An itemization of the specific matters to be covered by such authority and responsibility:

N/A

3. The extent of such authority and responsibilities: N/A

Upon recording, please return to:  
Jennifer Kilinski, Esq.  
517 E. College Avenue  
Tallahassee, Florida 32301

## NOTICE OF COMMENCEMENT

Permit Nos. \_\_\_\_\_

Parcel I.D. No.: Legal Description Attached

STATE OF FLORIDA  
COUNTY OF POLK

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property in Polk County, Florida. The following information is provided in this Notice of Commencement.

1. Description of property (legal description of property and address if available):  
That property identified at **Exhibit A.**
2. General description of improvements: Earthwork and clearing, roadway improvements, drainage improvements, waterline and accessories, sewer system, irrigation and accessories, and related miscellaneous work for Willowbrook North Phase 1 ("Project").
3. Owner information
  - a) Name and address: Willowbrook Community Development District  
c/o Governmental Management Services-Central Florida, LLC  
219 E. Livingston Street  
Orlando, Florida 32801
  - b) Interest in property: Construction Easement
  - c) Name and address of fee simple titleholder (if other than owner): KRPC Willowbrook, LLC ("Developer")
4. Contractor (name and address): Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771
5. Surety
  - a) Name and address: \_\_\_\_\_
  - b) Amount of bond: \$8,233,760.04
6. Lender (name and address): \_\_\_\_\_
7. Person within the State of Florida designated by owner upon whom notices or other documents may be served.



Name and address: Jill Burns, Governmental Management Services-Central Florida, LLC, 219 E. Livingston Street, Orlando, Florida 32801

8. In addition, owner designates the following individual to receive a copy of any notices: Kilinski | Van Wyk PLLC, 517 E. College Avenue, Tallahassee, FL 32301.
9. Expiration date of notice of commencement: the expiration date is one year from the date of recording unless a different date is specified).

The foregoing information and execution of this notice is being provided solely for the purpose of providing notice. The Owner of the property is a local unit of special purpose government and not an "Owner" as defined in Section 713.01(23), *Florida Statutes*.

Attest:

**WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson, Board of Supervisors

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors of the Willowbrook Community Development District, who is  personally known to me or  produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Official Notary Signature & Seal)

Print Name: \_\_\_\_\_  
Notary Public, State of Florida

**EXHIBIT A:** Legal Description

EXHIBIT A  
Legal Description

**NORTH PARCEL:**

COMMENCE AT THE NORTHEAST CORNER OF SECTION 10, TOWNSHIP 28 SOUTH, RANGE 26 EAST; THENCE, ALONG THE EAST LINE OF SAID SECTION 10, RUN SOUTH 00°07'28" EAST A DISTANCE OF 137.45 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF STATE ROAD NO. 544 (LUCERNE PARK ROAD); THENCE, RUN SOUTH 89°53'19" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 1699.36 FEET TO A POINT OF CURVATURE OF A CURVE TO THE LEFT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 22°43'03", A CHORD BEARING SOUTH 78°31'48" WEST WITH A CHORD DISTANCE OF 726.69 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 731.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING; THENCE, DEPARTING SAID RIGHT-OF-WAY LINE AND ALONG THE FOLLOWING ONE HUNDRED SEVEN (107) COURSES AS DESCRIBED BY A SURVEY BY PESURV, INC., PROJECT NO. 1579, ROBERT E. LAZENBY IV, P.E. #52006, PSM #6389, RUN (1) SOUTH 24°14'34" EAST A DISTANCE OF 65.67 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 102.00 FEET, A CENTRAL ANGLE OF 22°30'16", A CHORD BEARING SOUTH 12°59'26" EAST WITH A CHORD DISTANCE OF 39.81 FEET; THENCE, ALONG SAID CURVE, RUN (2) A DISTANCE OF 40.06 FEET TO A POINT OF TANGENCY; THENCE RUN (3) SOUTH 01°44'19" EAST A DISTANCE OF 61.72 FEET TO A POINT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 17.00 FEET, A CENTRAL ANGLE OF 90°00'03", A CHORD BEARING SOUTH 46°44'17" EAST WITH A CHORD DISTANCE OF 24.04 FEET; THENCE, ALONG SAID CURVE, (4) RUN A DISTANCE OF 26.70 FEET TO A POINT OF TANGENCY; THENCE RUN (5) NORTH 88°15'41" EAST A DISTANCE OF 29.84 FEET; THENCE RUN (6) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (7) SOUTH 01°44'19" EAST A DISTANCE OF 65.00 FEET; THENCE RUN (8) NORTH 88°15'41" EAST A DISTANCE OF 191.46 FEET; THENCE RUN (9) SOUTH 21°47'55" WEST A DISTANCE OF 182.23 FEET; THENCE RUN (10) SOUTH 10°18'49" WEST A DISTANCE OF 111.02 FEET; THENCE RUN (11) SOUTH 06°20'28" EAST A DISTANCE OF 31.78 FEET; THENCE RUN (12) SOUTH 10°24'42" EAST A DISTANCE OF 54.63 FEET; THENCE RUN (13) SOUTH 05°19'55" EAST A DISTANCE OF 113.33 FEET; THENCE RUN (14) SOUTH 05°26'27" WEST A DISTANCE OF 49.92 FEET; THENCE RUN (15) SOUTH 01°21'11" EAST A DISTANCE OF 279.65 FEET; THENCE RUN (16) SOUTH 01°30'16" EAST A DISTANCE OF 33.99 FEET; THENCE RUN (17) SOUTH 01°07'03" WEST A DISTANCE OF 61.24 FEET; THENCE RUN (18) SOUTH 03°14'57" EAST A DISTANCE OF 61.33 FEET; THENCE RUN (19) SOUTH 09°38'37" EAST A DISTANCE OF 85.84 FEET; THENCE RUN (20) SOUTH 02°33'05" WEST A DISTANCE OF 82.31 FEET; THENCE RUN (21) SOUTH 00°59'55" WEST A DISTANCE OF 41.05 FEET; THENCE RUN (22) SOUTH 27°20'51" EAST A DISTANCE OF 119.34 FEET; THENCE RUN (23) SOUTH 21°55'15" EAST A DISTANCE OF 43.92 FEET; THENCE RUN (24) SOUTH 25°25'05" EAST A DISTANCE OF 46.73 FEET; THENCE RUN (25) SOUTH 29°18'59" EAST A DISTANCE OF 62.53 FEET; THENCE (26) RUN SOUTH 18°08'22" EAST A DISTANCE OF 69.12 FEET THENCE RUN (27) SOUTH 25°45'05" EAST A DISTANCE OF 203.70 FEET; THENCE RUN

(28) SOUTH 35°31'25" EAST A DISTANCE OF 129.37 FEET; THENCE RUN (29) SOUTH 39°05'37" EAST A DISTANCE OF 170.07 FEET; THENCE RUN (30) SOUTH 62°35'36" EAST A DISTANCE OF 86.01 FEET; THENCE RUN (31) SOUTH 67°18'39" EAST A DISTANCE OF 81.88 FEET; THENCE RUN (32) SOUTH 65°17'05" EAST A DISTANCE OF 86.19 FEET; THENCE RUN (33) SOUTH 65°14'32" EAST A DISTANCE OF 160.88 FEET; THENCE RUN (34) SOUTH 42°25'05" EAST A DISTANCE OF 62.14 FEET; THENCE RUN (35) SOUTH 16°46'33" EAST A DISTANCE OF 71.63 FEET; THENCE RUN (36) SOUTH 31°17'48" EAST A DISTANCE OF 112.99 FEET; THENCE RUN (37) SOUTH 45°31'19" EAST A DISTANCE OF 123.81 FEET; THENCE RUN (38) SOUTH 33°31'02" EAST A DISTANCE OF 108.20 FEET; THENCE RUN (39) SOUTH 75°18'46" EAST A DISTANCE OF 30.67 FEET; THENCE RUN (40) SOUTH 18°52'36" EAST A DISTANCE OF 49.22 FEET; THENCE RUN (41) SOUTH 42°51'44" EAST A DISTANCE OF 44.94 FEET; THENCE RUN (42) SOUTH 18°43'34" EAST A DISTANCE OF 61.08 FEET; THENCE RUN (43) SOUTH 41°25'19" EAST A DISTANCE OF 99.47 FEET; THENCE RUN (44) SOUTH 10°00'58" EAST A DISTANCE OF 49.92 FEET; THENCE RUN (45) SOUTH 28°45'37" EAST A DISTANCE OF 128.89 FEET; THENCE RUN (46) SOUTH 22°27'37" EAST A DISTANCE OF 48.99 FEET; THENCE RUN (47) SOUTH 23°23'08" EAST A DISTANCE OF 168.86 FEET; THENCE RUN (48) SOUTH 18°38'33" EAST A DISTANCE OF 14.11 FEET; THENCE RUN (49) SOUTH 16°12'55" EAST A DISTANCE OF 173.77 FEET; THENCE RUN (50) SOUTH 26°02'45" EAST A DISTANCE OF 146.50 FEET; THENCE RUN (51) SOUTH 39°50'19" EAST A DISTANCE OF 74.25 FEET; THENCE RUN (52) SOUTH 27°05'27" EAST A DISTANCE OF 68.44 FEET; THENCE RUN (53) SOUTH 56°07'54" EAST A DISTANCE OF 30.87 FEET; THENCE RUN (54) SOUTH 13°44'32" EAST A DISTANCE OF 32.09 FEET; THENCE RUN (55) SOUTH 38°42'48" EAST A DISTANCE OF 90.93 FEET; THENCE RUN (56) SOUTH 17°00'26" EAST A DISTANCE OF 22.47 FEET; THENCE RUN (57) SOUTH 46°15'23" EAST A DISTANCE OF 70.76 FEET; THENCE RUN (58) SOUTH 47°18'33" EAST A DISTANCE OF 92.46 FEET; THENCE RUN (59) SOUTH 45°47'01" WEST A DISTANCE OF 27.26 FEET; THENCE RUN (60) NORTH 66°16'10" EAST A DISTANCE OF 19.12 FEET; THENCE RUN (61) SOUTH 72°14'50" EAST A DISTANCE OF 61.74 FEET; THENCE RUN (62) SOUTH 01°17'45" EAST A DISTANCE OF 47.33 FEET; THENCE RUN (63) SOUTH 34°55'37" EAST A DISTANCE OF 122.41 FEET; THENCE RUN (64) SOUTH 30°41'09" EAST A DISTANCE OF 115.62 FEET; THENCE RUN (65) SOUTH 31°51'50" EAST A DISTANCE OF 114.98 FEET; THENCE RUN (66) SOUTH 24°49'19" EAST A DISTANCE OF 108.73 FEET; THENCE RUN (67) SOUTH 20°40'07" EAST A DISTANCE OF 54.42 FEET; THENCE RUN (68) SOUTH 14°25'21" EAST A DISTANCE OF 60.74 FEET; THENCE RUN (69) SOUTH 30°18'00" EAST A DISTANCE OF 56.19 FEET; THENCE RUN (70) SOUTH 22°25'07" EAST A DISTANCE OF 66.79 FEET; THENCE RUN (71) SOUTH 23°19'46" EAST A DISTANCE OF 46.76 FEET; THENCE RUN (72) SOUTH 26°34'29" EAST A DISTANCE OF 120.05 FEET; THENCE RUN (73) SOUTH 04°03'40" WEST A DISTANCE OF 113.51 FEET; THENCE RUN (74) SOUTH 20°25'56" EAST A DISTANCE OF 30.41 FEET; THENCE RUN (75) SOUTH 56°12'51" EAST A DISTANCE OF 45.66 FEET; THENCE RUN (76) SOUTH 09°45'17" WEST A DISTANCE OF 42.32 FEET; THENCE RUN (77) SOUTH 13°18'50" WEST A DISTANCE OF 36.73 FEET; THENCE RUN (78) SOUTH 15°22'55" WEST A DISTANCE OF 17.85 FEET; THENCE RUN (79) SOUTH 00°57'02" WEST A DISTANCE OF 22.66 FEET; THENCE RUN (80) SOUTH 26°50'51" WEST A DISTANCE OF 32.66 FEET; THENCE RUN (81) NORTH 87°11'09" WEST A DISTANCE OF 56.18 FEET; THENCE RUN (82) NORTH 78°15'36" WEST A DISTANCE

OF 21.13 FEET; THENCE RUN (83) NORTH 33°14'32" WEST A DISTANCE OF 45.29 FEET; THENCE RUN (84) SOUTH 47°47'36" WEST A DISTANCE OF 38.67 FEET; THENCE RUN (85) SOUTH 28°21'34" WEST A DISTANCE OF 5.10 FEET; THENCE RUN (86) SOUTH 45°31'50" WEST A DISTANCE OF 135.10 FEET; THENCE RUN (87) SOUTH 89°49'14" WEST A DISTANCE OF 202.62 FEET; THENCE RUN (88) NORTH 81°35'22" WEST A DISTANCE OF 200.26 FEET; THENCE RUN (89) NORTH 70°35'59" WEST A DISTANCE OF 144.18 FEET; THENCE RUN (90) NORTH 72°07'51" WEST A DISTANCE OF 111.39 FEET; THENCE RUN (91) NORTH 81°30'44" WEST A DISTANCE OF 137.41 FEET; THENCE RUN (92) SOUTH 86°56'56" WEST A DISTANCE OF 393.25 FEET; THENCE RUN (93) SOUTH 66°45'52" WEST A DISTANCE OF 199.31 FEET; THENCE RUN (94) SOUTH 23°20'01" WEST A DISTANCE OF 10.08 FEET TO A POINT ON THE NORTH LINE OF THAT PERPETUAL 100 FOOT WIDE EASEMENT AS RECORDED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 OF THE PUBLIC RECORDS OF POLK COUNTY FLORIDA; THENCE RUN (95) NORTH 74°39'11" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 656.11 FEET; THENCE, DEPARTING SAID NORTH LINE, RUN (96) NORTH 14° 51'12" EAST A DISTANCE OF 540.08 FEET; THENCE RUN (97) NORTH 24°23'40" WEST A DISTANCE OF 380.00 FEET; THENCE RUN (98) NORTH 01°07'00" EAST A DISTANCE OF 629.14 FEET; THENCE RUN (99) NORTH 27°23'40" WEST A DISTANCE OF 800.00 FEET; THENCE RUN (100) NORTH 06°15'35" EAST A DISTANCE OF 680.00 FEET; THENCE RUN (101) NORTH 20°23'40" WEST A DISTANCE OF 735.00 FEET; THENCE RUN (102) NORTH 03°49'25" WEST A DISTANCE OF 140.00 FEET; THENCE RUN (103) NORTH 20°10'35" EAST A DISTANCE OF 130.00 FEET; THENCE RUN (104) NORTH 03°49'25" WEST A DISTANCE OF 125.00 FEET; THENCE RUN (105) NORTH 86°10'35" EAST A DISTANCE OF 150.00 FEET; THENCE RUN (106) NORTH 01°24'48" WEST A DISTANCE OF 941.77 FEET; THENCE RUN (107) NORTH 59°53'40" WEST A DISTANCE OF 70.00 FEET TO A POINT ON THE AFORESAID SOUTHERLY RIGHT OFWAY LINE OF STATE ROAD NO. 544, THENCE RUN NORTH 63°17'43" EAST A DISTANCE OF 75.21 FEET TO A POINT OF CURVATURE, ON SAID RIGHT-OF-WAY LINE, OF A CURVE TO THE RIGHT WITH A RADIUS OF 1844.86 FEET, A CENTRAL ANGLE OF 03°51'58", A CHORD BEARING NORTH 65°14'18" EAST WITH A CHORD DISTANCE OF 124.46 FEET; THENCE, ALONG SAID CURVE OF SAID RIGHT-OF-WAY LINE, RUN A DISTANCE OF 124.48 FEET TO A POINT ON SAID RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING.

**DEVELOPER’S AFFIDAVIT AND AGREEMENT  
REGARDING ASSIGNMENT OF CONTRACTOR AGREEMENT  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned, personally appeared Steve Rosser, as Manager of KRPC Willowbrook, LLC (“**Developer**”), who, after being first duly sworn, deposes and says:

- (i) I, Steve Rosser, as Manager and authorized representative for Developer am authorized to make this affidavit on its behalf. I make this affidavit in order to induce the Willowbrook Community Development District (“**District**”) to accept an assignment of the Contractor Agreement (defined below).
- (ii) The agreement (“**Contractor Agreement**”) between Developer and Jon M Hall Company, LLC (“**Contractor**”), dated \_\_\_\_\_, 2024 including all change orders approved to date, and attached hereto as **Exhibit A**, either
  - a.   X   was competitively bid prior to its execution and represents a fair, competitive and reasonable price for the work involved; or
  - b. \_\_\_\_\_ is below the applicable bid thresholds and was not required to be competitively bid prior to its execution.

(iii) Developer, in consideration for the District’s acceptance of an assignment of the Contractor 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 Contractor Agreement. Such indemnification does not negate the responsibilities of the District or the Contractor in performance of its requirements under the Agreement or Florida law.

(iv) Developer has obtained a release from Contractor (and all subcontractors and material suppliers thereto) acknowledging the assignment of the above referenced contract and the validity thereof, the satisfaction of the bonding requirements of Section 255.05, *Florida Statutes*, 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:
  - a.   X   furnished and recorded a performance and payment bond in accordance with Section 255.05, *Florida Statutes*, which is attached hereto as **Exhibit C**, or
  - b. \_\_\_\_\_ was not required to provide such a bond pursuant to Section 255.05, *Florida Statutes*; or
  - c. \_\_\_\_\_ Developer will furnish a demand note agreement in satisfactory form to the District.

(vi) Developer

- a.   X   represents and warrants that there are no outstanding liens or claims relating to the Contractor Agreement, or
- b.        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 Contractor Agreement are current and there are no outstanding disputes under the Contractor Agreement.

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 March, 2024.

**KRPC Willowbrook, LLC**

\_\_\_\_\_  
\_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Name: Steve Rosser, Manager

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this    day of March, 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

**Willowbrook  
Community Development District**

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Chairman, Board of Supervisors

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this    day of March, 2024, by McKenzie Terrill, Chairperson of the Willowbrook Community Development District, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

**CONTRACTOR'S ACKNOWLEDGMENT AND ACCEPTANCE OF  
ASSIGNMENT AND RELEASE  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

For ten dollars and such additional good and valuable consideration received in hand, the receipt and sufficiency of which are hereby acknowledged, Jon M Hall Company, LLC ("**Contractor**"), hereby agrees as follows:

- (i) The agreement between KRPC Willowbrook LLC and Contractor dated \_\_\_\_\_, 2024 ("**Contractor Agreement**"), has been assigned to the Willowbrook Community Development District ("**District**"). Contractor acknowledges and accepts such assignment and its validity.
  
- (ii) Contractor represents and warrants that either:
  - a.   X   Contractor has furnished and recorded 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 Contractor Agreement.
  
- (iii) Contractor represents and warrants that all payments to Contractor and any subcontractors or materialmen under the Contractor Agreement are current, there are no past-due invoices for payment due to Contractor under the Contractor Agreement, and there are no outstanding disputes under the Contractor 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 March, 2024.

**JON M HALL COMPANY, LLC,**  
a Florida limited liability company

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Jon M Hall Company, LLC, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature



**ADDENDUM (“ADDENDUM”) TO CONTRACTOR AGREEMENT (“CONTRACT”)  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**1. ASSIGNMENT.** This Addendum applies to that certain contract between the Willowbrook Community Development District (“**District**”) and Jon M Hall Company, LLC (“**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, *Florida Statutes*, 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, *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.** In addition to the existing additional insureds under the Contract, the District, its officers, governing board, agents, staff, and representatives shall be named as additional insureds 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. LOCAL GOVERNMENT PROMPT PAYMENT ACT.** Notwithstanding any other provision of the Contract, all payments to the Contractor shall be made in a manner consistent with the Local Government Prompt Payment Act, sections 218.70 through 218.80, *Florida Statutes*. Contractor shall make payments due to subcontractors and materialmen and laborers 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*. All payments due and not made within the time prescribed by Section 218.735, *Florida Statutes*, bear interest at the rate of two percent (2%) per month on the unpaid balance in accordance with Section 218.735(9), *Florida Statutes*. To the extent the Contract 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 the Contract, together with this Addendum, 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. Further, the District shall hold retainage up to 5% of each pay application, consistent with Chapters 218 and 255, *Florida Statutes*.

**5. INDEMNIFICATION.** Contractor’s indemnification, defense, and hold harmless obligations under the Contract shall continue to apply to the original indemnitees and shall further include the District and its supervisors, consultants, agents, attorneys, managers, engineers and representatives. To the extent that a maximum limit for indemnification is required by law, and not otherwise set forth in the Contract, the indemnification limit shall be the greater of the limits of the insurance amounts set forth in the Contract

or Three Million Dollars (\$3,000,000), which amounts Contractor agrees bears a reasonable commercial relationship to the Contract and are enforceable and were included as part of the bid and/or assignment documents. Contractor's obligations hereunder are intended to be consistent with all provisions of applicable law, and to the extent found inconsistent by a court of competent jurisdiction, the Contract shall be deemed amended and/or reformed consistent with the intent of this paragraph and such that the obligations apply to the maximum limits of the law.

**6. TAX EXEMPT DIRECT PURCHASES.** The parties agree that the District may in its sole discretion elect to undertake a direct purchase of any or all materials incorporated into the work performed according to the Contract. In such event, the following conditions shall apply:

a. The District represents to Contractor that the District is a governmental entity exempt from Florida sales and use tax and has provided Contractor with a copy of its Consumer Exemption Certificate.

b. The District may elect to implement a direct purchase arrangement whereby the District will directly acquire certain materials ("Direct Purchase Materials") necessary for the work directly from the suppliers to take advantage of District's tax-exempt status.

c. Prior to purchasing any materials, the Contractor shall contact the District to determine which materials will be treated as Direct Purchase Materials and verify the exact manner, method, and requirements for acquiring any such Direct Purchase Materials.

d. The District shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and to the Contractor. Each Certificate of Entitlement will be in the format specified by Rule 12A-1.094(4)(c), Florida Administrative Code. Each Certificate of Entitlement shall have attached thereto the corresponding purchase order. 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 District; (3) payment of the vendor's invoice will be made directly by the District to the vendor from public funds; (4) the District 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 District assumes the risk of damage or loss at the time of purchase or delivery by the vendor. 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.

e. The District shall issue purchase orders directly to suppliers of Direct Purchase Materials. The District shall issue a separate Certificate of Entitlement for each purchase order. Such purchase orders shall require that the supplier provide the required shipping and handling insurance and provide for delivery F.O.B. jobsite. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the District and if the original contract contemplated sale of materials and installation by same person, the change order shall reflect sale of materials and installation by different legal entities.

f. Upon delivery of the Direct Purchase Materials to the jobsite, the District shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, the District shall accept and take title to the Direct Purchase Materials.

g. Suppliers shall issue invoices directly to the District. The District shall process invoices and issue payment directly to the suppliers from public funds.

h. Upon acceptance of Direct Purchase Materials, the District shall assume risk of loss of same until they are incorporated into the project. Contractor shall be responsible for safeguarding all Direct

Purchase Materials and for obtaining and managing all warranties and guarantees for all materials and products.

i. The District shall, at its option, maintain builder's risk insurance on the Direct Purchase Materials.

**7. PUBLIC RECORDS.** Contractor agrees and understands that Chapter 119, *Florida Statutes*, may be applicable to documents prepared in connection with the services provided hereunder and agrees to cooperate with public record requests made thereunder. In connection with this Contract, Contractor agrees to comply with all provisions of Florida's public records laws, including but not limited to Section 119.0701, *Florida Statutes*, the terms of which are incorporated herein. Among other requirements, Contractor must:

- a. Keep and maintain public records required by the District to perform the service.
- b. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if Contractor does not transfer the records to the District.
- d. Upon completion of this Agreement, transfer, at no cost, to the District all public records in possession of Contractor or keep and maintain public records required by the District to perform the service. If Contractor transfers all public records to the District upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT C/O JILL BURNS, GOVERNMENTAL MANAGEMENT SERVICES – CENTRAL FLORIDA, LLC, 219 EAST LIVINGSTON STREET, ORLANDO, FLORIDA 32801, PHONE (407) 841-5524, AND JBURNS@GMSCFL.COM.**

**8. 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.

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

District: Willowbrook Community Development District  
c/o Governmental Management Services – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager

With a copy to: Kilinski | Van Wyk PLLC  
517 E. College Ave  
Tallahassee, Florida 32301  
Attn: District Counsel

**10. SCRUTINIZED COMPANIES STATEMENT.** Upon the Assignment, Contractor shall properly execute a sworn statement pursuant to section 287.135(5), *Florida Statutes*, regarding Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Terrorism Sectors List, 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 A**. If 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 the Iran Terrorism Sectors List or been engaged in business operations in Cuba or Syria, the District may immediately terminate the Contract.

**11. 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**.

**12. 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**.

**13. DISCRIMINATION STATEMENT.** Upon the Assignment, Contractor shall properly execute a sworn statement under Section 287.134(2)(a), *Florida Statutes*, regarding discriminatory vendor list, 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 D**.

**14. CONSTRUCTION DEFECTS.** 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.

[signatures on following page]

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

**JON M HALL COMPANY, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Print Name of Witness

**WILLOWBROOK**  
**COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairman, Board of Supervisors

\_\_\_\_\_  
Print Name of Witness

- Exhibit A:** Scrutinized Companies Statement
- Exhibit B:** Public Entity Crimes Statement
- Exhibit C:** Trench Safety Act Statement
- Exhibit D:** Discrimination Statement

**EXHIBIT A**  
**SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES,**  
**REGARDING SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR**  
**SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN TERRORISM SECTORS**  
**LIST**

**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 Willowbrook Community Development District by \_\_\_\_\_ (print individual's name and title) for Jon M Hall Company, LLC (print name of entity submitting sworn statement) whose business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
2. I understand that, subject to limited exemptions, section 287.135, *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 Terrorism Sectors 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 accepts assignment of its Contract with KRPC Willowbrook, LLC to the Willowbrook 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 Terrorism Sectors 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. The entity will immediately notify the Willowbrook 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 Terrorism Sectors 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 and subscribed before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of March 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Jon M Hall Company, LLC.

\_\_\_\_\_  
Signature of Notary Public taking acknowledgement

(SEAL)

**EXHIBIT B**  
**SWORN STATEMENT UNDER SECTION 287.133(3)(a),**  
**FLORIDA STATUTES, REGARDING PUBLIC ENTITY CRIMES**

**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 Willowbrook Community Development District.
2. 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 Jon M Hall Company, LLC, (“Contractor”), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor’s business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
4. Contractor’s Federal Employer Identification Number (FEIN) is 59-1748765.

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

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 an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and 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 adjudication 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 jury verdict, nonjury trial, or entry of a plea 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 for the provision of goods or services 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 officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity, have 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 the officers, directors, executives, partners, shareholders, employees, members or agents who are active in 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, AND (please indicate which additional statement applies):

\_\_\_\_\_ There has been a proceeding concerning the conviction before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Florida Department of Management Services.)

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 March, 2024.

Subcontractor: \_\_\_\_\_

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

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

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, 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





**TRENCH SAFETY ACT COMPLIANCE COST STATEMENT**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**INSTRUCTIONS**

Because trench excavations on this Project are expected to be in excess of 5 feet, Florida’s Trench Safety Act, Sections 553.60 – 553.64, *Florida Statutes*, 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. The Contractor further identifies the costs as follows:

Type of Trench Safety Mechanism	Quantity	Unit Cost <sup>1</sup>	Item Total Cost
<b>Project Total</b>			

Dated this \_\_\_\_\_ day of March, 2024.

Contractor: **JON M HALL COMPANY, LLC**

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

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
 Notary Public, State of Florida

<sup>1</sup> Use cost per linear square foot of trench excavation used and cost per square foot of shoring used.

**EXHIBIT D**  
**SWORN STATEMENT PURSUANT TO SECTION 287.134(2)(a), FLORIDA STATUTES,**  
**ON DISCRIMINATION**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**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 Willowbrook Community Development District.
2. I, \_\_\_\_\_ (print name of authorized representative) am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of \_\_\_\_\_ (print individual's title) for Jon M Hall Company, LLC ("Contractor"), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor's business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
4. Contractor's Federal Employer Identification Number (FEIN) is 59-1748765.

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

5. 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.
6. 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*.
7. 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.
8. I understand that an "affiliate" as defined in Section 287.134(1)(a), *Florida Statutes*, means:
  - a. A predecessor or successor of an entity that discriminated; or
  - b. 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
9. 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 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.

\_\_\_\_\_  
Signature by authorized representative

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

**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):  
Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771  
Phone: (407) 215-0410

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

OWNER: Willowbrook Community Development District  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Phone: (407) 841-5524

**CONTRACT**

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

Amount: \$8,233,760.04

Description (Name and Location): Willowbrook Community Development District – North Phase 1 – Winter Haven, Florida

**BOND**

Bond Number:

Date (Not earlier than Contract Date):

Amount: \$8,233,760.04

Modifications to this Bond Form: This Bond is hereby amended so that the provisions and limitations of Section 255.05, Florida Statutes, are incorporated by reference herein.

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.

CONTRACTOR AS PRINCIPAL  
Company: Jon M Hall Company, LLC

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: \_\_\_\_\_  
Signature and Title

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: \_\_\_\_\_  
Signature and Title:

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:

1. 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

2. 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 non-performance 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.

**PAYMENT BOND**

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

CONTRACTOR (Name and Address and Phone Number):  
Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771  
Phone: (407) 215-0410

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

OWNER: Willowbrook Community Development District  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Phone: (407) 841-5524

**CONTRACT**

Date:                     

Amount: \$8,233,760.04

Description (Name and Location): Willowbrook Community Development District – North Phase 1 – Winter Haven, Florida

**BOND**

Bond Number:

Date (Not earlier than Contract Date):

Amount: \$8,233,760.04

Modifications to this Bond Form:

This Bond is hereby amended so that the provisions and limitations of Section 255.05, Florida Statutes, are incorporated by reference herein.

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.

CONTRACTOR AS PRINCIPAL  
Company: Jon M Hall Company, LLC

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: \_\_\_\_\_  
Signature and Title

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: \_\_\_\_\_  
Signature and Title:



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:
    1. 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
    2. 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):**

# SECTION B

# **AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE) WILLOWBROOK SOUTH – “CONSTRUCTION PHASE 1”**

This Agreement is by and between KRPC Willowbrook, LLC (“Owner”) and Jon M Hall Company, LLC (“Contractor”).

Terms used in this Agreement have the meanings stated in the General Conditions and the Supplementary Conditions.

Owner and Contractor hereby agree as follows:

## **WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: All labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents, including but not limited to work related to earthwork/clearing, roadway improvements, drainage improvements, waterline and accessories, sewer system, irrigation and accessories, related miscellaneous work, and coordination efforts to support the development of Willowbrook South “Construction Phase 1” all as more particularly described in the Contract Documents.

## **THE PROJECT**

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: Construction services generally related to construction of infrastructure improvements for Willowbrook South “Construction Phase 1”, as more fully described in the engineering documents and specifications contained within the Contract Documents.

## **ENGINEER**

3.01 The Owner has retained Sloan Engineering Group, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities of Engineer, and have the rights and authority assigned to Engineer in the Contract.

3.02 The part of the Project that pertains to the Work has been designed by Engineer.

## **CONTRACT TIMES**

4.01 *Time is 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. The Work to be performed under this Agreement shall be commenced no later than ten (10) calendar days, including Saturdays, Sundays, and holidays, from the date of the Notice to Proceed.

~~4.02 Contract Times: Dates~~

- ~~A. The Work will be substantially complete on or before **[date]**, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before **[date]**.~~

4.03 Contract Times: Days

- A. The Work for Willowbrook South "Construction Phase 1" will be substantially complete within \_\_\_ days after the date when the Contract 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 \_\_\_ days after the date when the Contract Times commence to run.

~~4.04 Milestones~~

- ~~A. Parts of the Work must 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]**~~
- ~~B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.~~
- ~~C. *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 **[\$number]** for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to **[\$number]**.~~

4.05 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 Contract Times, as duly modified. 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. The Owner and Contractor agree that an assessment of actual damages as of the date of this Agreement would be uncertain, and the amount of liquidated damages set forth herein is reasonable. Accordingly, instead of requiring any such proof of actual damages, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
1. *Substantial Completion:* Contractor shall pay Owner \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified 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 \$750.00 for each day that expires after such time until the Work is completed and ready for final payment for the first thirty (30) calendar days and \$1,000.00 for each day after the first 30 until final completion.

3. *Milestones:* Contractor shall pay Owner \$[number] 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, or until the time specified for Substantial Completion is reached, at which time the rate indicated in Paragraph 4.05.A.1 will apply, rather than the Milestone rate.
  4. Liquidated damages for failing to timely attain Milestones, Substantial Completion, and final completion are not additive, and will not be imposed concurrently.
- B. If Owner recovers liquidated damages for a delay in completion by Contractor, then such liquidated damages are Owner's sole and exclusive remedy for such delay, and Owner is precluded from recovering any other damages, whether actual, direct, excess, or consequential, for such delay, except for special damages (if any) specified in this Agreement.
- C. ~~*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 \$500.00 for each day prior to the time specified above for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus will be limited to \$\_\_\_\_\_.~~

#### 4.06 *Special Damages*

- A. Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.
- C. The special damages imposed in this paragraph are supplemental to any liquidated damages for delayed completion established in this Agreement.

## 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:

- A. For all Work other than Unit Price Work (priced for Change Orders as set forth herein), a lump sum not to exceed \$6,205,113.00 for the Willowbrook South "Construction Phase 1" improvements.

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					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
				\$	\$
				\$	\$
				\$	\$
				\$	\$
				\$	\$
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$

~~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) \$[number].~~
- D. For all Work, including additions or changes to the Work, payment shall be made in accordance with at the prices stated in Contractor's Bid, attached hereto as an exhibit. Unit Pricing, as shown in the Contractor's Bid attached hereto, shall be used in connection with pricing for change orders. No fuel, labor or material cost escalation shall be permitted whatsoever.

5.02 *Fuel Escalation*

~~The cost of fuel is volatile, and sudden, unforeseeable price increases have and could occur during the performance of the Work. As a result, this price adjustment provision shall apply throughout the Work to minimize the uncontrollable and uncertain cost impacts upon Contractor of rising fuel prices.~~

~~Contract price adjustments will be made on each applicable progress payment to reflect increases in the prices of gasoline and diesel fuels from those in effect on May 24, 2023, the month in which Contractor's initial bid proposal was prepared (the "Base Month").~~

~~The Contractor will certify the number of gallons of fuel (gasoline and/or diesel) used on this Contract during the period represented by each Application for Payment. Contract Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Florida Department of Transportation in the "Fuel and Bituminous Average Price Index" available at <https://www.fdot.gov/construction/fuel-Bit/Fuel-Bit.shtm> ("Fuel Prices").~~

~~When Fuel Prices have increased between the Base Month and the period represented by the Application for Payment, the Contract Price shall be adjusted and Contractor shall be paid an additional amount equal to the difference between the Fuel Prices in such month and the Fuel Prices in the Base Month, multiplied by the number of gallons of such fuel used during the period represented by such Application for Payment.~~

~~This Fuel Escalation provision shall be in effect throughout the life of the Contract and on every Application for Payment.~~

## 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 the basis of Contractor's Applications for Payment by the last day of each month during performance of the Work, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract, ~~on or about the [ordinal number, such as 5th] 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. Five percent (5%) of the amount of each progress payment shall be withheld as retainage until final completion of the Work, acceptance of the Work by the Owner, satisfaction of all punch list requirements, and submission of all documents required under Paragraph 15.06 of the General Conditions, subject to any offsets to which the Owner is entitled.

- ~~1. 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. [number] percent of the value of the Work completed (with the balance being retainage).~~

~~If 50 percent or more of the Work has been 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. [number] 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 [number] percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less [number]~~



~~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.~~

6.03 *Final Payment*

Upon final completion and acceptance of the Work, in accordance with Paragraph 15.06 of the General Conditions, and subject to final acceptance by the City of Winter Haven/Polk County, as applicable and the local utility provider, as applicable, Owner shall pay the remainder of the Contract Price as recommended by the Engineer and in accordance with Paragraph 15.06 of the General Conditions.

6.04 *Intentionally Omitted*

6.05 *Interest*

- A. All amounts not paid when due will bear interest at the rate of eighteen percent (18%) per annum.

**CONTRACT DOCUMENTS**

7.01 *Contents*

- A. The Contract Documents consist of all of the following:
1. This Agreement as modified herein.
  2. General Conditions as modified therein.
  3. Supplementary Conditions Relating to Insurance Requirements, Subsurface Conditions, and Hazardous Conditions.
  4. Contractor's Bid Form, including but not limited to Specifications as listed in the table of contents of the Project Manual (copy of list not attached), including technical specifications (by signing this Contract, Contractor acknowledges that he/she will conform all work to the latest standards and specifications of FDOT, Polk County, City of Winter Haven, all applicable utility authorities and other applicable codes, regulations and laws as applicable).
  5. Permits (to be provided by Owner upon receipt):
    - a. Southwest Florida Water Management District Permit ERP
    - b. Polk County Development Order (pending)
    - c. Florida Dept. of Health (pending)
    - d. Florida Dept. of Environmental Protection Wastewater Permit (pending)
    - e. Florida Dept. of Transportation Connection Permit (pending)
    - f. Florida Dept. of Transportation Drainage Connection Permit (pending)
    - g. Florida Dept. of Transportation Utility Permit (pending)
    - h. Army Corps of Engineers (pending)
    - i. Florida Dept. of Environmental Protection Notice of Intent – Contractor Responsibility
    - j. Site Development Plans for Willowbrook South dated February 14, 2024

- k. Drawings as indicated on the Index of Drawings on page 1 of the Site Development Plans identified in Paragraph 7.01.A.5.k.
- 6. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid for Willowbrook South "Construction Phase 1" (Exhibit A)
    - b. Geotechnical Report dated November 30, 2023 and as more specifically identified in the Supplemental Conditions.
    - c. Assignment of Contract package (Exhibit B), however Exhibit B and the documents contained therein are not and shall not be deemed to be "Contract Documents." The Addendum contained in Exhibit B shall only become a Contract Document upon execution thereof and assignment of the Contract as provided in Section 9.02.B herein.
  - 7. 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 Contract Documents listed in Paragraph 7.01.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 7.
  - D. The Contract Documents may only be amended, modified, or supplemented as provided in the Contract.

## **REPRESENTATIONS, CERTIFICATIONS, AND STIPULATIONS**

### **8.01 Contractor's Representations**

- A. In order to induce Owner to enter into this Contract, Contractor makes the following representations:
  - 1. Contractor has examined and carefully studied the Contract Documents, including Addenda, if any.
  - 2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - 3. Contractor is familiar with all Laws and Regulations that may affect cost, progress, and performance of the Work.
  - 4. Contractor has carefully studied the reports of explorations and tests of subsurface conditions at or adjacent to the Site and the drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, if any, with respect to the Technical Data in such reports and drawings.

5. Contractor has carefully studied the reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, with respect to Technical Data in such reports and drawings.
6. 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 Technical Data identified in the Supplementary Conditions or by definition, with respect to the effect of such information, observations, and Technical Data on (a) the cost, progress, and performance of the Work; (b) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (c) Contractor's safety precautions and programs.
7. ~~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.~~
8. 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.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and of discrepancies that Contractor has been made aware of or has reasonably discovered between Site conditions and the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
11. 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.
12. Contractor is financially solvent, able to pay its debts as they mature and possesses sufficient working capital (subject to payments by Owner required under this Agreement) to complete the Work required to be performed of it under this Contract.
13. Contractor is able to furnish (directly or by subcontract or through vendors) any plant, tools, materials, supplies, equipment and labor necessary to complete the services required of Contractor under this Contract and Contractor has sufficient experience and competence to perform the Work under the Contract.
14. Contractor is authorized to do business in the State of Florida and is properly licensed (to the extent required by law) by all necessary governmental authorities having jurisdiction over the Work.

#### 8.02 *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 8.02:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of an individual in the bidding process or in the Contract execution;
2. "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.

### 8.03 *Standard General Conditions*

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are a modified version of EJCDC® C-700, Standard General Conditions for the Construction Contract (2018), 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), and/or in the Supplementary Conditions.

## **MISCELLANEOUS**

### 9.01 *Terms*

- A. Terms used in the Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions unless otherwise stated herein.

### 9.02 *Successors and Assigns; Assignment*

- 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.
- B. Contractor acknowledges and agrees that Owner anticipates, and shall have the right to, assign the Contract to the Willowbrook Community Development District at any time after the Effective Date thereof by notice to Contractor and, if Owner has performed its obligations such that the representations therein are true and correct, Contractor shall execute an Acknowledgement and Acceptance of Assignment and Release, and the parties shall sign an Addendum to Contract, both in the form as attached in Exhibit B. A Change Order shall be issued to Contractor to compensate Contractor for the cost and/or premium for such bonds and equitably adjusting the Contract Price accordingly.

### 9.03 *Assignment of Warranties*

- A. Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or

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EJCDC® C-520, Agreement between Owner and Contractor for Construction Contract (Stipulated Price).  
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and American Society of Civil Engineers. All rights reserved.

subcontractor to consent to same, then Contractor shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner.

9.04 Construction Defects

A. CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.05 Restriction on Removal of Fill Dirt from Work Site

A. Contractor acknowledges that all suitable soil/fill material shall remain on-site. Fill material shall not be removed from the Project site without the written consent of the Owner.

9.06 Counterparts; Electronic Signatures

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. Additionally, the parties acknowledge and agree that this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, "electronic signature" shall include faxed versions of an original signature, electronically scanned and transmitted versions (e.g. via PDF) of an original signature, or signatures created in a digital format.

[Signatures on following page]

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

This Agreement will be effective on March \_\_\_\_\_, 2024 (which is the Effective Date of the Contract).

Owner:

KRPC Willowbrook, LLC  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: Steve Rosser  
*(typed or printed)*

Title: Manager  
*(typed or printed)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

121 Garfield Avenue  
Winter Park, Florida 32789

Designated Authorized Representative:

Name: Steve Rosser  
*(typed or printed)*

Title: Manager  
*(typed or printed)*

Address:

121 Garfield Avenue  
Winter Park, Florida 32789

Phone: (407) 645-4400

Email: [srosser@keewin.net](mailto:srosser@keewin.net)

*(If [Type of Entity] is a corporation, attach evidence of authority to sign. If [Type of Entity] is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)*

Contractor:

Jon M Hall Company, LLC  
*(typed or printed name of organization)*

By: \_\_\_\_\_  
*(individual's signature)*

Date: \_\_\_\_\_  
*(date signed)*

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

*authority to sign.)*

Attest: \_\_\_\_\_  
*(individual's signature)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address for giving notices:

1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771

Designated Authorized Representative:

Name: \_\_\_\_\_  
*(typed or printed)*

Title: \_\_\_\_\_  
*(typed or printed)*

Address:

1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771

Phone: (407) 215-0410

Email: \_\_\_\_\_

License No.: \_\_\_\_\_  
*(where applicable)*

State: Florida

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**

**WILLOWBROOK SOUTH “Construction Phase 1”**

Prepared by



Issued and Published Jointly by



Endorsed by



# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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# STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

## 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 document prepared by Contractor, in a form acceptable to Engineer, to request 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, the project manual and any documents included or referenced therein, including but not limited to 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; 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

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- Price or Contract Times; 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.
- 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.
  - c. A demand or assertion by Owner or Contractor, duly submitted in compliance with the procedural requirements set forth herein, made pursuant to Paragraph 12.01.A.4, concerning disputes arising after Engineer has issued a recommendation of final payment, other than a claim by Contractor for payment of amounts due.
  - d. 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), lead-based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, chemical, element, compound, solution, mixture, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to Laws and Regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, chemical, element, compound, solution, mixture, or material.
  12. *Contract*—The entire and integrated written contract between 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. *Electronic Document*—Any Project-related correspondence, attachments to correspondence, data, documents, drawings, information, or graphics, including but not limited to Shop Drawings and other Submittals, that are in an electronic or digital format.
  21. *Electronic Means*—Electronic mail (email), upload/download from a secure Project website, or other communications methods that allow: (a) the transmission or

communication of Electronic Documents; (b) the documentation of transmissions, including sending and receipt; (c) printing of the transmitted Electronic Document by the recipient; (d) the storage and archiving of the Electronic Document by sender and recipient; and (e) the use by recipient of the Electronic Document for purposes permitted by this Contract. Electronic Means does not include the use of text messaging, or of Facebook, Twitter, Instagram, or similar social media services for transmission of Electronic Documents.

22. *Engineer*—The individual or entity named as such in the Agreement.
23. *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.
24. *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.
  - a. The presence at the Site of materials that are necessary for the execution of the Work, or that are to be incorporated into the Work, and that are controlled and contained pursuant to industry practices, Laws and Regulations, and the requirements of the Contract, is not a Hazardous Environmental Condition.
  - b. The presence of Constituents of Concern that are to be removed or remediated as part of the Work is not a Hazardous Environmental Condition.
  - c. The presence of Constituents of Concern as part of the routine, anticipated, and obvious working conditions at the Site, is not a Hazardous Environmental Condition.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and binding decrees, resolutions, 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.
26. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
27. *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.
28. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
29. *Notice to Proceed*—A written notice by Owner or Engineer to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work.
30. *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.

31. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising Contractor’s plan to accomplish the Work within the Contract Times.
32. *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.
33. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative (RPR) includes any assistants or field staff of Resident Project Representative.
34. *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.
35. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals.
36. *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.
37. *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.
38. *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 or areas furnished by Owner which are designated for the use of Contractor.
39. *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.
40. *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.
41. *Submittal*—A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers’ instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.



42. *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 of such Work. Notwithstanding anything to the contrary herein, “Substantial Completion” shall be considered to be on the date which all applicable governmental agencies having jurisdiction over the Work have issued unconditional certificates of completion and have signed off on all final inspections with respect to each portion of the work and the Owner is able to utilize each portion of the Work set forth in the Contract Documents for the intended purpose. Also notwithstanding anything to the contrary contained herein, Contractor shall be responsible for obtaining the final inspections and applicable written approvals from all governmental agencies with jurisdiction with respect to each portion of the Work, and in connection therewith, Owner and Engineer shall comply with all of its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.
43. *Successful Bidder*—The Bidder to which the Owner makes an award of contract.
44. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
45. *Supplier*—A manufacturer, fabricator, supplier, distributor, 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.
46. *Technical Data*
- a. Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (1) existing subsurface conditions at or adjacent to the Site, or existing physical conditions at or adjacent to the Site including existing surface or subsurface structures (except Underground Facilities) or (2) Hazardous Environmental Conditions at the Site.
  - b. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then Technical Data is defined, with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06, as the data contained in boring logs, recorded measurements of subsurface water levels, assessments of the condition of subsurface facilities, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical, environmental, or other Site or facilities conditions report prepared for the Project and made available to Contractor.
  - c. Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data, and instead Underground Facilities are shown or indicated on the Drawings.
47. *Underground Facilities*—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at the Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable

television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

48. *Unit Price Work*—Work to be paid for on the basis of unit prices.
49. *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.
50. *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 Paragraphs 1.02.B, C, D, and E are not defined terms that require initial capital letters, but, when used in the ~~Bidding Requirements~~ or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives*: 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*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.
- D. *Defective*: The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
1. does not conform to the Contract Documents;
  2. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
  3. 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 Paragraph 15.04).

E. *Furnish, Install, Perform, Provide*

1. The word “furnish,” when used in connection with services, materials, or equipment, means 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, means 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, means 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. *Contract Price or Contract Times*: References to a change in “Contract Price or Contract Times” or “Contract Times or Contract Price” or similar, indicate that such change applies to (1) Contract Price, (2) Contract Times, or (3) both Contract Price and Contract Times, as warranted, even if the term “or both” is not expressed.

G. 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 Performance and Payment Bonds; Evidence of Insurance*

- A. *Performance and Payment Bonds*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner the performance bond and payment bond (if the Contract requires Contractor to furnish such bonds).
- B. *Evidence of Contractor’s Insurance*: When Contractor delivers the signed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each additional insured (as identified in the Contract), the certificates, endorsements, and other evidence of insurance required to be provided by Contractor in accordance with Article 6, except to the extent the Supplementary Conditions expressly establish other dates for delivery of specific insurance policies.
- C. *Evidence of Owner’s Insurance*: ~~After receipt of the signed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each additional insured (as identified in the Contract), 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 one ~~four~~ printed copy ~~copies~~ of the Contract (including one fully signed 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 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 *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 the schedules submitted in accordance with Paragraph 2.03.A. No progress payment will 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.
4. If a schedule is not acceptable, Contractor will have an additional 10 days to revise and resubmit the schedule.

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

#### 2.06 *Electronic Transmittals*

- A. Except as otherwise stated elsewhere in the Contract, the Owner, Engineer, and Contractor may send, and shall accept, Electronic Documents transmitted by Electronic Means.
- B. If the Contract does not establish protocols for Electronic Means, then Owner, Engineer, and Contractor shall jointly develop such protocols.
- C. Subject to any governing protocols for Electronic Means, when transmitting Electronic Documents by Electronic Means, the transmitting party makes no representations as to long-term compatibility, usability, or readability of the Electronic Documents 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 Electronic Documents.

### **ARTICLE 3—CONTRACT DOCUMENTS: INTENT, REQUIREMENTS, REUSE**

#### 3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one Contract Document 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 versions of the Contract Documents (including any printed copies derived from such electronic versions) and the printed record version, the printed record version will 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.
- F. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation will be deemed stricken, and all remaining provisions will continue to be valid and binding upon Owner and Contractor, which agree that the Contract Documents will 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.
- G. Nothing in the Contract Documents creates:
  1. any contractual relationship between Owner or Engineer and any Subcontractor, Supplier, or other individual or entity performing or furnishing any of the Work, for the benefit of such Subcontractor, Supplier, or other individual or entity; or

2. 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.

### 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, means 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, and no instruction of a Supplier, will be effective to change the duties or responsibilities of Owner, Contractor, or Engineer 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 or Engineer 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 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 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 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 in writing 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.
- 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 notify Owner and Contractor in writing 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 versions, 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 precludes 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 30th 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. No Work shall be performed before the issuance of a Notice to Proceed. ~~In no event will the Contract Times commence to run later than the 60th day after the day of Bid opening or the 30th 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 may be done at the Site prior to such date. Notwithstanding the foregoing, should any Work be performed at the Site prior to such date, such Work shall be deemed to have been performed pursuant to this Contract.

##### **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.
  - 1. 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 must 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 will 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 Contract Price or 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. The Owner, in its sole and absolute discretion, may divide the Work into phases, and prioritize those phases, or elect to terminate the Contract early and complete only a portion of the Work. If Owner divides the Work into phases or prioritizes those phases, Contractor shall be entitled to an equitable adjustment in the Contract Time and/or Contract Price. Such changes in Contract Time and/or Contract Price shall be as negotiated in good faith between the Parties and set forth in a separate change order provided that any changes in Contract Price shall be consistent with the schedule of values provided by Contractor.
- 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. Such an adjustment will 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 to~~ only the following:
  - 1. Severe and unavoidable acts of God or natural catastrophes such as fires, floods, epidemics, and earthquakes;
  - 2. Adverse weather days: defined as the occurrence of one or more of the following conditions within a twenty-four (24) hour day that prevents construction activity exposed to weather conditions or access to the site: (a) precipitation (rain, snow, or ice) in excess of one-half inch (0.50") liquid measure ("standard baseline"); or (b) sustained wind in excess of twenty-five (25) m.p.h. The Contractor must document such Adverse Weather and notify the Owner promptly of its occurrence;
  - 3. Acts or failures to act of third-party utility owners or other third-party entities (other than those third-party utility owners or other third-party entities performing other work at or adjacent to the Site as arranged by or under contract with Owner, as contemplated in Article 8); and
  - 4. Acts of war or terrorism.

Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event, or such claim shall be waived. Contractor shall be required to provide documentation and evidence of the existence of the conditions enumerated above for any adverse weather day.

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); or
2. delays beyond the control of both Owner and Contractor, including, but not limited to, fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work;

Nor shall Owner or Engineer of each of them 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 resulting from such delays.

Except for an adjustment to the Contract Times, the Contractor shall not be entitled to and hereby waives any and all damages that it may suffer by reason of such 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 such delays or hindrances that are avoidable by Contractor.

- D. Contractor's entitlement to an adjustment of Contract Times or Contract Price for delay, disruption, or interference is limited as follows:
1. Contractor's entitlement to an adjustment of the Contract Times is conditioned on the delay, disruption, or interference adversely affecting an activity on the critical path to completion of the Work, as of the time of the delay, disruption, or interference.
  2. Contractor shall not be entitled to an adjustment in Contract Price 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. Such a concurrent delay by Contractor shall not preclude an adjustment of Contract Times to which Contractor is otherwise entitled.
  3. Adjustments of Contract Times or Contract Price are subject to the provisions of Article 11.
- E. Each Contractor request or Change Proposal seeking an increase in Contract Times or Contract Price must be supplemented by supporting data that sets forth in detail the following:
1. The circumstances that form the basis for the requested adjustment;
  2. The date upon which each cause of delay, disruption, or interference began to affect the progress of the Work;
  3. The date upon which each cause of delay, disruption, or interference ceased to affect the progress of the Work;
  4. The number of days' increase in Contract Times claimed as a consequence of each such cause of delay, disruption, or interference; and
  5. The impact on Contract Price, in accordance with the provisions of Paragraph 11.07.

Contractor shall also furnish such additional supporting documentation as Owner or Engineer may require including, where appropriate, a revised progress schedule indicating all the activities affected by the delay, disruption, or interference, and an explanation of the effect

of the delay, disruption, or interference on the critical path to completion of the Work. Such supporting documentation shall include, where appropriate, documentation of abnormal weather conditions and an explanation of their impact on Contract Price and/or Contract Times.

- F. 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, together with the provisions of Paragraphs 4.05.D and 4.05.E.
- G. Paragraph 8.03 addresses 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.

## **ARTICLE 5—SITE; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS**

### **5.01 *Availability of Lands***

- A. Owner shall furnish the Site. Owner shall notify Contractor in writing 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 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. ~~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, or to improvements, structures, utilities, or similar facilities located at such adjacent lands 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.

2. If a damage or injury claim is made by the owner or occupant of any such land or area 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 7.13, 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 in a court of competent jurisdiction; 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, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, 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 will 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, rubbish, debris, 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:
  1. Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site ~~that contain Technical Data~~ from which the Engineer prepared the Contract Drawings and Specifications;
  2. Those drawings of existing physical conditions at or adjacent to the Site, including those drawings depicting existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities), ~~that contain Technical Data~~ from which the Engineer prepared the Contract Drawings and Specifications; and
  3. Technical Data contained in such reports and drawings, if any.
- B. *Underground Facilities:* Underground Facilities are shown or indicated on the Drawings, pursuant to Paragraph 5.05, and not in the drawings referred to in Paragraph 5.03.A.

Information and data regarding the presence or location of Underground Facilities are not intended to be categorized, identified, or defined as Technical Data.

- C. *No Reliance by Contractor on Technical Data:* Contractor may not 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 upon the accuracy of the Technical Data as defined in Paragraph 1.01.A.46.b.~~ Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for Owner's benefit by third parties and accordingly, Owner cannot guarantee the quantity, quality, completeness or accuracy of that information. Contractor warrants it has, by careful examination, satisfied itself as to the nature and location of the Work, the character, quality 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 foreseeable and foreseen risks, hazards, and difficulties in connection therewith.
- D. *Limitations of Other Data and Documents:* 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;
  2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings;
  3. the contents of other Site-related documents made available to Contractor, such as record drawings from other projects at or adjacent to the Site, or Owner's archival documents concerning the Site; or
  4. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or 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:
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;
  2. is of such a nature as to require a change in the Drawings or Specifications;
  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 whether it is necessary for Owner to obtain 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; 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. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the subsurface or physical condition in question may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the condition in question has been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.
- E. *Possible Price and Times Adjustments*
  - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, 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 subject to the provisions of Paragraphs 4.05.D and 4.05.E.
  - 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 submission of a Bid or becoming bound under a negotiated contract, or otherwise;
    - 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 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, then any such adjustment will be set forth in a Change Order.
  4. 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, 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.
- F. *Underground Facilities; Hazardous Environmental Conditions:* Paragraph 5.05 governs rights and responsibilities regarding the presence or location of Underground Facilities. Paragraph 5.06 governs rights and responsibilities regarding Hazardous Environmental Conditions. The provisions of Paragraphs 5.03 and 5.04 are not applicable to the presence or location of Underground Facilities, or to Hazardous Environmental Conditions.

#### 5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* Owner and Engineer do not warrant or guarantee the accuracy or completeness of any information or data regarding underground facilities provided by others. Unless it is otherwise expressly provided in the Supplementary Conditions, the cost of all of the following are included in the Contract Price, and Contractor shall have full responsibility for, without additional compensation from the Owner:
1. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
  2. complying with applicable state and local utility damage prevention Laws and Regulations, including but not limited to notification of and cooperation with utility companies and agencies when the Contractor's operations are close to existing facilities in order to provide time for the utilities to stake the location of their existing facilities. This coordination effort shall be done in compliance with Florida Statutes Chapter 556, "Underground Facility Damage Prevention and Safety Act," latest revision.;
  3. locating or verifying the actual location of those Underground Facilities shown or indicated in the Contract Documents as being within the area affected by the Work, by exposing such Underground Facilities during the course of construction;
  4. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
  5. 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 on the Drawings, or was not shown or indicated on the Drawings 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), notify Owner and Engineer in writing regarding such Underground Facility.

C. *Engineer's Review*: Engineer will:

1. promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated on the Drawings, or was not shown or indicated with reasonable accuracy;
2. identify and communicate with the owner of the Underground Facility; prepare recommendations to Owner (and if necessary issue any preliminary instructions to Contractor) regarding the Contractor's resumption of Work in connection with the Underground Facility in question;
3. obtain any pertinent cost or schedule information from Contractor; 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
4. 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. *Early Resumption of Work*: If at any time Engineer determines that Work in connection with the Underground Facility may resume prior to completion of Engineer's review or Owner's issuance of its statement to Contractor, because the Underground Facility in question and conditions affected by its presence have been adequately documented, and analyzed on a preliminary basis, then the Engineer may at its discretion instruct Contractor to resume such Work.

F. *Possible Price and Times Adjustments*

1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, to the extent that any existing Underground Facility at the Site that was not shown or indicated on the Drawings, 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. 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;
  - b. Contractor's entitlement to an adjustment of the Contract Times is subject to the provisions of Paragraphs 4.05.D and 4.05.E; and
  - c. 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, then any such adjustment will 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, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.
4. The information and data shown or indicated on the Drawings with respect to existing Underground Facilities at the Site is based on information and data (a) furnished by the owners of such Underground Facilities, or by others, (b) obtained from available records, or (c) gathered in an investigation conducted in accordance with the current edition of ASCE 38, Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data, by the American Society of Civil Engineers. If such information or data is incorrect or incomplete, Contractor's remedies are limited to those set forth in this Paragraph 5.05.F.

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site, if any;
  2. drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site, if any; and
  3. Technical Data contained in such reports and drawings.
- B. *No Reliance by Contractor on Technical Data Authorized:* Contractor may not 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 Paragraph 1.01.A.46.b.~~ Instead, while the Technical Data is believed to be reliable, the Technical Data was prepared for the Owner's benefit by third parties and accordingly, the Owner cannot guarantee the quantity, quality, completeness or accuracy of that information. 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;
  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. Neither Contractor nor any of its successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives shall store, place, generate, manufacture, refine, handle, or locate on the Site a Constituent of Concern except those that are being used or to be used in the performance of the Work or are part of the routine and anticipated working conditions at the Site or in the performance of the Work and only in strict compliance with any state federal or local government handling and storage requirements for 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, as a result of such Work stoppage, such special conditions under which Work is agreed to be resumed by Contractor, or any costs or expenses incurred in response to the Hazardous Environmental Condition, 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. Entitlement to any such adjustment is subject to the provisions of Paragraphs 4.05.D, 4.05.E, 11.07, and 11.08.
- 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.

- I. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor and Subcontractors, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, from and against all claims, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to an existing Hazardous Environmental Condition, provided that such existing 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.B, 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. ~~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, 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.B, 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 obligates 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 Indemnitees ~~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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, arising out of or relating to the wholly or partially negligent, reckless, or intentionally wrongful failure to control, contain, or remove a Constituent of Concern brought to the Site by Contractor or by anyone for whom Contractor is responsible, including without limitation, Contractor's successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives, or to a Hazardous Environmental Condition created in whole or in part by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J obligates 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. Only if Contractor is expressly required to furnish payment and performance bonds in the Bidding Documents and the cost of payment and performance bonds are included as a separate line item in Contractor's Bid, excluding any required maintenance bond, Contractor shall furnish a performance bond and a payment bond, each in an amount equal to the original Contract Price, as security for the faithful performance and payment of Contractor's obligations under the Contract. These bonds must remain in effect until one year (for the payment bond) and two years (for the performance 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 terms of a prescribed bond form, the Supplementary Conditions, or other provisions of the Contract.
- B. Contractor shall also furnish such other bonds (if any) as are required by the Supplementary Conditions or other provisions of the Contract.
- C. All bonds, if any required, must be in the form included in the Bidding Documents or otherwise specified by Owner prior to execution of the Contract, except as provided otherwise by Laws or Regulations, and must be issued and signed by a surety named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Department Circular 570 (as amended and supplemented) by the Bureau of the Fiscal Service, 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 must 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 upon assignment to the Willowbrook Community Development District: "This Bond is hereby amended so that the provisions and limitations of Section 255.05, including without limitation subsection (6) and the notice and time limitation provisions in subsections (2) and (10), or Sections 713.23 and 713.245, Florida Statutes, whichever are applicable, are incorporated by reference herein."
- D. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue bonds in the required amounts.
- E. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer in writing and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which must comply with the bond and surety requirements above.
- F. 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.
- G. Upon request to Owner from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Owner shall provide a copy of the payment bond to such person or entity.

- H. Upon request to Contractor from any Subcontractor, Supplier, or other person or entity claiming to have furnished labor, services, materials, or equipment used in the performance of the Work, Contractor shall provide a copy of the payment bond to such person or entity.

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. Alternative forms of insurance coverage, including but not limited to self-insurance and “Occupational Accident and Excess Employer’s Indemnity Policies,” are not sufficient to meet the insurance requirements of this Contract, unless expressly allowed in the Supplementary Conditions.
- D. Prior to commencing the Work and entering any lands upon which the Work shall be performed, Contractor shall deliver to Owner, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Contractor has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by Subcontractors or Suppliers. In any documentation furnished under this provision, Contractor, Subcontractors, and Suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Contract.
- E. Owner shall deliver to Contractor, with copies to each additional insured identified in the Contract, certificates of insurance and endorsements establishing that Owner has obtained and is maintaining the policies and coverages 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, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision. Owner may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Contract.
- F. 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, will not be construed as a waiver of the other party’s obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by Contractor, the Owner, at Owner’s option, may purchase and maintain Owner’s own liability insurance. 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.

H. Contractor shall require:

1. Subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the Project, and to name as additional insureds Owner (and any other individuals or entities identified in the Supplementary Conditions as additional insureds on Contractor's liability policies) on each Subcontractor's commercial general liability insurance policy; and
  2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the Project.
- I. If either party does not purchase or maintain 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.
- J. If Contractor has failed to obtain and maintain required insurance, Contractor's entitlement to enter or remain at the Site will end immediately, and Owner may impose an appropriate set-off against payment for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise Owner's termination rights under Article 16.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) 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 will be adjusted accordingly.
- L. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests. Contractor is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Contractor deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Contractor's liability, or that of its Subcontractors or Suppliers, under the indemnities granted to Owner and other individuals and entities in the Contract or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Contract will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 30 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 and Engineer.
- O. The fact that an entity or individual is named as an additional insured on a particular insurance 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. *Required Insurance:* Contractor shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of the Supplementary Conditions.
- B. *General Provisions:* The policies of insurance required by this Paragraph 6.03 as supplemented must:
  - 1. include at least the specific coverages required;
  - 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
  - 3. remain in effect at least until the Work is complete (as set forth in Paragraph 15.06.D), and longer if expressly required elsewhere in this Contract, 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;
  - 4. apply with respect to the performance of the Work, whether such performance is 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; and
  - 5. include all necessary endorsements to support the stated requirements.
- C. *Additional Insureds:* The Contractor's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Contract, must:
  - 1. include and list as additional insureds Owner and Engineer, and any individuals or entities identified as additional insureds in the Supplementary Conditions;
  - 2. include coverage for the respective supervisors, officers, directors, members, partners, employees, agents, subcontractors, and consultants of all such additional insureds;
  - 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
  - 4. not seek contribution from insurance maintained by the additional insured; and
  - 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Contractor's acts or omissions, or the acts and omissions of those working on Contractor's behalf, in the performance of Contractor's operations.

### 6.04 *Builder's Risk and Other 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 Work's full insurable replacement cost (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in the Supplementary Conditions.

- B. *Property Insurance for Facilities of Owner Where Work Will Occur:* Owner is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Work will occur, or to which any part of the Work will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Work is complete, as set forth in Paragraph 15.06.D.
- ~~C. *Property Insurance for Substantially Complete Facilities:* Promptly after Substantial Completion, and before actual occupancy or use of the substantially completed Work, Owner will obtain property insurance for such substantially completed Work, and maintain such property insurance at least until the Work is complete, as set forth in Paragraph 15.06.D. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, and provide coverage consistent with that required for the builder's risk insurance. The builder's risk insurance may terminate upon written confirmation of Owner's procurement of such property insurance.~~
- 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 advance notice of such occupancy or use to the builder's risk insurer, and obtain an endorsement consenting to the continuation of coverage prior to commencing such partial occupancy or use.
- E. *Insurance of Other Property; Additional Insurance:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. 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 6.04, it may do so at Contractor's expense.

#### 6.05 *Property Losses; Subrogation*

- A. The builder's risk insurance policy purchased and maintained in accordance with Paragraph 6.04 (or an installation floater policy if authorized by the Supplementary Conditions), will contain provisions to the effect that in the event of payment of any loss or damage the insurer 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.
1. ~~Owner and Contractor waives all rights against each other and the respective Owner and its 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, risks, or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waives all such rights against Engineer, its consultants, all individuals or entities identified in the Supplementary Conditions as builder's risk or installation floater 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.~~



2. None of the above waivers extends 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. ~~Any property insurance policy maintained by Owner covering any loss, damage, or consequential loss to Owner's existing structures, buildings, or facilities in which any part of the Work will occur, or to which any part of the Work will attach or adjoin; to adjacent structures, buildings, or facilities of Owner; or to part or all of the completed or substantially completed Work, 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, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.~~
1. ~~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 all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.~~
- C. The waivers in this Paragraph 6.05 include the waiver of rights 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 insured peril, risk, or cause of loss .
- D. Contractor shall be responsible for assuring that each Subcontract 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 fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the Work.

#### 6.06 *Receipt and Application of Property Insurance Proceeds*

- A. Any insured loss under the builder's risk and other policies of property insurance required by Paragraph 6.04 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 6.04 shall maintain such proceeds in a segregated account, and 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, Contractor shall repair or replace the damaged Work, using allocated insurance proceeds.

## **ARTICLE 7—CONTRACTOR’S RESPONSIBILITIES**

### **7.01 Contractor’s Means and Methods of Construction**

- A. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction.
- B. If the Contract Documents note, or Contractor determines, that professional engineering or other design services are needed to carry out Contractor’s responsibilities for construction means, methods, techniques, sequences, and procedures, or for Site safety, then Contractor shall cause such services to be provided by a properly licensed design professional, at Contractor’s expense. Such services are not Owner-delegated professional design services under this Contract, and neither Owner nor Engineer has any responsibility with respect to (1) Contractor’s determination of the need for such services, (2) the qualifications or licensing of the design professionals retained or employed by Contractor, (3) the performance of such services, or (4) any errors, omissions, or defects in such services.

### **7.02 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.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who will not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

### **7.03 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 maintain good discipline and order at the Site.
- B. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of Contractor’s employees; of Suppliers and Subcontractors, and their employees; and of any other individuals or entities performing or furnishing any of the Work, just as Contractor is responsible for Contractor’s own acts and omissions.
- C. 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 will 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.

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.

7.04 *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 must be new and of good quality, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications will 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 must 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.

7.05 *"Or Equals"*

- A. *Contractor's Request; Governing Criteria:* Whenever an item of equipment or material is specified or described in the Contract Documents by using the names of one or more proprietary items or specific Suppliers, 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 equipment or material, or items from other proposed Suppliers, under the circumstances described below.
  - 1. If Engineer in its sole discretion determines that an item of equipment or material proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer will deem it an "or equal" item. For the purposes of this paragraph, a proposed item of equipment or material will be considered functionally equal to an item so named if:
    - a. in the exercise of reasonable judgment Engineer determines that the proposed item:
      - 1) is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
      - 2) 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) has a proven record of performance and availability of responsive service; and
      - 4) is not objectionable to Owner.

- b. Contractor certifies that, if the proposed item is approved and incorporated into the Work:
  - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
  - 2) the item 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 will result in any change in Contract Price. The Engineer's denial of an "or-equal" request will be final and binding, and may not be reversed through an appeal under any provision of the Contract.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of equipment or material proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the item a proposed substitute pursuant to Paragraph 7.06.

#### 7.06 *Substitutes*

- A. *Contractor's Request; Governing Criteria*: Unless the specification or description of an item of equipment or material 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 equipment or material under the circumstances described below. To the extent possible such requests must 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 equipment or material from anyone other than Contractor.
  - 2. The requirements for review by Engineer will be as set forth in Paragraph 7.06.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 equipment or material that Contractor seeks to furnish or use. The application:
    - a. will 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 the item specified; and
  - 3) be suited to the same use as the item 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 the item specified; and
  - 2) available engineering, sales, maintenance, repair, and replacement services.
- d. will 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 will be final and binding, and may not be reversed through an

appeal under any provision of the Contract. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.06.D, by timely submittal of a Change Proposal.

7.07 *Concerning Subcontractors and Suppliers*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner. The Contractor's retention of a Subcontractor or Supplier for the performance of parts of the Work will not relieve Contractor's obligation to Owner to perform and complete the Work in accordance with the Contract Documents.
- B. Contractor shall retain specific Subcontractors and Suppliers 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 or Supplier 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 5 days.
- E. Owner may require the replacement of any Subcontractor or Supplier. 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 or Suppliers 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 or Supplier so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor or Supplier.
- F. If Owner requires the replacement of any Subcontractor or Supplier retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, 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 or Supplier, whether initially or as a replacement, will 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 solely responsible for scheduling and coordinating the work of Subcontractors and Suppliers.

- J. The divisions and sections of the Specifications and the identifications of any Drawings do not control Contractor in dividing the Work among Subcontractors or Suppliers, or in delineating the Work to be performed by any specific trade.
- K. All Work performed for Contractor by a Subcontractor or Supplier must be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract for the benefit of Owner and Engineer.
- L. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor for Work performed for Contractor by the Subcontractor or Supplier.
- M. Contractor shall restrict all Subcontractors and Suppliers from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed in this Contract.

7.08 *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 an 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 will be disclosed 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, defend and hold harmless Indemnitees 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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees or costs) whether monetary or otherwise, 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, to the extent such infringement is caused in whole or in part by the negligent, reckless, or intentionally wrongful actions of the Contractor or those for which Contractor is responsible including without limitation, Contractor's successors, assigns, agents, employees, contractors, subcontractors, materialmen, officers, invitees, and representatives.

## 7.09 Permits

- A. Except for permits related to the site and development obtained by Owner and/or Engineer, unless otherwise provided in the Contract Documents, Contractor shall obtain and pay for all construction permits and licenses necessary and required for Contractor's performance of its Work. 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~~ Contractor shall pay all charges and fees of utility owners for connections for providing permanent service to the Work, including without limitation water and electrical meters (if applicable), installation fees, electrical inspection fees, and temporary services and utilities. Contractor shall additionally provide all signage required by applicable permits and governmental authorities.
- B. Owner and Contractor acknowledge and agree that Owner intends to turn over all or a portion of the Work upon completion to a governmental entity for ownership and maintenance. To the extent that Owner intends to turn over any portion of the Work to another governmental entity for ownership or other purposes, Contractor agrees at its sole expense to take all actions necessary (including but not limited to providing all warranties, improvement bonds, and close-out documents required by the governmental entity even if such requirements are beyond what is required herein) to ensure that the recipient governmental entity accepts the Work.

## 7.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes and assessments 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.

## 7.11 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. Neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor or those for whom Contractor is responsible 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 Indemnitees ~~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, liabilities, suits, liens, demands, costs, losses, interest, expenses, penalties, fines, judgments, 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 fees or costs) whether monetary or otherwise arising out of or relating to such Work or other action. ~~It is not Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this does not relieve Contractor of its obligations under Paragraph 3.03.~~
- C. Owner or Contractor may give written 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 written notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

#### 7.12 *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.

#### 7.13 *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.
- B. Contractor shall designate a qualified and experienced safety representative whose duties and responsibilities are the prevention of Work-related accidents and the maintenance and supervision of safety precautions and programs.
- C. 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.
- D. All damage, injury, or loss to any property referred to in Paragraph 7.13.C.2 or 7.13.C.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).
- E. 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. Among

other requirements, the Contractor or Subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards.

- F. Contractor shall notify Owner; the owners of adjacent property; the owners of Underground Facilities and other utilities (if the identity of such owners is known to Contractor); and other contractors and utility owners performing work at or adjacent to the Site, in writing, when Contractor knows that 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.
- G. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. Any Owner's safety programs that are applicable to the Work are identified or included in the Supplementary Conditions or Specifications.
- H. 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.
- I. Contractor's duties and responsibilities for safety and protection will continue until all the Work is completed, Engineer has issued a written notice to Owner and Contractor in accordance with Paragraph 15.06.C that the Work is acceptable, and Contractor has left the Site (except as otherwise expressly provided in connection with Substantial Completion).
- J. Contractor's duties and responsibilities for safety and protection will 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.

#### 7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of safety data sheets (formerly known as 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 or foreseeable 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 by an emergency, or are required as a result of Contractor's response to an emergency. If Engineer determines that a change in the Contract Documents is required because of an emergency or Contractor's response, a Work Change Directive or Change Order will be issued.

#### 7.16 *Submittals*

##### A. *Shop Drawing and Sample Requirements*

- 1. Before submitting a Shop Drawing or Sample, Contractor shall:
  - a. review and coordinate the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;

- b. determine and verify:
    - 1) all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect to the Submittal;
    - 2) 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
    - 3) all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto;
  - c. confirm that the Submittal is complete with respect to all related data included in the Submittal.
- 2. Each Shop Drawing or Sample must 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 Shop Drawing or Sample, Contractor shall give Engineer specific written notice of any variations that the Submittal may have from the requirements of the Contract Documents. This notice must be set forth in a written communication separate from the Shop Drawing or Sample; and, in addition, in the case of a Shop Drawing by a specific notation made on the Shop Drawing itself.
- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall label and submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals.
- 1. *Shop Drawings*
    - a. Contractor shall be required to submit all Shop Drawings by the following Milestone dates:
      - (1) For all X, by Y.
      - (2) for all Y, by Z.
- Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings must 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.C.
- 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.C.

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. Engineer's Review of Shop Drawings and Samples*

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the accepted Schedule of Submittals and in no event shall Engineer fail to review and provide comments or approval longer than 72 hours after Contractor submittal. 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, comply with the requirements of 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 will 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 or other appropriate Contract modification.
5. Engineer's review and approval of a Shop Drawing or Sample will not relieve Contractor from responsibility for complying with the requirements of Paragraphs 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, will 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 or Sample will 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.C.4.

*D. Resubmittal Procedures for Shop Drawings and Samples*

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 within 3 business days, or longer if agreed to by Owner in writing, of receipt of such drawings by Engineer. 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 Shop Drawing and Sample submittals with sufficient information and accuracy to obtain required approval of an item with no more than two resubmittals. Engineer will record Engineer's time for reviewing a third or subsequent resubmittal of a Shop Drawing or Sample, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges.
  3. If Contractor requests a change of a previously approved Shop Drawing or Sample, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may impose a set-off against payments due Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.
- E. *Submittals Other than Shop Drawings, Samples, and Owner-Delegated Designs*
1. The following provisions apply to all Submittals other than Shop Drawings, Samples, and Owner-delegated designs:
    - a. Contractor shall submit all such Submittals to the Engineer in accordance with the Schedule of Submittals and pursuant to the applicable terms of the Contract Documents.
    - b. Engineer will provide timely review of all such Submittals in accordance with the Schedule of Submittals and return such Submittals with a notation of either Accepted or Not Accepted. Any such Submittal that is not returned within the time established in the Schedule of Submittals will be deemed accepted.
    - c. Engineer's review will be only to determine if the Submittal is acceptable under the requirements of the Contract Documents as to general form and content of the Submittal.
    - d. If any such Submittal is not accepted, Contractor shall confer with Engineer regarding the reason for the non-acceptance, and resubmit an acceptable document.
  2. Procedures for the submittal and acceptance of the Progress Schedule, the Schedule of Submittals, and the Schedule of Values are set forth in Paragraphs 2.03, 2.04, and 2.05.
- F. *Owner-delegated Designs: Submittals pursuant to Owner-delegated designs are governed by the provisions of Paragraph 7.19.*

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 is entitled to rely on Contractor's warranty and guarantee.
- B. Owner's rights under this warranty and guarantee are in addition to, and are not limited by, Owner's rights under the correction period provisions of Paragraph 15.08. The time in which Owner may enforce its warranty and guarantee rights under this Paragraph 7.17 is limited only by applicable Laws and Regulations restricting actions to enforce such rights; provided, however, that after the end of the correction period under Paragraph 15.08:
  1. Owner shall give Contractor written notice of any defective Work within 60 days of the discovery that such Work is defective; and

2. Such notice will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B, such that any related Claim must be brought within 30 days of the notice.
- C. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
1. abuse, or improper 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.
- D. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents is absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents, a release of Contractor's obligation to perform the Work in accordance with the Contract Documents, or a release of Owner's warranty and guarantee rights under this Paragraph 7.17:
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. The end of the correction period established in Paragraph 15.08;
  8. Any inspection, test, or approval by others; or
  9. Any correction of defective Work by Owner.
- E. 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 will govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- F. 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.
- G. The warranties provided in this Contract 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 losses, damages, costs, and judgments (including but not limited to all fees and charges of engineers,~~

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~~architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising from third party claims or actions relating to or resulting from the performance or furnishing of the Work, provided that any such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage 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, and its supervisors, managers, attorneys, engineers, 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, fees, and costs (including, but not limited to, reasonable fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution fees and costs), arising out of or relating to the performance or lack of performance of the Work or in conjunction with entry on Owner's property and provided that such claim, action, loss, cost, judgment or damage is attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of personal or tangible , but only 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 \$5,000,000.00 per occurrence, (or the amount of any applicable insurance coverage, if such amount is greater), 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 will 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 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 unless such actions should have been, or were capable of being, discovered by the Contractor; or
2. giving directions or instructions if that is the primary cause of the injury or damage unless the Contractor should have been, or was capable of knowing, such directions or instructions would cause the liability giving rise to a claim as set forth in this section.

7.19 *Delegation of Professional Design Services*

- A. Owner may require Contractor to provide professional design services for a portion of the Work only by express delegation in, and to the extent specifically and expressly required by, the Contract Documents. Such delegation shall specify the performance and design criteria that such services must satisfy, and the Submittals that Contractor must furnish to Engineer with respect to the Owner-delegated design.
- B. Contractor shall cause such Owner-delegated professional design services to be provided pursuant to the professional standard of care by a properly licensed design professional, whose signature and seal must appear on all drawings, calculations, specifications, certifications, and Submittals prepared by such design professional. Such design professional must issue all certifications of design required by Laws and Regulations.
- C. If a Shop Drawing or other Submittal related to the Owner-delegated design is prepared by Contractor, a Subcontractor, or others for submittal to Engineer, then such Shop Drawing or other Submittal must bear the written approval of Contractor's design professional when submitted by Contractor to Engineer.
- D. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals retained or employed by Contractor under an Owner-delegated design, subject to the professional standard of care and the performance and design criteria in the Contract Documents that such services must satisfy.
- E. Pursuant to this Paragraph 7.19, Engineer's review, approval, and other determinations regarding design drawings, calculations, specifications, certifications, and other Submittals furnished by Contractor pursuant to an Owner-delegated design will be only for the following limited purposes:
  1. Checking for conformance with the requirements of this Paragraph 7.19;
  2. Confirming that Contractor (through its design professionals) has used the performance and design criteria specified in the Contract Documents; and
  3. Establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents.
- F. Contractor shall not be responsible for the adequacy of performance or design criteria specified by Owner or Engineer.
- G. Contractor is not required to provide professional services in violation of applicable Laws and Regulations.



## 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 third-party utility work that Owner has arranged to take place or that is not a responsibility of the Contractor at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford proper and safe access to the Site to each contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work.
- D. 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.
- E. If the proper execution or results of any part of Contractor's Work depends upon work performed by others, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies reasonably discoverable 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.
- F. The provisions of this article are not applicable to work that is performed by third-party utilities or other third-party entities without a contract with Owner, or that is performed without having been arranged by Owner. If such work occurs, then any related delay, disruption, or interference incurred by Contractor is governed by the provisions of Paragraph 4.05.C.3.

### 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*

- A. If, in the course of performing other work for Owner at or adjacent to the Site, the Owner's employees, any other contractor working for Owner, or any utility owner that Owner has arranged to perform work, 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. 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 will 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, and any remedies available to Contractor under Laws or Regulations concerning utility action or inaction. When applicable, any such equitable adjustment in Contract Price will 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 or Contract Price is subject to the provisions of Paragraphs 4.05.D and 4.05.E.
- 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.
1. 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 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 8.03.B.
  2. 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 Contractor.
- C. 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, recklessness, or intentional misconduct 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, defend, and hold harmless Indemnitees ~~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 claims, and against all costs, liabilities, suits, liens, demands, interest, expenses, penalties, fines, judgments, 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 fees and costs) whether monetary or otherwise, arising out of or relating to such damage, delay, disruption, or interference.

## **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 will 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 (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 will keep Owner informed of the progress of the Work and will endeavor 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 10.07. 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 *Resident 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 the Supplementary Conditions and in Paragraph 10.07.
- B. If Owner designates an individual or entity who is not Engineer's consultant, agent, or employee to represent Owner at the Site, then the responsibilities and authority of such individual or entity will be as provided in the Supplementary Conditions.

10.04 *Engineer's Authority*

- A. Engineer has the authority to reject Work in accordance with Article 14.
- B. Engineer's authority as to Submittals is set forth in Paragraph 7.16.
- C. Engineer's authority as to design drawings, calculations, specifications, certifications and other Submittals from Contractor in response to Owner's delegation (if any) to Contractor of professional design services, is set forth in Paragraph 7.19.
- D. Engineer's authority as to changes in the Work is set forth in Article 11.
- E. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.05 *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.

10.06 *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.

10.07 *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, will 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 Contractor under 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 10.07 also apply to the Resident Project Representative, if any.

#### 10.08 *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 of which Engineer has been informed.

### **ARTICLE 11—CHANGES TO THE CONTRACT**

#### 11.01 *Amending and Supplementing the Contract*

- A. The Contract may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
- B. If an amendment or supplement to the Contract includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order.
- C. All changes to the Contract that 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, must be supported by Engineer's recommendation. Owner and Contractor may amend other terms and conditions of the Contract without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order or a Work Change Directive.

#### 11.02 *Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in 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 11.05, (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 that embody the substance of any final and binding results under: Paragraph 11.03.B, resolving the impact of a Work Change Directive; Paragraph 11.09, concerning Change Proposals; Article 12, Claims; Paragraph 13.02.D, final adjustments resulting from allowances; Paragraph 13.03.D, final adjustments relating to determination of quantities for Unit Price Work; and similar provisions.
- B. ~~If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A, it will be deemed to be of full force and effect, as if fully executed.~~ If Contractor refuses to execute a Change Order that is required to be executed under the terms of Paragraph 11.02.A.4, it will be deemed to be of full force and effect, as if fully executed.

#### 11.03 *Work Change Directives*

- A. 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 11.07 regarding change of Contract Price.
- B. If Owner has issued a Work Change Directive and:
  1. Contractor believes that an adjustment in Contract Times or Contract Price is necessary, then Contractor shall submit any Change Proposal seeking such an adjustment no later than 30 days after the completion of the Work set out in the Work Change Directive.
  2. Owner believes that an adjustment in Contract Times or Contract Price is necessary, then Owner shall submit any Claim seeking such an adjustment no later than 60 days after issuance of the Work Change Directive.

#### 11.04 *Field Orders*

- A. 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.
- B. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

#### 11.05 *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 including but not limited to for the purposes of achieving cost savings, and Owner reserves the right to delete portions of the Work and contract with third parties to provide any such deleted Work.

Changes involving the design (as set forth in the Drawings, Specifications, or otherwise) or other engineering or technical matters will be supported by Engineer's recommendation.

- B. Such changes in the Work 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 must be performed under the applicable conditions of the Contract Documents.
- C. Nothing in this Paragraph 11.05 obligates Contractor to undertake work that Contractor reasonably concludes cannot be performed in a manner consistent with Contractor's safety obligations under the Contract Documents or Laws and Regulations.

#### 11.06 *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.C.2.

#### 11.07 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment of Contract Price must 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);
  - 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 11.07.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 11.07.C).~~
- C. Contractor's Fee: The Contractor's fee allowed to Contractor for overhead and profit shall be included in the Cost of the Work and/or in the approved Schedule of Values and shall not be claimed after bid submittal. When applicable, the Contractor's fee for overhead and profit will 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 will be 15 percent;~~



- ~~b. For costs incurred under Paragraph 13.01.B.3, the Contractor's fee will be 5 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 11.07.C.2.a and 11.07.C.2.b is that the Contractor's fee will be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.B.1 and 13.01.B.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 5 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 will be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the Work;~~
- ~~d. No fee will 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 of the Work will be the amount of the actual net decrease in Cost of the Work and a deduction of an additional amount equal to 5 percent of such actual net decrease in Cost of the Work; and~~
- ~~f. When both additions and credits are involved in any one change or Change Proposal, the adjustment in Contractor's fee will be computed by determining the sum of the costs in each of the cost categories in Paragraph 13.01.B (specifically, payroll costs, Paragraph 13.01.B.1; incorporated materials and equipment costs, Paragraph 13.01.B.2; Subcontract costs, Paragraph 13.01.B.3; special consultants costs, Paragraph 13.01.B.4; and other costs, Paragraph 13.01.B.5) and applying to each such cost category sum the appropriate fee from Paragraphs 11.07.C.2.a through 11.07.C.2.e, inclusive.~~

#### 11.08 *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 must comply with the provisions of Paragraph 11.09. Any Claim for an adjustment in the Contract Times must comply with the provisions of Article 12.
- B. Delay, disruption, and interference in the Work, and any related changes in Contract Times, are addressed in and governed by Paragraph 4.05.

#### 11.09 *Change Proposals*

- A. *Purpose and Content:* Contractor shall submit a Change Proposal to Engineer to request an adjustment in the Contract Times or Contract Price; contest an initial decision by Engineer concerning the requirements of the Contract Documents or relating to the acceptability of the Work under the Contract Documents; challenge a set-off against payment due; or seek other relief under the Contract. The Change Proposal will specify any proposed change in Contract Times or Contract Price, or other proposed relief, and explain the reason for the proposed change, with citations to any governing or applicable provisions of the Contract Documents. Each Change Proposal will address only one issue, or a set of closely related issues.

B. *Change Proposal Procedures*

1. *Submittal*: Contractor shall submit each Change Proposal to Engineer within 30 days after the start of the event giving rise thereto, or after such initial decision.
2. *Supporting Data*: 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.
  - a. Change Proposals based on or related to delay, interruption, or interference must comply with the provisions of Paragraphs 4.05.D and 4.05.E.
  - b. Change proposals related to a change of Contract Price must include full and detailed accounts of materials incorporated into the Work and labor and equipment used for the subject Work.

The supporting data must 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.

3. *Engineer's Initial Review*: Engineer will advise Owner regarding the Change Proposal, and consider any comments or response from Owner regarding the Change Proposal. If in its reasoned discretion Engineer concludes that additional supporting data is needed before conducting a full review and making a decision regarding the Change Proposal, then Engineer may request that Contractor submit such additional supporting data by a date specified by Engineer, prior to Engineer beginning its full review of the Change Proposal.
  4. *Engineer's Full Review and Action on the Change Proposal*: Upon receipt of Contractor's supporting data (including any additional data requested by Engineer), Engineer will conduct a full review of each Change Proposal and, within 30 days after such receipt of the Contractor's supporting data, either approve the Change Proposal in whole, deny it in whole, or approve it in part and deny it in part. Such actions must 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.
  5. *Binding Decision*: Engineer's decision is final and binding upon Owner and Contractor, unless Owner or Contractor appeals the decision by filing a Claim under Article 12.
- C. *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 in writing that the Engineer is unable to resolve the Change Proposal. For purposes of further resolution of such a Change Proposal, such notice will be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.
- D. *Post-Completion*: Contractor shall not submit any Change Proposals after Engineer issues a written recommendation of final payment pursuant to Paragraph 15.06.B.

#### 11.10 *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 are subject 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;
  - 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; and
  - 4. Subject to the waiver provisions of Paragraph 15.07, any dispute arising after Engineer has issued a written recommendation of final payment pursuant to Paragraph 15.06.B.
- 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 rests with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, 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 will 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 will 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 will 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 will resume as of the date 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 will 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 will 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 will be incorporated in a Change Order or other written document 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 *Intentionally Omitted.*

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 for any of the foregoing will be valid.
- C. *Owner's Contingency Allowance*: Contractor agrees that an Owner's 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 for Work covered by allowances, and the Contract Price will 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 and/or the Contract Documents.
- 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, and the final adjustment of Contract Price will be set forth in a Change Order, subject to the provisions of the following paragraph.
- E. *Adjustments in Unit Price*
  - 1. Contractor or Owner shall be entitled to an adjustment in the unit price with respect to an item of Unit Price Work if:
    - a. the quantity of the item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
    - b. Contractor's unit costs to perform the item of Unit Price Work have changed materially and significantly as a result of the quantity change.
  - 2. The adjustment in unit price will account for and be coordinated with any related changes in quantities of other items of Work, and in Contractor's costs to perform such other Work, such that the resulting overall change in Contract Price is equitable to Owner and Contractor.
  - 3. Adjusted unit prices will apply to all units of that item.

## **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 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 with such procedures and programs 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 other than any expressly required by the Contract Documents to be furnished and paid for by Contractor, except that costs incurred in connection with tests or inspections of covered Work will 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 will 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 will 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 written 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 will 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.

1. 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, 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 will 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 defective Work as required by Engineer, then Owner may, after 7 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. The equipment referenced in the foregoing sentence shall include only equipment that is intended solely for use and installation or incorporation in the Project as part of the Work and shall not include Contractor's tools, machinery, or construction equipment. 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 for 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 25 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.
  2. ~~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 must also be accompanied by: (a) a bill of sale, invoice, copies of subcontract or purchase order payments, or other documentation establishing full payment by Contractor for the materials and equipment; (b) at Owner's request, documentation warranting that Owner has received the materials and equipment free and clear of all Liens; and (c) evidence that 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, and no payments shall be made on stored material, whether on or off site, unless prior written arrangements are made with Owner.~~
  3. Beginning with the second Application for Payment, each Application must include an affidavit of Contractor stating that all previous progress payments received by Contractor have been applied to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
  4. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- C. *Review of Applications*
1. Engineer will, within 5 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;
  - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto;
  - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work;
  - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid by Owner; 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*

- 1. ~~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.~~ Twenty 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.

*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 based on Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages resulting from 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 has occurred that would constitute a default by Contractor and therefore justify a termination for cause;
  - j. ~~Liquidated or other damages have accrued as a result of Contractor's failure to achieve Milestones, Substantial Completion, or final completion of the Work; 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; or

- k. Other items entitle 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 will 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 will be treated as an amount due as determined by Paragraph 15.01.D.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 7 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.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a preliminary certificate of Substantial Completion which will 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 7 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.

#### 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 15.03.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 6.04 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 7.12), and other documents, Contractor may make application for final payment.
2. The final Application for Payment must 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 duly pending Change Proposals and Claims or other disputes or items that Contractor believes are unresolved; 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 Final Application and Recommendation of Payment:* If, on the basis of Engineer's observation of the Work during construction and final 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 shall, within 10 days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the final Application for Payment to Owner for payment. Such recommendation will account for any set-offs against payment that are necessary in Engineer's reasoned opinion to protect Owner from loss for the reasons stated above with respect to progress payments. 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. *Notice of Acceptability*: In support of, and at the same time as, its recommendation of payment of the final Application for Payment, Engineer shall also give written notice to Owner and Contractor that the Work is acceptable, subject to stated limitations in the notice and to the provisions of Paragraph 15.07.
- D. *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 and issuance of notice of the acceptability of the Work. Without intending to limit any other requirements set forth herein for final payment, the Work shall not be deemed complete until the Engineer has certified that, among any other requirements herein, the Contractor has completed all of the Work; there is satisfactory operation of all equipment, by means of acceptance tests; all punch list items has been corrected to the satisfaction of Owner and Engineer; the Contractor has provided all evidence of all releases of all mechanics', materialmen's and like liens; all warranties, equipment operation and maintenance manuals, As-Built Drawings and other required documents have been delivered; the Work is ready for all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction; all rubbish, tools, and surplus materials and equipment from the Project Site have been removed; and a final affidavit and release of claims has been provided.
- E. *Final Payment Becomes Due*: Upon receipt from Engineer of the final Application for Payment and accompanying documentation, Owner shall set off against the amount recommended by Engineer for final payment any further sum to which Owner is entitled, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions of this Contract with respect to progress payments. Owner shall pay the resulting balance due to Contractor within 30 days of Owner's receipt of the final Application for Payment from Engineer.

#### 15.07 *Waiver of Claims*

- A. By making final payment, Owner waives its claim or right to liquidated damages or other damages for late completion by Contractor, except as set forth in an outstanding Claim, appeal under the provisions of Article 17, set-off, or express reservation of rights by Owner. Owner reserves all other claims or rights after final payment. Final payment shall not be construed to mean acceptance of defective work or improper materials.
- 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 as a Claim, or appealed under the provisions of Article 17.

#### 15.08 *Correction Period*

- A. If within two years after the date of Substantial Completion, or any common law warranty period, (or such longer period of time as may be prescribed by the Supplementary Conditions or the terms of any applicable special guarantee required by the Contract Documents), Owner gives Contractor written notice that any Work has been found to be defective, or that Contractor's repair of any damages to the Site or adjacent areas has been found to be defective, then after receipt of such notice of defect 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 adjacent areas;

2. correct such defective Work;
  3. remove the defective Work from the Project and replace it with Work that is not defective, if the defective Work has been rejected by Owner, 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 from the corrective measures.
- B. Owner shall give any such notice of defect within 60 days of the discovery that such Work or repairs is defective. If such notice is given within such 60 days but after the end of the correction period, the notice will be deemed a notice of defective Work under Paragraph 7.17.B.
- C. If, after receipt of a notice of defect within 60 days and within the correction period, 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 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). Contractor's failure to pay such costs, losses, and damages within 10 days of invoice from Owner will be deemed the start of an event giving rise to a Claim under Paragraph 12.01.B.
- D. 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.
- E. 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.
- F. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph are not to 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 directly attributable to any such suspension. Any Change Proposal seeking such adjustments must be submitted no later than 30 days after the date fixed for resumption of Work.
- B. When all or a portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and other protections reasonably necessary to protect the Work and the Site from foreseeable injury by the elements or otherwise.



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 any 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) 10 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) written 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. The equipment referenced in the foregoing sentence shall include only equipment that is intended solely for use and installation or incorporation in the Project as part of the Work and shall not include Contractor's tools, machinery, or construction equipment.
- D. Owner may not proceed with termination of the Contract under Paragraph 16.02.B if Contractor within 7 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 will govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.

#### 16.03 *Owner May Terminate for Convenience*

- A. Upon 7 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, Owner, without waiving the provisions set forth in Section B below and in consideration for its ability to terminate for convenience, 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, for Work thereafter completed as specified in such notice, costs and expenses of demobilization including fair and reasonable overhead and profit on demobilization costs and expenses, as well as release and payment to Contractor of all retainage held by Owner related to the portion of the Work completed. ~~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.~~

- B. Contractor shall not be paid for any loss of anticipated profits or revenue, post-termination overhead costs, consequential damages of any kind, or other indirect economic loss arising out of or resulting from such termination.

C. Upon any such termination, Contractor shall:

1. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;
2. Place no further orders for materials, services, or facilities, other than as may be necessary or required for completion of such portion of Work under the Contract that is not terminated;
3. Promptly make every reasonable effort to obtain cancellation upon terms reasonably satisfactory to Owner of all purchase orders and Subcontracts to the extent they relate to the performance of Work terminated or assign to Owner those orders and Subcontracts and revoke agreements specified in such notice;
4. Reasonably assist Owner, as specifically requested in writing, in the maintenance, protection and disposition of property acquired by Owner under the Contract, as may be necessary;
5. Complete performance of any Work which is not terminated; and

6. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors 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 7 days' written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the eContract 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, 7 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, pursuant to Article 12; and
  2. Disputes between Owner and Contractor concerning the Work, or obligations under the Contract Documents, that arise 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;
  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. In the event Owner or Contractor is required to enforce this Contract by court proceedings, alternative dispute resolution, appellate proceedings or otherwise, then venue for any such legal action shall be in Polk County, Florida, and the prevailing party shall be entitled to recover from the other party all fees and costs, including reasonable attorney's fees and costs,

paralegal fees, and expert witness fees, incurred in bringing or defending such action and/or enforcing any judgment granted in such action.

## ARTICLE 18—MISCELLANEOUS

### 18.01 *Giving Notice*

- A. Whenever any provision of the Contract requires the giving of written notice to Owner, Engineer, or Contractor, it will be deemed to have been validly given only if delivered:
1. in person, by a commercial courier service or otherwise, to the recipient's place of business;
  2. by registered or certified mail, postage prepaid, to the recipient's place of business; or
  3. by e-mail to the recipient, with the words "Formal Notice" or similar in the e-mail's subject line.

### 18.02 *Computation of Times*

- A. When any period of time is referred to in the Contract by days, it will be computed ~~to~~ based on calendar days and shall 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 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 will not constitute a waiver of that provision, nor will 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 of the Contract or 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 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party to this Contract of any rights under or interests in the Contract will be binding on the other party without the written consent of the party sought to be bound; and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract.

18.09 *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.

18.10 *Headings*

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

18.11 *No Third-Party Beneficiaries*

Except with respect to Contractor's indemnification of the Indemnitees as set forth herein, and except as otherwise specifically provided herein, this Contract is solely for the benefit of Owner and Contractor 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 Contract (specifically including but not limited to any design professionals, subcontractors, or material suppliers directly engaged by Contractor). Nothing in this Contract expressed or implied is intended or shall be construed to confer upon any person or corporation other than Owner and Contractor any right, remedy, or claim under or by reason of this Contract or any of the provisions or conditions of this Contract; and all of the provisions, representations, covenants, and conditions contained in this Contract shall inure to the sole benefit of and shall be binding upon Owner and Contractor and their respective representatives, successors, and assigns.

**SUPPLEMENTARY CONDITIONS RELATING TO INSURANCE REQUIREMENTS, SUBSURFACE CONDITIONS,  
AND HAZARDOUS CONDITIONS  
Willowbrook South Phase 1**

The following supplements establish information supplementary to the *Standard General Conditions of the Construction Contract*, EJCDC Document No. C-700, 2018 Edition (the “**General Conditions**”), including establishing insurance limits and other requirements pursuant to Article 6, and identifying certain reports relating to subsurface conditions and hazardous conditions at the site pursuant to Article 5.

Other changes have been marked directly in underlined and strike-through text 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.

**SC-5.03 SUBSURFACE AND PHYSICAL CONDITIONS**

1. *Reports.* Pursuant to Paragraph 5.03.A.1. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or adjacent to the Site are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

Geotechnical Engineering Services Report, dated November 30, 2023 and attached hereto.

OR

~~No reports related to physical conditions and subsurface structures at the Site are known to the Owner.~~

2. *Drawings.* Pursuant to Paragraph 5.03.A.2. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at or adjacent to the Site (except Underground Facilities) are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

No drawings related to physical conditions and subsurface structures at the Site are known to the Owner.

OR

~~No drawings related to physical conditions and subsurface structures at the Site are known to the Owner.~~

3. *Technical Data.* Pursuant to Paragraph 5.03.A.3. of the General Conditions, the following Technical Data is contained in the reports and drawings of subsurface and physical conditions:

N/A

OR

~~No reports or drawings related to physical conditions and subsurface structures at the Site are known to the Owner.~~

**SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE**

1. *Reports.* Pursuant to Paragraph 5.06.A.1. of the General Conditions, the following reports of Hazardous Environmental Conditions at or adjacent to the Site are known to Owner:

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

2. *Drawings.* Pursuant to Paragraph 5.06.A.2. of the General Conditions, the following drawings of Hazardous Environmental Conditions at or adjacent to the Site are known to Owner:

~~[Title of Drawing], prepared by [Preparing Entity], dated [date].~~

~~OR~~

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

3. *Technical Data.* Pursuant to Paragraph 5.06.A.3. of the General Conditions, the following Technical Data is contained in the reports and drawings of Hazardous Environmental Conditions:

~~[List Technical Data]~~

~~OR~~

No reports or drawings related to Hazardous Environmental Conditions at the Site are known to Owner.

**SC-6.01 PERFORMANCE, PAYMENT, AND OTHER BONDS**

No performance or payment bonds are required.

**SC-6.03 CONTRACTOR'S INSURANCE**

Pursuant to Paragraph 6.03.A. of the General Conditions, the limits of Contractor's required insurance shall be as follows.

A. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

1. Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory
Employer's Liability	
Each Accident	\$1,000,000
Each Employee	\$1,000,000
Policy Limit	\$1,000,000

2. *Commercial General Liability*

General Aggregate	\$3,000,000
Products - Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury	\$2,000,000
Bodily Injury and Property Damage*—Each Occurrence	\$2,000,000

*\*Property Damage liability shall provide explosion, collapse, and under-ground coverages where applicable.*

3. *Automobile Liability\**

<b>Bodily Injury</b>	
Each Person	\$1,000,000
Each Accident	\$1,000,000
<b>Property Damage</b>	
Each Accident	\$1,000,000
<b>AND</b>	
Combined Single Limit (Bodily Injury and Property Damage)	\$2,000,000

*\*Automobile liability insurance shall include coverage for all owned, non-owned, and hired vehicles.*

4. *Excess or Umbrella Liability*

Per Occurrence	\$5,000,000
General Aggregate	\$5,000,000

5. *Contractor’s Pollution Liability\**

Each Occurrence/Claim	\$1,000,000
General Aggregate	\$2,000,000

*\*Pollution liability shall cover third-party injury and property damage claims, including clean-up costs.*

6. *Builder’s Risk*

Completed Value	<i>Full insurable replacement value of the Work</i>
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- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days after notice has been received by the purchasing policyholder. Within three days of receipt of any such notice, the purchasing policyholder shall provide a copy of the notice to each other insured and Engineer.
- C. Automobile liability insurance provided by Contractor will be written on an occurrence basis and provide coverage 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.

- D. Contractor's commercial general liability policy will be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
1. Products and completed operations coverage maintained for three years after final payment;
  2. Blanket contractual liability coverage to the extent permitted by law;
  3. Broad form property damage coverage; and
  4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies will include and list Owner and its staff, officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds will provide primary coverage for all claims covered thereby (including, as applicable, those arising from both ongoing and completed operations) on a non-contributory basis.
1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance will be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. The coverage afforded must be at least as broad as that of each and every one of the underlying policies. Contractor may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy.
- G. 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. This insurance shall:
1. include the Owner and Contractor as named 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.
  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.
- H. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.

- I. 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 15. Alternatively, the Owner has the right but not the obligation 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 Owner's obtaining the required insurance.

#### **SC-8.02 COORDINATION**

Pursuant to Paragraph 8.02 of the General Conditions, 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 adjected to the Site, the following information pertains to 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:

The authorized representatives and agents of KRPC Willowbrook, LLC, including but not limited to Steve Rosser, Allan Keen, Mckenzie Terrill and Steve Sloan.

2. An itemization of the specific matters to be covered by such authority and responsibility:

N/A

3. The extent of such authority and responsibilities: N/A

Upon recording, please return to:  
Jennifer Kilinski, Esq.  
517 E. College Avenue  
Tallahassee, Florida 32301

## NOTICE OF COMMENCEMENT

Permit Nos. \_\_\_\_\_

Parcel I.D. No.: Legal Description Attached

STATE OF FLORIDA  
COUNTY OF POLK

THE UNDERSIGNED hereby gives notice that improvements will be made to certain real property in Polk County, Florida. The following information is provided in this Notice of Commencement.

1. Description of property (legal description of property and address if available):  
That property identified at Exhibit A.
2. General description of improvements: Earthwork and clearing, roadway improvements, drainage improvements, waterline and accessories, sewer system, irrigation and accessories, and related miscellaneous work for Willowbrook South Phase 1 ("Project").
3. Owner information
  - a) Name and address: Willowbrook Community Development District  
c/o Governmental Management Services-Central Florida, LLC  
219 E. Livingston Street  
Orlando, Florida 32801
  - b) Interest in property: Construction Easement
  - c) Name and address of fee simple titleholder (if other than owner): KRPC Willowbrook, LLC ("Developer")
4. Contractor (name and address): Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771
5. Surety
  - a) Name and address: \_\_\_\_\_
  - b) Amount of bond: \$6,205,113.00
6. Lender (name and address): \_\_\_\_\_
7. Person within the State of Florida designated by owner upon whom notices or other documents may be served.

Name and address: Jill Burns, Governmental Management Services-Central Florida, LLC, 219 E. Livingston Street, Orlando, Florida 32801

8. In addition, owner designates the following individual to receive a copy of any notices: Kilinski | Van Wyk PLLC, 517 E. College Avenue, Tallahassee, FL 32301.
9. Expiration date of notice of commencement: the expiration date is one year from the date of recording unless a different date is specified).

The foregoing information and execution of this notice is being provided solely for the purpose of providing notice. The Owner of the property is a local unit of special purpose government and not an "Owner" as defined in Section 713.01(23), *Florida Statutes*.

Attest:

**WILLOWBROOK  
COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chairperson, Board of Supervisors

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March 2024, by McKenzie Terrill, as Chairperson of the Board of Supervisors of the Willowbrook Community Development District, who is  personally known to me or  produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
(Official Notary Signature & Seal)

Print Name: \_\_\_\_\_  
Notary Public, State of Florida

**EXHIBIT A:** Legal Description

EXHIBIT A  
Legal Description

**SOUTH PARCEL:**

COMMENCE AT A 4" x 4" CONCRETE MONUMENT WITH A DISK LABELED LB7454, LYING AT THE SOUTHWEST CORNER OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, SAID POINT HAVING A NORTHING OF 1,347,673.47 FEET, AND AN EASTING OF 752,255.25 FEET IN REFERENCE TO THE STATE PLANE COORDINATE SYSTEM OF FLORIDA, NORTH AMERICAN DATUM OF 1983, 2011 ADJUSTMENT, AND RUN THENCE ALONG THE WEST BOUNDARY OF SAID SOUTHEAST 1/4 , N00°05'30"W A DISTANCE OF 1379.25 FEET TO A POINT MONUMENTED WITH A ONE HALF INCH IRON ROD WITH CAP READING "PESURV LB8112", LYING ON THE NORTHERN RIGHT OF WAY OF BUCKEYE LOOP ROAD / AVENUE T NE (AS DESCRIBED IN OFFICIAL RECORD BOOK 748, PAGE 608 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA), SAID POINT LYING ON A CURVE CONCAVE NORTHEASTERLY, NON TANGENT TO THE PREVIOUS COURSE, HAVING A RADIUS OF 924.93 FEET, A DELTA ANGLE OF 13°36'00", CHORD LENGTH OF 219.03 FEET, AND CHORD BEARING N70°42'22"W. THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE, AN ARC DISTANCE OF 219.55 FEET TO A POINT OF REVERSE CURVATURE ON A CURVE HAVING A RADIUS OF 984.93 FEET, A DELTA ANGLE OF 17°29'50", CHORD LENGTH OF 299.61 FEET AND CHORD BEARING OF N72°39'17"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 300.78 FEET TO THE POINT OF BEGINNING, SAID POINT ON A CURVE HAVING A RADIUS OF 984.93 FEET, A CENTRAL ANGLE OF 9°30'10", CHORD LENGTH OF 163.17 FEET, AND CHORD BEARING OF N86°09'17"W. CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 163.35 FEET TO A POINT OF COMPOUND CURVATURE ON A CURVE HAVING A RADIUS OF 602.96 FEET, A CENTRAL ANGLE OF 23°57'00", CHORD LENGTH OF 250.21 FEET, AND CHORD BEARING OF S77°07'08"W; CONTINUE THENCE ALONG SAID NORTHERN RIGHT OF WAY LINE AND CURVE AN ARC DISTANCE OF 252.04 FEET TO THE EAST BOUNDARY OF THAT PARCEL DESCRIBED BY WARRANTY DEED IN OFFICIAL RECORD BOOK 4476, PAGE 439, PUBLIC RECORDS OF POLK COUNTY, FLORIDA; RUN THENCE ALONG SAID EAST BOUNDARY THE FOLLOWING (13 ) COURSES: (1) N03°00'59"W A DISTANCE OF 837.96 FEET; (2) N27°38'59"W A DISTANCE OF 151.06 FEET; (3) N17°11'59"W A DISTANCE OF 119.50 FEET; (4) N02°16'59"W A DISTANCE OF 150.00 FEET; (5) N05°12'01"E A DISTANCE OF 279.98 FEET; (6) N02°52'01"E A DISTANCE OF 174.28 FEET; (7) N05°58'59"W A DISTANCE OF 107.84 FEET; (8) N24°03'59"W A DISTANCE OF 270.00 FEET; (9) N29°03'59"W A DISTANCE OF 273.00 FEET; (10) N07°36'59"W A DISTANCE 122.34 FEET; (11) N20°38'59"W A DISTANCE OF 229.76 FEET; (12) S84°36'01"W A DISTANCE OF 253.80 FEET; (13) N02°38'59"W A DISTANCE OF 423.10 FEET MORE OR LESS TO THE SOVEREIGN SUBMERGED LAND LINE FOR LAKE SMART; THENCE ALONG SAID SOVEREIGN SUBMERGED LAND LINE MEANDERED BY THE FOLLOWING (2) COURSES: (1) N37°11'01"E A DISTANCE OF 612.27 FEET; (2) N19°04'35"E A DISTANCE OF 692.87 FEET TO THE NORTH BOUNDARY OF A PERPETUAL CANAL EASEMENT

RECORDED IN OFFICIAL RECORDS BOOK 913, PAGE 237 AND CORRECTED IN OFFICIAL RECORDS BOOK 1003, PAGE 901 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S74°39'25"E A DISTANCE OF 424.92 FEET TO THE BOUNDARY OF WILLOWBROOK GOLF COURSE AS DESCRIBED IN OFFICIAL RECORDS BOOK 1006, PAGE 150 PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID BOUNDARY OF WILLOWBROOK GOLF COURSE THE FOLLOWING (5) COURSES: (1) S03°20'11"E A DISTANCE OF 590.08 FEET; (2) S31°53'40"E A DISTANCE OF 165.00 FEET; (3) S75°33'40"E A DISTANCE OF 700.00 FEET; (4) N59°06'20"E A DISTANCE OF 180.00 FEET; (5) N14°51'22"E A DISTANCE OF 530.00 FEET TO SAID NORTH BOUNDARY OF CANAL EASEMENT; THENCE ALONG SAID NORTH BOUNDARY S74°39'03"E A DISTANCE OF 656.11 FEET MORE OR LESS TO THE STATE SOVEREIGN SUBMERGED LAND LINE FOR LAKE FANNIE; THENCE ALONG STATE SOVEREIGN LAND LINE MEANDERED BY THE FOLLOWING (17 ) COURSES: (1) S22°54'12"W A DISTANCE OF 84.02 FEET; (2) S23°20'01"W A DISTANCE OF 77.13 FEET; (3) S01°56'35"W A DISTANCE OF 183.39 FEET; (4) S17°50'27"E A DISTANCE OF 156.71 FEET; (5) S03°23'58"W A DISTANCE OF 272.03 FEET; (6) S04°08'43"E A DISTANCE OF 136.28 FEET; (7) S01°04'00"W A DISTANCE OF 140.27 FEET; (8) S08°34'41"E A DISTANCE OF 72.00 FEET; (9) S08°34'41"E A DISTANCE OF 115.99 FEET; (10) S18°02'29"E A DISTANCE OF 188.98 FEET; (11) S06°24'25"W A DISTANCE OF 239.38 FEET; (12) S16°39'01"E A DISTANCE OF 139.88 FEET; (13) S04°16'33"W A DISTANCE OF 81.73 FEET; (14) S01°16'19"W A DISTANCE OF 240.92 FEET; (15) S08°50'46"W A DISTANCE OF 194.47 FEET; (16) S19°25'21"E A DISTANCE OF 131.16 FEET; (17) S30°20'43"E A DISTANCE OF 50.01 FEET TO THE NORTH BOUNDARY OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15, TOWNSHIP 28 SOUTH, RANGE 26 EAST, ALSO BEING THE NORTH BOUNDARY OF POINSETTIA PARK UNIT 3, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK23, PAGE 5 OF THE PUBLIC RECORDS OF POLK COUNTY, FLORIDA; THENCE ALONG SAID NORTH BOUNDARY S89°11'18"W A DISTANCE OF 1183.64 FEET TO THE WEST BOUNDARY OF SAID NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 15; THENCE ALONG SAID WEST BOUNDARY S00°05'30"E A DISTANCE OF 189.74 FEET; THENCE N48°21'56"W A DISTANCE OF 7.64 FEET TO THAT JURISDICTIONAL WETLAND LINE DESCRIBED BY ENVIRONMENTAL RESOURCE PERMIT 43029879.00 ; THENCE ALONG SAID JURISDICTIONAL WETLANDS LINE THE FOLLOWING (18) COURSES: (1) S09°32'52"W A DISTANCE OF 5.79 FEET; (2) S64°35'31"W A DISTANCE OF 42.41 FEET; (3) S53°10'36"W A DISTANCE OF 71.33 FEET; (4) S41°33'05"W A DISTANCE OF 99.64 FEET; (5) S39°51'13"W A DISTANCE OF 136.53 FEET; (6) S15°48'15"W A DISTANCE OF 93.60 FEET; (7) S11°37'15"E A DISTANCE OF 78.22 FEET; (8) S38°10'38"E A DISTANCE OF 89.25 FEET; (9) S22°39'08"W A DISTANCE OF 66.24 FEET; (10) S39°40'21"W A DISTANCE OF 32.28 FEET; (11) S23°39'36"E A DISTANCE OF 22.48 FEET; (12) N80°26'21"W A DISTANCE OF 32.38 FEET; (13) S61°11'23"W A DISTANCE OF 39.18 FEET; (14) S45°26'59"W A DISTANCE OF 69.06 FEET; (15) S57°05'32"W A DISTANCE OF 57.78 FEET; (16) S42°55'02"W A DISTANCE OF 46.01 FEET; (17) S21°40'16"W A DISTANCE OF 102.79 FEET; (18) S08°52'51"W A DISTANCE OF 67.76 FEET TO THE POINT OF BEGINNING

**DEVELOPER’S AFFIDAVIT AND AGREEMENT  
REGARDING ASSIGNMENT OF CONTRACTOR AGREEMENT  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

BEFORE ME, the undersigned, personally appeared Steve Rosser, as Manager of KRPC Willowbrook, LLC (“**Developer**”), who, after being first duly sworn, deposes and says:

- (i) I, Steve Rosser, as Manager and authorized representative for Developer am authorized to make this affidavit on its behalf. I make this affidavit in order to induce the Willowbrook Community Development District (“**District**”) to accept an assignment of the Contractor Agreement (defined below).
- (ii) The agreement (“**Contractor Agreement**”) between Developer and Jon M Hall Company, LLC (“**Contractor**”), dated \_\_\_\_\_, 2024, including all change orders approved to date, and attached hereto as **Exhibit A**, either
  - a.   X   was competitively bid prior to its execution and represents a fair, competitive and reasonable price for the work involved; or
  - b. \_\_\_\_\_ is below the applicable bid thresholds and was not required to be competitively bid prior to its execution.

(iii) Developer, in consideration for the District’s acceptance of an assignment of the Contractor 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 Contractor Agreement. Such indemnification does not negate the responsibilities of the District or the Contractor in performance of its requirements under the Agreement or Florida law.

(iv) Developer has obtained a release from Contractor (and all subcontractors and material suppliers thereto) acknowledging the assignment of the above referenced contract and the validity thereof, the satisfaction of the bonding requirements of Section 255.05, *Florida Statutes*, 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:
  - a.   X   furnished and recorded a performance and payment bond in accordance with Section 255.05, *Florida Statutes*, which is attached hereto as **Exhibit C**, or
  - b. \_\_\_\_\_ was not required to provide such a bond pursuant to Section 255.05, *Florida Statutes*; or
  - c. \_\_\_\_\_ Developer will furnish a demand note agreement in satisfactory form to the District.



(vi) Developer

- a.   X   represents and warrants that there are no outstanding liens or claims relating to the Contractor Agreement, or
- b.            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 Contractor Agreement are current and there are no outstanding disputes under the Contractor Agreement.

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 March, 2024.

**KRPC Willowbrook, LLC**

\_\_\_\_\_  
\_\_\_\_\_  
[Print Name]

By: \_\_\_\_\_  
Name: Steve Rosser, Manager

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this      day of March, 2024, by Steve Rosser, as Manager of KRPC Willowbrook, LLC, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

**Willowbrook  
Community Development District**

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
Print Name of Witness

\_\_\_\_\_  
Chairman, Board of Supervisors

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this      day of March, 2024, by McKenzie Terrill, Chairperson of the Willowbrook Community Development District, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

**CONTRACTOR'S ACKNOWLEDGMENT AND ACCEPTANCE OF  
ASSIGNMENT AND RELEASE  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

For ten dollars and such additional good and valuable consideration received in hand, the receipt and sufficiency of which are hereby acknowledged, Jon M Hall Company, LLC (“**Contractor**”), hereby agrees as follows:

- (i) The agreement between KRPC Willowbrook LLC and Contractor dated \_\_\_\_\_, 2024 (“**Contractor Agreement**”), has been assigned to the Willowbrook Community Development District (“**District**”). Contractor acknowledges and accepts such assignment and its validity.
- (ii) Contractor represents and warrants that either:
  - a.  Contractor has furnished and recorded 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 Contractor Agreement.
- (iii) Contractor represents and warrants that all payments to Contractor and any subcontractors or materialmen under the Contractor Agreement are current, there are no past-due invoices for payment due to Contractor under the Contractor Agreement, and there are no outstanding disputes under the Contractor 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 March, 2024.

**JON M HALL COMPANY, LLC,**  
a Florida limited liability company

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

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Jon M Hall Company, LLC, who  is personally known to me or  produced \_\_\_\_\_ as identification.

(NOTARY SEAL)

\_\_\_\_\_  
Notary Public Signature

**ADDENDUM (“ADDENDUM”) TO CONTRACTOR AGREEMENT (“CONTRACT”)  
WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**1. ASSIGNMENT.** This Addendum applies to that certain contract between the Willowbrook Community Development District (“**District**”) and Jon M Hall Company, LLC (“**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, *Florida Statutes*, 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, *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.** In addition to the existing additional insureds under the Contract, the District, its officers, governing board, agents, staff, and representatives shall be named as additional insureds 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. LOCAL GOVERNMENT PROMPT PAYMENT ACT.** Notwithstanding any other provision of the Contract, all payments to the Contractor shall be made in a manner consistent with the Local Government Prompt Payment Act, sections 218.70 through 218.80, *Florida Statutes*. Contractor shall make payments due to subcontractors and materialmen and laborers 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*. All payments due and not made within the time prescribed by Section 218.735, *Florida Statutes*, bear interest at the rate of two percent (2%) per month on the unpaid balance in accordance with Section 218.735(9), *Florida Statutes*. To the extent the Contract 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 the Contract, together with this Addendum, 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. Further, the District shall hold retainage up to 5% of each pay application, consistent with Chapters 218 and 255, *Florida Statutes*.

**5. INDEMNIFICATION.** Contractor’s indemnification, defense, and hold harmless obligations under the Contract shall continue to apply to the original indemnitees and shall further include the District and its supervisors, consultants, agents, attorneys, managers, engineers and representatives. To the extent that a maximum limit for indemnification is required by law, and not otherwise set forth in the Contract, the indemnification limit shall be the greater of the limits of the insurance amounts set forth in the Contract

or Three Million Dollars (\$3,000,000), which amounts Contractor agrees bears a reasonable commercial relationship to the Contract and are enforceable and were included as part of the bid and/or assignment documents. Contractor's obligations hereunder are intended to be consistent with all provisions of applicable law, and to the extent found inconsistent by a court of competent jurisdiction, the Contract shall be deemed amended and/or reformed consistent with the intent of this paragraph and such that the obligations apply to the maximum limits of the law.

**6. TAX EXEMPT DIRECT PURCHASES.** The parties agree that the District may in its sole discretion elect to undertake a direct purchase of any or all materials incorporated into the work performed according to the Contract. In such event, the following conditions shall apply:

a. The District represents to Contractor that the District is a governmental entity exempt from Florida sales and use tax and has provided Contractor with a copy of its Consumer Exemption Certificate.

b. The District may elect to implement a direct purchase arrangement whereby the District will directly acquire certain materials ("Direct Purchase Materials") necessary for the work directly from the suppliers to take advantage of District's tax-exempt status.

c. Prior to purchasing any materials, the Contractor shall contact the District to determine which materials will be treated as Direct Purchase Materials and verify the exact manner, method, and requirements for acquiring any such Direct Purchase Materials.

d. The District shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and to the Contractor. Each Certificate of Entitlement will be in the format specified by Rule 12A-1.094(4)(c), Florida Administrative Code. Each Certificate of Entitlement shall have attached thereto the corresponding purchase order. 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 District; (3) payment of the vendor's invoice will be made directly by the District to the vendor from public funds; (4) the District 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 District assumes the risk of damage or loss at the time of purchase or delivery by the vendor. 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.

e. The District shall issue purchase orders directly to suppliers of Direct Purchase Materials. The District shall issue a separate Certificate of Entitlement for each purchase order. Such purchase orders shall require that the supplier provide the required shipping and handling insurance and provide for delivery F.O.B. jobsite. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the District and if the original contract contemplated sale of materials and installation by same person, the change order shall reflect sale of materials and installation by different legal entities.

f. Upon delivery of the Direct Purchase Materials to the jobsite, the District shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, the District shall accept and take title to the Direct Purchase Materials.

g. Suppliers shall issue invoices directly to the District. The District shall process invoices and issue payment directly to the suppliers from public funds.

h. Upon acceptance of Direct Purchase Materials, the District shall assume risk of loss of same until they are incorporated into the project. Contractor shall be responsible for safeguarding all Direct

Purchase Materials and for obtaining and managing all warranties and guarantees for all materials and products.

i. The District shall, at its option, maintain builder's risk insurance on the Direct Purchase Materials.

**7. PUBLIC RECORDS.** Contractor agrees and understands that Chapter 119, *Florida Statutes*, may be applicable to documents prepared in connection with the services provided hereunder and agrees to cooperate with public record requests made thereunder. In connection with this Contract, Contractor agrees to comply with all provisions of Florida's public records laws, including but not limited to Section 119.0701, *Florida Statutes*, the terms of which are incorporated herein. Among other requirements, Contractor must:

- a. Keep and maintain public records required by the District to perform the service.
- b. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if Contractor does not transfer the records to the District.
- d. Upon completion of this Agreement, transfer, at no cost, to the District all public records in possession of Contractor or keep and maintain public records required by the District to perform the service. If Contractor transfers all public records to the District upon completion of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE PUBLIC RECORDS CUSTODIAN AT C/O JILL BURNS, GOVERNMENTAL MANAGEMENT SERVICES – CENTRAL FLORIDA, LLC, 219 EAST LIVINGSTON STREET, ORLANDO, FLORIDA 32801, PHONE (407) 841-5524, AND JBURNS@GMSCFL.COM.**

**8. 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.

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

District: Willowbrook Community Development District  
c/o Governmental Management Services – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Attn: District Manager

With a copy to: Kilinski | Van Wyk PLLC  
517 E. College Ave  
Tallahassee, Florida 32301  
Attn: District Counsel

**10. SCRUTINIZED COMPANIES STATEMENT.** Upon the Assignment, Contractor shall properly execute a sworn statement pursuant to section 287.135(5), *Florida Statutes*, regarding Scrutinized Companies with Activities in Sudan List or Scrutinized Companies with Activities in the Iran Terrorism Sectors List, 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 A**. If 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 the Iran Terrorism Sectors List or been engaged in business operations in Cuba or Syria, the District may immediately terminate the Contract.

**11. 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**.

**12. 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**.

**13. DISCRIMINATION STATEMENT.** Upon the Assignment, Contractor shall properly execute a sworn statement under Section 287.134(2)(a), *Florida Statutes*, regarding discriminatory vendor list, 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 D**.

**14. CONSTRUCTION DEFECTS.** 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.

*[signatures on following page]*

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

**JON M HALL COMPANY, LLC,**  
a Florida limited liability company

\_\_\_\_\_  
Witness

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

\_\_\_\_\_  
Print Name of Witness

**WILLOWBROOK**  
**COMMUNITY DEVELOPMENT DISTRICT**

\_\_\_\_\_  
Witness

\_\_\_\_\_  
By: McKenzie Terrill  
Its: Chairman, Board of Supervisors

\_\_\_\_\_  
Print Name of Witness

- Exhibit A:** Scrutinized Companies Statement
- Exhibit B:** Public Entity Crimes Statement
- Exhibit C:** Trench Safety Act Statement
- Exhibit D:** Discrimination Statement



**EXHIBIT A**  
**SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES,**  
**REGARDING SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR**  
**SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN TERRORISM SECTORS**  
**LIST**

**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 Willowbrook Community Development District by \_\_\_\_\_ (print individual's name and title) for Jon M Hall Company, LLC (print name of entity submitting sworn statement) whose business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
2. I understand that, subject to limited exemptions, section 287.135, *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 Terrorism Sectors 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 accepts assignment of its Contract with KRPC Willowbrook, LLC to the Willowbrook 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 Terrorism Sectors 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. The entity will immediately notify the Willowbrook 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 Terrorism Sectors 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 and subscribed before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of March 2024, by \_\_\_\_\_, as \_\_\_\_\_ of Jon M Hall Company, LLC.

\_\_\_\_\_  
Signature of Notary Public taking acknowledgement

(SEAL)

**EXHIBIT B**  
**SWORN STATEMENT UNDER SECTION 287.133(3)(a),**  
**FLORIDA STATUTES, REGARDING PUBLIC ENTITY CRIMES**

**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 Willowbrook Community Development District.
2. 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 Jon M Hall Company, LLC, (“Contractor”), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor’s business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
4. Contractor’s Federal Employer Identification Number (FEIN) is 59-1748765.

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

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 an agency or political subdivision of any other state or with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and 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 adjudication 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 jury verdict, nonjury trial, or entry of a plea 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 for the provision of goods or services 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 officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity, have 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 the officers, directors, executives, partners, shareholders, employees, members or agents who are active in 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, AND (please indicate which additional statement applies):

\_\_\_\_\_ There has been a proceeding concerning the conviction before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Florida Department of Management Services.)

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 March, 2024.

Subcontractor: \_\_\_\_\_

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

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

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, 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



**TRENCH SAFETY ACT COMPLIANCE COST STATEMENT**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**INSTRUCTIONS**

Because trench excavations on this Project are expected to be in excess of 5 feet, Florida's Trench Safety Act, Sections 553.60 – 553.64, *Florida Statutes*, 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. The Contractor further identifies the costs as follows:

Type of Trench Safety Mechanism	Quantity	Unit Cost <sup>1</sup>	Item Total Cost
<b>Project Total</b>			

Dated this \_\_\_\_\_ day of March, 2024.

Contractor: **JON M HALL COMPANY, LLC**

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

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

\_\_\_\_\_  
<sup>1</sup> Use cost per linear square foot of trench excavation used and cost per square foot of shoring used.

**EXHIBIT D**  
**SWORN STATEMENT PURSUANT TO SECTION 287.134(2)(a), FLORIDA STATUTES,**  
**ON DISCRIMINATION**  
**WILLOWBROOK COMMUNITY DEVELOPMENT DISTRICT**

**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 Willowbrook Community Development District.
2. I, \_\_\_\_\_ (print name of authorized representative) am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of \_\_\_\_\_ (print individual's title) for Jon M Hall Company, LLC ("Contractor"), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor's business address is 1400 Martin Luther King Jr. Boulevard, Sanford, Florida 32771.
4. Contractor's Federal Employer Identification Number (FEIN) is 59-1748765.

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

5. 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.
6. 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*.
7. 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.
8. I understand that an "affiliate" as defined in Section 287.134(1)(a), *Florida Statutes*, means:
  - a. A predecessor or successor of an entity that discriminated; or
  - b. 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
9. 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 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.

\_\_\_\_\_  
Signature by authorized representative

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_ day of March, 2024, by \_\_\_\_\_ of Jon M Hall Company, LLC, who is personally known to me or who has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public, State of Florida

**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):  
Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771  
Phone: (407) 215-0410

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

OWNER: Willowbrook Community Development District  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Phone: (407) 841-5524

**CONTRACT**

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

Amount: \$6,205,113.00

Description (Name and Location): Willowbrook Community Development District – South Phase 1 – Winter Haven, Florida

**BOND**

Bond Number:

Date (Not earlier than Contract Date):

Amount: \$6,205,113.00

Modifications to this Bond Form: This Bond is hereby amended so that the provisions and limitations of Section 255.05, Florida Statutes, are incorporated by reference herein.

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.

CONTRACTOR AS PRINCIPAL  
Company: Jon M Hall Company, LLC

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: \_\_\_\_\_  
Signature and Title

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: \_\_\_\_\_  
Signature and Title:



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:

1. 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

2. 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 non-performance 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.

**PAYMENT BOND**

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

CONTRACTOR (Name and Address and Phone Number):  
Jon M Hall Company, LLC  
1400 Martin Luther King Jr. Boulevard  
Sanford, Florida 32771  
Phone: (407) 215-0410

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

OWNER: Willowbrook Community Development District  
c/o GMS – Central Florida, LLC  
219 East Livingston Street  
Orlando, Florida 32801  
Phone: (407) 841-5524

**CONTRACT**

Date:                     

Amount: \$6,205,113.00

Description (Name and Location): Willowbrook Community Development District – South Phase 1 – Winter Haven, Florida

**BOND**

Bond Number:

Date (Not earlier than Contract Date):

Amount: \$6,205,113.00

Modifications to this Bond Form:

This Bond is hereby amended so that the provisions and limitations of Section 255.05, Florida Statutes, are incorporated by reference herein.

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.

CONTRACTOR AS PRINCIPAL  
Company: Jon M Hall Company, LLC

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: \_\_\_\_\_  
Signature and Title

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: \_\_\_\_\_  
Signature and Title:

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:
    1. 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
    2. 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):**

# SECTION XII

# SECTION C

# SECTION 1



**Willowbrook**  
**Community Development District**

Bill to: KRPC Willowbrook LLC

Funding Request #4  
February 14, 2024

Payee	General Fund FY24
<b>1 Governmental Management Services</b>	
Invoice # 4 - Management Fees - February 2024	\$ 3,614.94
<b>2 Kilinski   Van Wyk, PLLC</b>	
Invoice # 8758 - Attorney Services - January 2024	\$ 3,072.46
<b>3 Supervisor Fees - 11/16/2023 Meeting</b>	
McKinzie Terrill	\$ 215.30
Steve Rosser	\$ 215.30
Marcia Bexley	\$ 215.30
	\$ 7,333.30
<hr/>	
<b>Total:</b>	<b>\$ 7,333.30</b>

Please make check payable to:

**Willowbrook**  
**Community Development District**  
Governmental Management Services-CF  
219 E. Livingston Street  
Orlando, Florida 32801

# SECTION 2

***Willowbrook***  
***Community Development District***

***Unaudited Financial Reporting***  
***February 29, 2024***



# Table of Contents

1	<hr/>	<u>Balance Sheet</u>
2	<hr/>	<u>General Fund</u>
3	<hr/>	<u>Month to Month</u>

**Willowbrook**  
**Community Development District**  
**Combined Balance Sheet**  
**February 29, 2024**

		<i>General Fund</i>
<b>Assets:</b>		
<u>Cash:</u>		
Operating Account	\$	4,585
Due from Developer	\$	7,333
<b>Total Assets</b>	<b>\$</b>	<b>11,918</b>
<b>Liabilities:</b>		
Accounts Payable	\$	7,698
<b>Total Liabilites</b>	<b>\$</b>	<b>7,698</b>
<b>Fund Balance:</b>		
Unassigned	\$	4,219
<b>Total Fund Balances</b>	<b>\$</b>	<b>4,219</b>
<b>Total Liabilities &amp; Fund Balance</b>	<b>\$</b>	<b>11,918</b>

**Willowbrook**  
**Community Development District**  
**General Fund**  
**Statement of Revenues, Expenditures, and Changes in Fund Balance**  
**For The Period Ending February 29, 2024**

	Adopted Budget	Prorated Budget Thru 02/29/24	Actual Thru 02/29/24	Variance
<b>Revenues:</b>				
Developer Contributions	\$ 162,003	\$ 53,350	\$ 53,350	\$ -
<b>Total Revenues</b>	<b>\$ 162,003</b>	<b>\$ 53,350</b>	<b>\$ 53,350</b>	<b>\$ -</b>
<b>Expenditures:</b>				
<b><u>General &amp; Administrative:</u></b>				
Supervisor Fees	\$ 11,000	\$ 5,000	\$ 1,400	\$ 3,600
FICA Expenses	\$ 825	\$ 375	\$ 107	\$ 268
Engineering	\$ 13,750	\$ 6,250	\$ -	\$ 6,250
Attorney	\$ 22,917	\$ 10,417	\$ 13,167	\$ (2,750)
Audit	\$ 4,000	\$ -	\$ -	\$ -
Assessment Administration	\$ 6,000	\$ -	\$ -	\$ -
Arbitrage	\$ 450	\$ -	\$ -	\$ -
Dissemination	\$ 5,000	\$ -	\$ -	\$ -
Dissemination Software	\$ 1,500	\$ -	\$ -	\$ -
Trustee Fees	\$ 3,600	\$ -	\$ -	\$ -
Management Fees	\$ 36,667	\$ 16,667	\$ 11,667	\$ 5,000
Information Technology	\$ 1,650	\$ 750	\$ 525	\$ 225
Website Maintenance	\$ 2,850	\$ 1,295	\$ 1,950	\$ (655)
Telephone	\$ 275	\$ 125	\$ -	\$ 125
Postage & Delivery	\$ 917	\$ 417	\$ 119	\$ 298
Insurance	\$ 5,000	\$ 5,000	\$ 4,369	\$ 631
Printing & Binding	\$ 917	\$ 417	\$ -	\$ 417
Legal Advertising	\$ 13,750	\$ 6,250	\$ 14,735	\$ (8,485)
Contingency	\$ 4,583	\$ 2,083	\$ -	\$ 2,083
Office Supplies	\$ 573	\$ 260	\$ 6	\$ 255
Travel Per Diem	\$ 605	\$ 275	\$ -	\$ 275
Dues, Licenses & Subscriptions	\$ 175	\$ 175	\$ 150	\$ 25
<b>Total General &amp; Administrative</b>	<b>\$ 137,003</b>	<b>\$ 55,756</b>	<b>\$ 48,194</b>	<b>\$ 7,562</b>
<b><u>Operations &amp; Maintenance</u></b>				
Field Contingency	\$ 25,000	\$ 11,364	\$ -	\$ 36,364
<b>Total Operations &amp; Maintenance</b>	<b>\$ 25,000</b>	<b>\$ 11,364</b>	<b>\$ -</b>	<b>\$ 36,364</b>
<b>Total Expenditures</b>	<b>\$ 162,003</b>	<b>\$ 67,120</b>	<b>\$ 48,194</b>	<b>\$ 277,316</b>
<b>Excess (Deficiency) of Revenues over Expenditures</b>	<b>\$ -</b>		<b>\$ 5,156</b>	
<b>Net Change in Fund Balance</b>	<b>\$ -</b>		<b>\$ 5,156</b>	
<b>Fund Balance - Beginning</b>	<b>\$ -</b>		<b>\$ (937)</b>	
<b>Fund Balance - Ending</b>	<b>\$ -</b>		<b>\$ 4,219</b>	

**Willowbrook**  
Community Development District  
Month to Month

	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Total
<b>Revenues:</b>													
Developer Contributions	\$ -	\$ 26,750	\$ -	\$ 19,266	\$ 7,333	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 53,350
<b>Total Revenues</b>	<b>\$ -</b>	<b>\$ 26,750</b>	<b>\$ -</b>	<b>\$ 19,266</b>	<b>\$ 7,333</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 53,350</b>
<b>Expenditures:</b>													
<b><u>General &amp; Administrative:</u></b>													
Supervisor Fees	\$ -	\$ -	\$ -	\$ -	\$ 1,400	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,400
FICA Expenses	\$ -	\$ -	\$ -	\$ -	\$ 107	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 107
Engineering	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Attorney	\$ 1,722	\$ 5,742	\$ 2,631	\$ 3,072	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,167
Audit Fee	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Assessment Administration	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Arbitrage	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Dissemination	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Dissemination Software	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Management Fees	\$ -	\$ 1,667	\$ 3,333	\$ 3,333	\$ 3,333	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 11,667
Information Technology	\$ -	\$ 75	\$ 150	\$ 150	\$ 150	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 525
Website Maintenance	\$ -	\$ -	\$ -	\$ 1,850	\$ 100	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,950
Telephone	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Postage & Delivery	\$ -	\$ -	\$ 41	\$ 49	\$ 29	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 119
Insurance	\$ -	\$ -	\$ 4,369	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,369
Printing & Binding	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Legal Advertising	\$ -	\$ 359	\$ 12,139	\$ 1,480	\$ 757	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 14,735
Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Office Supplies	\$ -	\$ -	\$ 3	\$ -	\$ 3	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6
Travel Per Diem	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Dues, Licenses & Subscriptions	\$ -	\$ 150	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 150
<b>Total General &amp; Administrative</b>	<b>\$ 1,722</b>	<b>\$ 7,993</b>	<b>\$ 22,665</b>	<b>\$ 9,935</b>	<b>\$ 5,879</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 48,194</b>
<b><u>Operations &amp; Maintenance</u></b>													
Field Contingency	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>Total Operations &amp; Maintenance</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>Total Expenditures</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 48,194</b>
<b>Excess (Deficiency) of Revenues over Expenditures</b>	<b>\$ (1,722)</b>	<b>\$ 18,757</b>	<b>\$ (22,665)</b>	<b>\$ 9,331</b>	<b>\$ 1,454</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 5,156</b>