

THE DISTRICT

**COMMUNITY DEVELOPMENT
DISTRICT**

November 14, 2023

BOARD OF SUPERVISORS

SPECIAL MEETING

AGENDA

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

AGENDA LETTER

The District Community Development District
OFFICE OF THE DISTRICT MANAGER
2300 Glades Road, Suite 410W•Boca Raton, Florida 33431
Phone: (561) 571-0010•Toll-free: (877) 276-0889•Fax: (561) 571-0013

November 7, 2023

Board of Supervisors
The District Community Development District

Dear Board Members:

The Board of Supervisors of The District Community Development District will hold a Special Meeting on November 14, 2023 at 1:00 p.m., at 602 Shetter Avenue, Jacksonville Beach, Florida 32250. The agenda is as follows:

1. Call to Order/Roll Call
2. Public Comments: Agenda Items (limited to 3 minutes per individual)
3. Consideration of Resolution 2024-01, Ratifying, Confirming, and Approving Electing to Dispense with Further Competitive Solicitation for Construction of the Phase 3B Project; Ratifying, Confirming, and Approving the Actions of the Chairman and All District Staff to Engage in Direct Negotiations with One or More Vendors; and Providing for Severability and an Effective Date
4. Update: Contract/Agreement Phase 3B - CRA Project (Parks, Riverwalk and Streetscape Improvements)
 - Consideration of Proposal from UCC Group, Inc.
5. Update: Contract/Agreement for Phase 3B - CDD Project (Streetscape Improvements)
 - Consideration of Proposal from UCC Group, Inc.
6. Consideration of Change Order with JB Coxwell Construction, Inc. Related to the Boardwalk Construction
7. Presentation of Amended and Restated District Engineer's Report
8. Presentation of Supplemental Special Assessment Methodology Report
9. Consideration of Resolution 2024-02, Setting Forth the Specific Terms of the District's 2023A Bonds; Making Certain Additional Findings and Confirming and/or Adopting an Amended and Restated Engineer's Report and a Supplemental Assessment Report; Confirming the Maximum Assessment Lien Securing the 2023A Bonds and Addressing

ATTENDEES:

Please identify yourself each time you speak to facilitate accurate transcription of meeting minutes.

NOTE: Meeting Time

DIA Funding; Addressing the Allocation and Collection of the 2023A Assessments
 Securing the 2023A Bonds; Addressing Prepayments; Addressing True-Up Payments;
 Providing for the Supplementation of the Improvement Lien Book; and Providing for
 Conflicts, Severability and an Effective Date

10. Consideration of Issuer’s Counsel Documents
 - A. Declaration of Consent
 - B. Collateral Assignment - 2023A-1 Bonds
 - C. Collateral Assignment - 2023A-2 Bonds
 - D. Notice of Special Assessments
 - E. Fourth Restated Acquisition Agreement
 - F. Third Restated Completion Agreement
 - G. True Up Agreement - 2023A-1 Bonds
 - H. True Up Agreement - 2023A-2 Bonds
11. Ratification of Amended and Restated Redevelopment Agreement and Disbursement Agreement
12. Acceptance of Unaudited Financial Statements as of September 30, 2023
13. Approval of October 16, 2023 Regular Meeting Minutes
14. Staff Reports
 - A. District Counsel: *Kutak Rock LLP*
 - B. District Engineer: *Kimley-Horn and Associates, Inc.*
 - C. District Manager: *Wrathell, Hunt and Associates, LLC*
 - NEXT MEETING DATE: December 18, 2023 at 1:30 PM

○ QUORUM CHECK

SEAT 1	ART LANCASTER	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 2	JAY DODSON	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 3	JOHN DODSON	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 4		<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO
SEAT 5	JEAN PATTON	<input type="checkbox"/> IN PERSON	<input type="checkbox"/> PHONE	<input type="checkbox"/> NO

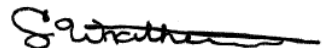
15. Board Members’ Comments/Requests

16. Public Comments: Non-Agenda Items *(limited to 3 minutes per individual)*8

17. Adjournment

If you should have any questions or concerns, please do not hesitate to contact me directly at (561) 719-8675.

Sincerely,



Craig Wrathell
District Manager

FOR BOARD MEMBERS AND STAFF TO ATTEND BY TELEPHONE

CALL-IN NUMBER: 1-888-354-0094

PARTICIPANT PASSCODE: 413 553 5047

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

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RESOLUTION 2024-01

A RESOLUTION OF THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT RATIFYING, CONFIRMING, AND APPROVING ELECTING TO DISPENSE WITH FURTHER COMPETITIVE SOLICITATION FOR CONSTRUCTION OF THE PHASE 3B PROJECT; RATIFYING, CONFIRMING, AND APPROVING THE ACTIONS OF THE CHAIRMAN AND ALL DISTRICT STAFF TO ENGAGE IN DIRECT NEGOTIATIONS WITH ONE OR MORE VENDORS; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the District Community Development District ("**District**") is a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, for the purpose of providing, operating and maintaining infrastructure improvements, facilities and services to the lands within the District; and

WHEREAS, the District, the City of Jacksonville ("**City**"), the Downtown Investment Authority ("**DIA**"), and Elements Development of Jacksonville, LLC ("**Elements**"), previously entered into the Redevelopment Agreement dated July 12, 2018, as amended from time to time ("**RDA**"), and the District, City, and DIA also previously entered into that certain CRA Infrastructure Improvements Costs Disbursement Agreement dated December 22, 2020, as amended from time to time ("**Disbursement Agreement**"); and

WHEREAS, pursuant to the RDA, the District shall provide for the construction of its Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape Improvements) (the "**Phase 3B CRA Project**") and Phase 3B – CDD Project (Streetscape Improvements) (the "**Phase 3B CDD Project**," and together with the Phase 3B CRA Project, the "**Phase 3B Project**"); and

WHEREAS, pursuant to the Disbursement Agreement, the DIA shall provide the District certain funding on a reimbursement basis for the Phase 3B CRA Project, as further provided therein; and

WHEREAS, on August 22, 2023, the District issued a request for proposal for the Phase 3B CRA Project ("**Phase 3B CRA RFP**") and a request for proposal for the Phase 3B CDD Project (the "**Phase 3B CDD RFP**," together with the Phase 3B CRA RFP, the "**Phase 3B RFPs**"); and

WHEREAS, one proposal was received in response to the Phase 3B CRA RFP and one proposal was received was received in response to the Phase 3B CDD RFP (together, the "**Proposals**"); and

WHEREAS, on October 16, 2023, the District's Board of Supervisors ("**Board**") met and rejected the Proposals received as non-responsive for reasons more fully set forth in two (2) separate memorandums dated October 16, 2023, and attached hereto as **Exhibit A** ("**Evaluation Memos**"); and

WHEREAS, no protests of the Board’s decisions on the Phase 3B RFPs were initiated; and

WHEREAS, the District has initiated and completed competitive solicitation processes for the Phase 3B Project in accordance with Florida law, including Sections 190.033(1) and 255.20, *Florida Statutes*, and District Rule 3.5, which included published notices, but such process failed to yield any responsive proposals to construct the Phase 3B Project; and

WHEREAS, the Phase 3B Project remain in need of construction; and

WHEREAS, the RDA and Disbursement Agreement require the District to obtain certain milestones by certain dates pursuant to a performance schedule, including but not limited to completing construction of the Phase 3B CRA Project by December 31, 2024, and completing construction of the Phase 3B CDD Project by December 31, 2025; and

WHEREAS, delays in the construction of the Phase 3B Project threaten to cause the District to be out of compliance with the RDA and the Disbursement Agreement’s performance schedule, thereby potentially diminishing a portion of the funding source of the Phase 3B CRA Project as envisioned by Sections 190.033(1) and 255.20(1)(c)7., *Florida Statutes*, and District Rule 3.5(6)(b); and

WHEREAS, delays in the construction of the Phase 3B Project may materially increase the cost to construct the Phase 3B Project to the detriment of the welfare of the landowners within the District; and

WHEREAS, on October 16, 2023, pursuant to Sections 190.033(1), 255.20(1)(c)2, 255.20(1)(c)7., *Florida Statutes*, and District Rule 3.5(2)(k) and 3.5(6)(b), the Board determined it was in the best interests of the District to dispense with further competitive solicitation for construction of the Phase 3B Project and directed the Chairman and staff to engage in direct negotiations (“**Direct Negotiations**”) with a vendor or vendors to provide the construction services for the Phase 3B Project; and

WHEREAS, the District desires to ratify, confirm, and approve (i) its election to engage in Direct Negotiations for the Phase 3B Project construction services and (ii) all actions of the Board’s Supervisors and District staff (“**District Staff**”) in engaging in the same.

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

SECTION 1. RECITALS; FINDINGS. The recitals stated above are hereby incorporated herein by reference as findings of the Board. The Board makes these additional separate and independent findings:

- i. Under Sections 190.033(1) and 255.20(1)(c)2., *Florida Statutes*, further competitive solicitation of the contract(s) for the Phase 3B Project construction is not required by Florida law;
- ii. Further competitive solicitation of the contract(s) for Phase 3B Project construction is not required by District Rule 3.5(2)(k); and
- iii. Further competitive solicitation of the contract for Phase 3B Project construction is not required by District Rules of Procedure 3.5(6)(b) and Sections 190.033(1) and 255.20(1)(c)7., *Florida Statutes*.

SECTION 2. DIRECT NEGOTIATIONS; DIRECTION TO STAFF. The Board hereby determines dispensing with further competitive solicitation for construction of the Phase 3B Project and directing the Chairman and staff to engage in Direct Negotiations with vendor(s) to provide the construction services for the Phase 3B Project is in the best interests of the District and such is hereby ratified, approved, and confirmed.

SECTION 3. PAST ACTIONS. All prior actions of the Board Supervisors and District Staff in initiating and engaging in Direct Negotiations are hereby ratified, approved, and confirmed in all respects.

SECTION 4. SEVERABILITY. The invalidity or unenforceability of any one or more provisions or findings of this Resolution shall not affect the validity or enforceability of the remaining portions and findings of this Resolution, or any part thereof.

SECTION 5. EFFECTIVE DATE. This Resolution shall become effective upon its passage.

PASSED AND ADOPTED this 14th day of November, 2023.

ATTEST:

**DISTRICT COMMUNITY DEVELOPMENT
DISTRICT**

Secretary/Assistant Secretary

By: _____

Its: _____

Exhibit A: Evaluation Memos

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

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Memorandum

To: District CDD Chairman and Board of Supervisors

From: William J. Schilling Jr., P.E. – CDD Engineer

Date: November 14, 2023

Subject: Update regarding contract negotiations for the Phase 3B CRA Project and request that the Board allow the Chairman to sign a construction contract on behalf of the CDD with UCC Group, Inc. or another qualified contractor for the Phase 3B CRA Project

CDD staff commenced negotiations with UCC Group, Inc. (“**UCC**”) immediately following the District Board of Supervisors meeting held on October 16, 2023. To date, UCC and District staff have conducted numerous negotiations meetings and have completed two iterations of revisions to the UCC bid numbers. While progress has been made in reducing UCC’s bid numbers to be more “in-line” with the District’s budgets for the Phase 3B CRA Project improvements, further negotiations are required. Accordingly, District staff are not able to present a final contract to the District Board of Supervisors at their November 14, 2023 meeting. Further, District staff have initiated discussions with two other construction firms to determine if they are qualified and able to provide the construction services contemplated for the Phase 3B CRA Project Improvements.

Accordingly, District staff is requesting that the District Board of Supervisors authorize the Chairman to sign a construction contract, valued at up to \$18.0 million (including allowances) on behalf of the CDD with UCC or another qualified contractor for the Phase 3B CRA Project. The form of the contract will be in substantial conformance with the Standard Form of Agreement, Standard General Conditions, and Supplementary Conditions contained in the Phase 3B CRA Project Request for Proposals (“**RFP**”), dated August 22, 2023. The subject Standard Form of Agreement, Standard General Conditions, and Supplementary Conditions are attached to this Memorandum.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)
PHASE 3B – CRA PROJECT
(PARKS, RIVERWALK, AND STREETScape IMPROVEMENTS)**

Prepared by



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AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)
PHASE 3B – CRA PROJECT
(PARKS, RIVERWALK, AND STREETScape IMPROVEMENTS)

THIS AGREEMENT is by and between The District Community Development District (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **The Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape Improvements)** consists of constructing, among other things, four new public parks (Northeast Riverfront, Central Riverfront, Northwest Riverfront, and Marshfront parks), an extension of the City of Jacksonville’s Riverwalk, and new streetscape, as shown in the District’s construction plans for “RiversEdge Streetscape Improvement Plans” – Bid Set and “RiversEdge Parks and Riverwalk” – Bid Set, all dated August 18, 2023, and as more fully described in the engineering documents and specifications contained within or reasonably inferred from the Contract Documents. The Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape Improvements) consists of a portion of the CRA Project.

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: The District Community Development District – Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape Improvements)

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by:

Kimley-Horn and Associates, Inc.
12740 Gran Bay Parkway West, Suite 2350
Jacksonville, Florida 32258

3.02 The Owner has retained _____ Kimley-Horn and Associates, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 ~~Contract Times: Dates~~

- A. ~~The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before 30 calendar days thereafter.~~

~~{or}~~

4.02 *Contract Times: Days*

- A. The Work will be substantially completed 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.

- B. Parts of the Work shall be substantially completed on or before _____.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. Substantial Completion: Contractor shall pay Owner \$2,000.00 (Two Thousand Dollars and No Cents) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$2,000.00 (Two Thousand Dollars and No Cents) for each day that expires after such time until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
4. Liquidated damages shall not be assessed until thirty days (30) after the date of Substantial completion.
5. Contractor's liability for Liquidated Damages under this Section 4.03 shall be subject to a total aggregate cap of \$1,000,000 (One Million Dollars and No Cents).

- B. ~~Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$_____ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$_____.~~

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, 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.

ARTICLE 5 – CONTRACT PRICE

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

- A. For all Work other than Unit Price Work, a lump sum of: \$ _____.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions. Unit Pricing, as shown in the Contractor's Bid Tabulation Summary attached hereto, shall be used in connection with pricing for change orders. Bid Alternate Improvements, as shown in the Contractor's Bid Tabulation Summary attached hereto, include the following:

- 1. Bike Lane; Concrete with Color Hardener \$ _____
- 2. Bike Lane; Asphalt with Color Pave Ready Mix \$ _____
- 3. Stamped Concrete \$ _____
- 4. Pavers in Roundabout with Concrete Banding \$ _____

- 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

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) \$_____.
- D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th 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 (i.e., by the fifth of the month) 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.

1. Pursuant to Section 255.078, Florida Statutes, Owner may withhold from each progress payment made to the Contractor an amount not exceeding 5 percent of the payment as retainage. Five percent of the Contract Price may be retained by Owner until Final Completion, acceptance of the Work by the Owner, and Final Payment to the Contractor.
2. ~~Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract~~
 - a. ~~_____ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
 - b. ~~_____ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

- B. ~~Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to _____ percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _____ percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~

6.03 *Final Payment*

- A. ~~Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.~~ Upon final completion and acceptance of the Work in accordance with paragraph 15.06.B of the General Conditions and subject to final acceptance by District Engineer, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.B.

6.04 *Procedure for Change of Payment.*

Owner shall make all payments to Contractor by wire transfer {"Payment Information"} as follows:
SEE ADDENDUM C TO STANDARD GENERAL CONDITIONS

Owner shall only change the Payment Information if requested orally and in writing by _____ . The District shall have no obligation to confirm the identity of such person. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as a result of Owner's failure to use the Payment Information when making payment.

ARTICLE 7 – INTEREST

- 7.01 ~~All amounts not paid when due shall bear interest at the rate of _____ percent per annum. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74, Florida Statutes.~~

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work and has correlated those personal observations with the requirements of the Contract Documents. Prior to execution of the Contract, the Contractor has examined the Site and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, among other things, (i) the location, condition, layout, and nature of the Site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

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

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement, as modified herein (pages 1 to ____, inclusive).
 - 2. Performance bond (pages 1 to ____, inclusive).
 - 3. Payment bond (pages 1 to ____, inclusive).
 - 4. ~~Other bonds.~~
 - a. ~~____ (pages ____ to ____, inclusive).~~
 - 5. General Conditions, as modified therein (pages 1 to ____, inclusive).
 - 6. Supplementary Conditions, as modified therein (together, "**Supplementary Conditions**"):
 - a. Supplementary Conditions Relating to Insurance Requirements, Subsurface Conditions, and Hazardous Conditions (pages 1 to ____, inclusive).
 - b. Contractor's On-Site Security Plan (pages ____ to ____, inclusive).

- o) The District General Information for Health and Safety Plan Preparation, prepared by Kimley-Horn and Associates, Inc., date January 11, 2021.
- p) Areas of Contamination Letter to C. Kruchell of FDEP from J. Sheasley of Kimley-Horn and Associates, Inc. regarding delineation of two areas of contamination, dated April 5, 2022.
- q) JEA Utility Easement Agreement, dated July, 12 2018.

9. ~~Addenda (numbers ___ to ___, inclusive).~~

10. Exhibits to this Agreement (enumerated as follows):

- a. Direct Purchase Forms
- b. Project Manual
- c. Contractor's RFP Response dated September 22, 2023

11. 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.

12. The Redevelopment Agreement among the City of Jacksonville, the Downtown Investment Authority, Elements Development of Jacksonville, LLC, and Owner for Redevelopment of the JEA Southside Generator Parcel, dated July 12, 2018, together with all agreements and exhibits thereto and as may be amended and/or restated from time to time.

- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 *Assignment of Contract*

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), 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 Documents.

10.03 *Successors and Assigns*

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

10.04 *Severability*

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

[SIGNATURES TO FOLLOW]

DRAFT

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

This Agreement will be effective on _____, 2023 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

District Community Development District

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

c/o Wrathell, Hunt & Associates, LLC

2300 Glades Road, Suite 410W

Boca Raton, Florida 33431

License No.: _____

(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

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
PHASE 3B – CRA PROJECT
(PARKS, RIVERWALK, AND STREETScape IMPROVEMENTS)**

Prepared by



Issued and Published Jointly by



Endorsed by



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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

regarding a Change Proposal; or seeking resolution of a contractual issue that Engineer has declined to address. A demand for money or services by a third party is not a Claim.

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

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner 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.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.
37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.

38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

49. Redevelopment Agreement – That certain Redevelopment Agreement among the City, DIA, and Developer for Redevelopment of the JEA Southside Generator Parcel originally dated and effective as of July 12, 2018, as may be amended from time to time, and together with all agreements thereto, exhibits thereto, and that certain Joinder Agreement dated April 23, 2019, among the Owner, City, DIA, and Developer, whereby the Owner agreed to be bound by the terms of the Redevelopment Agreement.
50. Disbursement Agreement – That certain CRA Infrastructure Improvements Costs Disbursement Agreement, originally dated and effective as of December 22, 2020, as may be amended and/or restated from time to time, by and between the DIA, Owner, and Developer.
51. BSRA – That certain Brownfield Site Rehabilitation Agreement and Clean Closure Plan and Clean Closure Plan effectively dated August 1, 2001, as subsequently amended on July 12, 2018, December 22, 2022, and as may be amended from time to time.
52. CDD Project – This refers to the CDD Infrastructure Improvements as defined in the Redevelopment Agreement. The Agreement shall identify whether the Project consists of all or a portion of the CDD Project or the CRA Project.
53. CRA Project – This refers to the CRA Infrastructure Improvements as defined in the Redevelopment Agreement. The Agreement shall identify whether the Project consists of all or a portion of the CDD Project or the CRA Project. The Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape Improvements) consists of a portion of the CRA Project.
54. Indemnitees – Include, together, the Owner, the City of Jacksonville (“City”), Downtown Investment Authority (“DIA”), Elements Development of Jacksonville, LLC (“Developer”), Preston Hollow Capital, LLC, and their respective officers, directors, Supervisors, Board Members, City Council members, employees, staff, managers, representatives, successors, and assigns of each and any of all of the foregoing entities and individuals.
55. Allowances – those certain Central Park Sculpture (as defined in Paragraph 18.33 herein), Interactive Artworks (as defined in Paragraph 18.34 herein), Park Signage, Streetscape Directional Signage, and Roundabout Feature as further identified under “Allowances” in Contractor’s Bid Tabulation Summary.

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work,

or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.

- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

- C. *Evidence of Owner's Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

- A. At least 10 days before submission of the first Application for Payment a conference, attended by Contractor, Engineer, and others as appropriate, will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.03.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.

1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.
2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to the component parts of the Work.

2.06 *Electronic Transmittals*

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.
- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

- A. Standards Specifications, Codes, Laws and Regulations
 1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the

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

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

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:
 - a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation). In the event of inconsistencies

within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall submit a Request for Information to the Engineer within a reasonable amount of time after discovery for clarification of the perceived ambiguity(s), however, unless the RFI response provides otherwise, the Contractor shall (i) provide the better quality or greater quality of Work, or (ii) comply with the more stringent requirement, either or both in accordance with the Engineer's interpretation.

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

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

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Contract or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 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 shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price, provided however that Contractor first furnishes Owner with written notice of any such delay, disruption or interference and Owner fails to promptly cure such delay, disruption or interference. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall 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 and Contract Price, provided however that any such equitable adjustment to Contract Price shall be limited to actual direct costs incurred by Contractor (and Owner shall not be responsible for consequential damages, including but not limited to lost profits, overhead, opportunity costs, or other similar costs). Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include limited to the following:

1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 2. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 3. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- ~~B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 Use of Site and Other Areas

- A. *Limitation on Use of Site and Other Areas:*
1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent

areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of Contractor unless otherwise specified in writing signed by both Parties. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site of the Work and all adjacent areas.

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 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold harmless ~~Indemnitees Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them~~ from and against any such claim, and against all liabilities, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's negligent, reckless or intentionally wrongful performance of the Work, or because of other negligent, reckless or intentionally wrongful actions or conduct of the Contractor or those for which Contractor is responsible.
- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
 - C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
 - D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. ~~Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site and from which the Engineer prepared the Contract Drawings and Specifications;~~
2. ~~Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities);), and from which the Engineer prepared the Contract Drawings and Specifications; and~~
3. Technical Data contained in such reports and drawings.

~~B. *Reliance by Contractor on Technical Data Not 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 upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:~~

- ~~1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or~~
- ~~2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or~~
- ~~3. any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.~~

Contractor 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 foreseen (and excluding unforeseen) risks, hazards, and difficulties in connection therewith.

5.04 *Differing Subsurface or Physical Conditions*

A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:

1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely (if any) as provided in Paragraph 5.03 is materially inaccurate; or
2. is of such a nature as to require a change in the Drawings or Specifications; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
 - 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
 - 2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
 - a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.

3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
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, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site, if any, is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. The information and data shown or indicated in the Contract Documents shall not relieve Contractor of its obligations to contact local utilities and confirm existing utility locations (Florida's Call Before You Dig Law). Unless it is otherwise expressly provided in the Supplementary Conditions:
1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and
 - d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.

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

5.06 *Hazardous Environmental Conditions at Site*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at or adjacent to the Site; and
 2. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the Technical Data expressly identified in the Supplementary Conditions with respect to such reports and drawings, but such reports and drawings are not Contract Documents. If no such express identification has been made, then Contractor may rely on the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - ~~3.~~ any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for removing or remediating any Hazardous Environmental Condition encountered, uncovered, or revealed at the Site unless such removal or remediation is expressly identified in the Contract Documents to be within the scope of the Work.
- D. Contractor shall be responsible for controlling, containing, and duly removing all Constituents of Concern brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible, and for any associated costs; and for the costs of removing and remediating any Hazardous Environmental Condition created by the presence of any such Constituents of Concern.
- E. If Contractor encounters, uncovers, or reveals a Hazardous Environmental Condition whose removal or remediation is not expressly identified in the Contract Documents as being within the scope of the Work, or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, then Contractor shall immediately: (1) secure or otherwise isolate such condition; (2) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 7.15); and (3) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.
- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article

11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the ~~fullest~~ extent permitted by Laws and Regulations, but without waiving any limitations of liability set forth in Section 768.28, Florida Statutes or other provisions of law, Owner shall indemnify and hold harmless Contractor, and Subcontractors, and Engineer, and the officers, directors, members, partners, employees, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.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 shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
 - J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, defend, and hold harmless 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, 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) to the extent arising out of or relating to the 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, or to a Hazardous Environmental Condition to the extent created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
 - K. The provisions of Paragraphs 5.03, 5.04, and 5.05 do not apply to the presence of Constituents of Concern or to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond in the forms included as part of the Contract Documents (or, at the Owner's election, an alternative form agreed to by the parties and approved by the Downtown Investment Authority), and each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor's obligations under the Contract. These bonds shall remain in effect for the duration provided for in the bonds until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, ~~the Supplementary Conditions, or other specific provisions of the Contract~~. Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (as amended and supplemented) by the

Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment bond shall contain the following language: "This Bond is hereby amended so that the provisions and limitations of Section 255.05 or Sections 713.23 and 713.245, Florida Statutes, whichever are applicable, are incorporated by reference herein."

- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts. The surety must be from a surety company acceptable to the Owner.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner's termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

- A. Owner and Contractor shall obtain and maintain insurance as required in this Article and in the Supplementary Conditions.
- B. All insurance required by the Contract to be purchased and maintained by Owner or Contractor shall be obtained from insurance companies that are duly licensed or authorized, in the state or jurisdiction in which the Project is located, to issue insurance policies for the required limits and coverages. Unless a different standard is indicated in the Supplementary Conditions, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Contractor shall deliver to Owner, with copies to each named insured and additional insured (as identified in this Article, in the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Contractor has obtained and is maintaining the policies, coverages, and endorsements required by the Contract. Upon request by Owner or any other insured, Contractor shall also furnish other evidence of such required insurance, including but not limited to copies of policies and endorsements, and documentation of applicable self-insured retentions and deductibles. Contractor may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- D. Owner shall deliver to Contractor, with copies to each named insured and additional insured (as identified in this Article, the Supplementary Conditions, or elsewhere in the Contract), certificates of insurance establishing that Owner has obtained and is maintaining the policies, coverages, and endorsements required of Owner by the Contract (if any). Upon request by Contractor or any other insured, Owner shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies and endorsements, and

- documentation of applicable self-insured retentions and deductibles. Owner may block out (redact) any confidential premium or pricing information contained in any policy or endorsement furnished under this provision.
- E. Failure of Owner or Contractor to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of Owner or Contractor to identify a deficiency in compliance from the evidence provided, shall not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
 - F. If either party does not purchase or maintain all of the insurance required of such party by the Contract, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage.
 - G. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 16.
 - H. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the Contract Price shall be adjusted accordingly.
 - I. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor or Contractor's interests.
 - J. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner and other individuals and entities in the Contract.

6.03 *Contractor's Insurance*

- A. *Workers' Compensation*: Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
 - 1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 - 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 - 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 - ~~4. Foreign voluntary worker compensation (if applicable).~~
- B. *Commercial General Liability—Claims Covered*: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
 - 1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 - 2. claims for damages insured by reasonably available personal injury liability coverage.
 - 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

- C. *Commercial General Liability—Form and Content*: Contractor’s commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for ~~three~~ ten years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and ~~three~~ ten years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor’s contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, “Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured” or its equivalent.
- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer’s liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor’s pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor’s operations and completed operations. This insurance shall be maintained for no less than ~~three~~ ten years after final completion.
- G. *Additional insureds*: The Contractor’s commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner, ~~and~~ Engineer, the City, DIA, the Developer, Preston Hollow Capital, LLC, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, officials, managers, Board members, Council members, staff, supervisors, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.

- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of ~~two~~ten years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least ~~10~~30 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.
 5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

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

6.05 *Property Insurance*

- A. *Builder's Risk*: Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the Owner, and Contractor as named insureds, and any individuals or entities required by the Supplementary Conditions, including but not limited to the City, DIA, and/or Developer, to be insured under such builder's risk policy, as insureds or named insureds and/or loss payees, at the Owner's option. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.
3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
6. extend to cover damage or loss to insured property while in transit.
7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
8. allow for the waiver of the insurer's subrogation rights, as set forth below.
9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
10. not include a co-insurance clause.
11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.

12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least ~~10~~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.
 - C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
 - D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 - E. *Additional Insurance:* If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
 - F. *Insurance of Other Property:* If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.

- ~~B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:~~
- ~~1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
 - ~~2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.~~
- ~~C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~
- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays, Sundays, or legal holidays only with Owner’s written consent, which will not be unreasonably withheld.
 - 1. The Contractor shall be responsible, whether previously scheduled or not, for the payment of Owner’s cost of overtime inspection outside of the working hours described above. The Contractor will be required to pay for overtime inspection services on unscheduled work, work which is delayed by Suppliers or Subcontractors and any other work performed for the convenience of the Contractor as he deems necessary to meet the schedule. Owner shall be responsible for any overtime necessary that arises out of Owner’s delay.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *“Or Equals”*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the

Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.

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

7.05 *Substitutes*

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

- installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee*: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
 - D. *Reimbursement of Engineer's Cost*: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
 - E. *Contractor's Expense*: Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
 - F. *Effect of Engineer's Determination*: If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution. The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.

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

7.07 *Patent Fees and Royalties*

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

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

- ~~B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, 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, 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) to the extent 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.

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations, applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor or those for which Contractor is responsible 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, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.~~

- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

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

7.12 *Safety and Protection*

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

Among other requirements, the Contractor or subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards.

- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).
- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.

1. *Shop Drawings:*

- a. Contractor shall submit the number of copies required in the Specifications.
- b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.

2. *Samples:*

- a. Contractor shall submit the number of Samples required in the Specifications.
- b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.

3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.

- C. *Other Submittals*: Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review*:
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.
 5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
 6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
 7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
 8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.
- E. *Resubmittal Procedures*:
1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
 2. Contractor shall furnish required submittals with sufficient information and accuracy to obtain required approval of an item with no more than three submittals. Engineer will record Engineer's time for reviewing a fourth or subsequent submittal of a Shop Drawings, sample, or other item requiring approval, and Contractor shall be responsible for Engineer's charges to Owner for such time. Owner may impose a set-off against payments due to Contractor to secure reimbursement for such charges.
 3. If Contractor requests a change of a previously approved submittal item, Contractor shall be responsible for Engineer's charges to Owner for its review time, and Owner may

impose a set-off against payments due to Contractor to secure reimbursement for such charges, unless the need for such change is beyond the control of Contractor.

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 - 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 - 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 - 1. observations by Engineer;
 - 2. recommendation by Engineer or payment by Owner of any progress or final payment;
 - 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 - 4. use or occupancy of the Work or any part thereof by Owner;
 - 5. any review and approval of a Shop Drawing or Sample submittal;
 - 6. the issuance of a notice of acceptability by Engineer (or other similar acceptance by Owner);
 - 7. any inspection, test, or approval by others; or
 - 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- E. Contractor shall assign to Owner all warranties extended to Contractor by Suppliers and Subcontractors. If an assignment of warranty requires the Supplier or Subcontractor to consent to same, then Contractor shall secure the Supplier's or Subcontractor's consent to assign said warranties to Owner.
- F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.

7.18 *Indemnification*

- ~~A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of~~

~~engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.~~

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, and for breach of Contract, Contractor shall indemnify, hold harmless, and defend Indemnitees from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligent, reckless, or intentionally wrongful acts or omissions 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.

In the event that any indemnification, defense or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees. The Contractor shall ensure that any and all Subcontractors, and Suppliers, include this express paragraph for the benefit of the Indemnitees.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- D. The total liability of Contractor arising under, in connection with, or out of this Agreement, whether in contract, tort, or any legal theory of recovery, shall be limited to the greater of any applicable insurance limits under this Agreement or \$20,000,000 (Twenty Million Dollars and No Cents) as provided in Section 6.02 of these Standard General Conditions. The parties agree that, pursuant to Section 725.06, Florida Statutes (to the extent applicable), this monetary limitation bears a reasonable commercial relationship to the contract and was part of the project specifications or bid documents.
- E. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, LOST PROFITS, LOST BUSINESS OPPORTUNITY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT. THIS PROVISION IN NO WAY WAIVES OR LIMITS THE SOVEREIGN

IMMUNITY GRANTED TO OWNER UNDER THE FLORIDA CONSTITUTION AS CODIFIED IN SECTION 768.28, FLORIDA STATUTES, AS AMENDED.

7.19 *Delegation of Professional Design Services*

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

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

- A. In addition to and apart from the Work under the Contract Documents, the Owner may perform other work at or adjacent to the Site. Such other work may be performed by Owner's employees, or through contracts between the Owner and third parties. Owner may also arrange to have third-party utility owners perform work on their utilities and facilities at or adjacent to the Site.
- B. If Owner performs other work at or adjacent to the Site with Owner's employees, or through contracts for such other work, then Owner shall give Contractor written notice thereof prior to starting any such other work. If Owner has advance information regarding the start of any utility work at or adjacent to the Site, Owner shall provide such information to Contractor.
- C. Contractor shall afford each other contractor that performs such other work, each utility owner performing other work, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, and provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate

with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected.

- D. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 8, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

8.02 *Coordination*

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

All contractors and subcontractors shall be required to use good faith efforts to coordinate their respective performance of any work at or adjacent to the Site.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination with assistance from Contractor.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and

- as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
 - D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, 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, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER'S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer's status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner's duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner's duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner's responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On

the basis of such visits and observations, Engineer 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 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in

- contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
 - C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
 - D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
 - E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

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

11.01 *Amending and Supplementing Contract Documents*

- A. The Contract Documents may be amended or supplemented by a Change Order, a Work Change Directive, or a Field Order.
 - 1. *Change Orders:*
 - a. If an amendment or supplement to the Contract Documents includes a change in the Contract Price or the Contract Times, such amendment or supplement must be set forth in a Change Order. A Change Order also may be used to establish amendments and supplements of the Contract Documents that do not affect the Contract Price or Contract Times.
 - b. Owner and Contractor may amend those terms and conditions of the Contract Documents that do not involve (1) the performance or acceptability of the Work, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, without the recommendation of the Engineer. Such an amendment shall be set forth in a Change Order.
 - 2. *Work Change Directives:* A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the modification ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order, following negotiations by the parties as to the Work Change Directive's effect, if any, on the Contract Price and Contract Times; or, if negotiations are unsuccessful, by a determination under the terms of the Contract Documents governing adjustments, expressly including Paragraph 11.04 regarding change of

Contract Price. Contractor must submit any Change Proposal seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 30 days after the completion of the Work set out in the Work Change Directive. Owner must submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work, 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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate 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.
- B. Owner and Contractor acknowledge that certain Allowances work was included within the Work and Contract Price based on the allowances provided below, despite the construction plans for the Allowances not being complete as of the Effective Date of this Contract. Considering such, notwithstanding anything else provided herein, Contractor and Owner reserve the right to subsequently negotiate a final price and schedule for the Allowances. Any changes in the Contract Time or Contract Price due to such negotiations shall comply with this Article 11, including but not limited to submission of a Change Order. Any final pricing agreed to by Contractor and Owner shall include any necessary increases in the amount of the performance bond and payment bond provided by Contractor hereunder. Such Allowances will be subject to one or multiple subsequently issued Notices to Proceed. Further, and in addition to Owners rights under Paragraph 11.02.A. and not in limitation thereof, the Owner reserves the right, in its sole and absolute discretion, to remove the Allowances from the scope of the Work and Contractor shall have no recourse or claim whatsoever for damages against the Owner for such removal. The allowances for the Allowances provided herein are:
 1. Interactive Artowrks: \$330,000
 2. Central Park Sculpture: \$2,030,000
 3. Park Signage: \$100,000
 4. Streetscape Directional Signage: \$250,000

5. Roundabout Feature: \$1,200,000

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).
- C. *Contractor's Fee:* When applicable, the Contractor's fee for overhead and profit shall be determined as follows:
1. a mutually acceptable fixed fee; or
 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 13.01.B.1 and 13.01.B.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 13.01.B.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 11.04.C.2.a and 11.04.C.2.b is that the Contractor's fee shall be based on: (1) a fee of 15 percent of the costs incurred under Paragraphs 13.01.A.1 and 13.01.A.2 by the Subcontractor that actually performs the Work, at whatever tier, and (2) with respect to Contractor itself and to any Subcontractors of a tier higher than that of the Subcontractor that actually performs the Work, a fee of five percent of the amount (fee plus underlying costs incurred) attributable to the next lower tier Subcontractor; provided, however, that for any such subcontracted work the maximum total fee to be paid by Owner shall be no greater than 27 percent of the costs incurred by the Subcontractor that actually performs the work;
 - d. no fee shall be payable on the basis of costs itemized under Paragraphs 13.01.B.4, 13.01.B.5, and 13.01.C;

- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 11.04.C.2.a through 11.04.C.2.e, inclusive.

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

Proposal, such notice shall be deemed a denial, and Contractor may choose to seek resolution under the terms of Article 12.

11.07 *Execution of Change Orders*

- A. Owner and Contractor shall execute appropriate Change Orders covering:
 - 1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 - 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 - 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 - 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.
- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or

- Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the 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 shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim:* If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results:* If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 *Cost of the Work*

- A. *Purposes for Determination of Cost of the Work:* The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. ~~The provisions of this Paragraph 13.01 are used for two distinct purposes:~~
- ~~1. To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost-plus-fee, time-and-materials, or other cost-based terms; or~~

~~2. To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.~~

- B. *Costs Included:* Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.
 2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
 3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
 4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
 5. Supplemental costs including the following:
 - a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - b. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation,

loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
- d. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
- e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
- f. The cost of utilities, fuel, and sanitary facilities at the Site.
- g. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.

C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
- 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
- 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
- 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
- 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.

D. *Contractor's Fee:* ~~When the Work as a whole is performed on the basis of cost plus, Contractor's fee shall be determined as set forth in the Agreement.~~ When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in

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

- E. *Documentation*: Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances*: Contractor agrees that:
 - 1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:

1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
2. there is no corresponding adjustment with respect to any other item of Work; and
3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 Tests, Inspections, and Approvals

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 3. by manufacturers of equipment furnished under the Contract Documents;
 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

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

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 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, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, without prejudice to other remedies the Owner may have, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.

- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. If payments then or thereafter due to the Contractor are not sufficient to cover such claims, costs, losses, and damages, the Contractor shall pay the difference to Owner.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 Progress Payments

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.
- B. *Applications for Payments:*
 - 1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. ~~If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and 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.

As an absolute condition precedent to payment from Owner to Contractor, Contractor shall furnish and submit to Owner a complete, accurate and up-to-date list of all Subcontractors and/or Suppliers (together, "List of Subcontractors") in writing furnishing labor or material, or both, in connection with the Work as well as the total amount paid to each Subcontractor and/or Supplier as of the date of the Application for Payment. Contractor shall furnish the List of Subcontractors together with each and every Application for Payment submitted to Owner. Each List of Subcontractors furnished to Owner shall be dated the same date as the Application for Payment with which it is submitted and shall be complete and accurate through such date. Contractor shall not be entitled to receive payment pursuant to its Application for Payment until a List of Subcontractors has been furnished to Owner therewith and Contractor has complied with all other contractual conditions precedent to receipt of payment.

As an additional condition precedent to payment from Owner to Contractor, Contractor shall furnish to Owner together with each and every Application for Payment, a Lien Waiver and Release for all potential lienors, including all Subcontractors and Suppliers identified in the List of Subcontractors furnished to the Owner together with the same Application for Payment. All Lien Waivers and Releases provided by a Subcontractor or Supplier and furnished to the Owner by the Contractor shall waive and release any claim of lien for labor and/or materials provided by such Subcontractor or Supplier up through the date of the Pay Application and shall be in the form acceptable to the Owner or as required by the applicable law of the state where the project is located. Owner shall agree to accept conditional waivers/releases or liens from potential lienors and those identified in the List of Subcontractors (exclusive of the Contractor) to satisfy this condition of payment, however, if the Contractor provides any conditional waivers/releases of lien, the Contractor must replace the conditional waivers/releases of lien with unconditional waivers/releases of lien in the following Application for Payment. Contractor shall not be entitled to receive payment pursuant to its Application for Payment until it has provided a Lien Waiver and Release as provided herein. Contractor understands and agrees that satisfaction of these conditions is an absolute condition precedent to Owner's obligation to make payment to Contractor.

All such Lien Waivers shall be in a form compliant with Section 255.05, Florida Statutes, and, because no lien rights are available, shall be waivers of the right to claim against the payment bond, as described in Section 255.05, Florida Statutes.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and

- c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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. Owner shall make payment to the Contractor in the amount recommended (subject to the provisions of~~

this Contract) in accordance with the prompt payment provisions contained in Sections 218.735 and 218.74, Florida Statutes. Contractor shall make payments due to Subcontractors and Suppliers within ten (10) days in accordance with the prompt payment provisions contained in Section 218.735(6), 218.735(7), and 218.74, Florida Statutes.

E. *Reductions in Payment by Owner:*

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

3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 15.01.C.1 and subject to interest as provided in the Agreement.

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

- F. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the punch list.
- G. To the extent this paragraph 15.03 is inconsistent in any way with Florida's Local Government Prompt Payment Act, sections 218.70 – 218.80, Florida Statutes ("Payment Act"), such Payment Act shall control, and this Contract shall be construed to allow for the maximum amount of time allowable under the Payment Act in order for the Owner to review any punch lists and make payment.

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

- A. *Application for Payment:*

After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection, and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record

documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

1. The final Application for Payment shall be accompanied (except as previously delivered) by (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as Supplier warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees, (7) submission by the Contractor to the Engineer and the Owner of as-built drawings, (8) submission by the Contractor to the Owner of a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone numbers, as well as the total amount paid to each Subcontractor and Supplier on the Project (9) submission by the Contractor to the Owner of an indexed, loose-leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) submission by the Contractor to the Owner, in an indexed, loose-leaf binder, of all inspection reports, permits and temporary and final certificates of occupancy (or equivalent) and licenses necessary for the occupancy of the project, (11) Conditional Waiver and Release of Lien Upon Final Payment (at a minimum compliant with § 255.05, Fla. Stat., § 713.20 Fla. Stat., or other applicable law) from itself as well as all subcontractors and suppliers providing labor, services or material to the Project, with Unconditional Waivers to be provided within ten calendar days, (12) a Contractor's Final Affidavit if required by state law where the Project is located (§ 713.06 Fla. Stat.), and (13) any and all other items required pursuant to the Contract Documents.
 - a. ~~all documentation called for in the Contract Documents;~~
 - b. ~~consent of the surety, if any, to final payment;~~
 - c. ~~satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.~~
 - d. ~~a list of all disputes that Contractor believes are unsettled; and~~
 - e. ~~complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.~~
2. ~~In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit~~

~~of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.~~

B. *Engineer's Review of Application and Acceptance:*

1. 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 will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment. 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 documents required under Section 7.11 have been delivered; all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction have been provided; 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.

D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special

guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within ~~one~~two years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose. The establishment of the time period of two year period after the date of Substantial Completion, or such longer period of time as may be prescribed by law or by the items of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.

- F. Contractor shall cooperate with the Owner to provide a warranty inspection of the Work, which shall be held approximately 11 months and/or 23 months (at the Owner's option) after Substantial Completion of all the Work, and with representatives of the DIA (as the Work relates to the CRA Project).

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

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

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.
- H. In the event Owner improperly terminates this Contract for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 16.03 below.

16.03 *Owner May Terminate For Convenience*

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

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

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 seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.
- C. In the event that Contractor intends to terminate this Contract due to a default by the Owner, Contractor agrees that the City, DIA,¹ U.S. Bank Trust Company, National Association as Owner's bond trustee ("Bond Trustee"), or Developer may elect, in their individual sole discretion, either (i) to cure the default, and accede to the rights and obligations of the Owner under the Contract for the purpose of ensuring the completion of the Project; or (ii) alternatively, to cause the Contract to be terminated, take over the Work, and use an alternative contractor for that purpose. That said, the Owner shall not be released from its obligations under such Contract, and the City, DIA, Bond Trustee, and Developer shall not be obligated to take any action with respect to the Contract, or be subject to any liability thereunder, irrespective of any default thereunder by Owner.

¹This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.
- C. In the event Owner or Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all fees and costs incurred, including reasonable attorney's fees and costs.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located. Venue for any dispute arising under this Contract shall lie exclusively in the Circuit Court in and for Duval County, Florida.

18.08 *Headings*

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

18.09 *Sovereign Immunity*

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

18.10 *Third Party Beneficiaries*

Bond Trustee, Developer, the City, and DIA,² shall be third party beneficiaries of this Contract, with the right to enforce all warranties, performance bonds, insurance, indemnification, and other provisions of this Contract.

18.11 *Assignment of Warranties*

- A. Contractor shall assign to Owner or Owner's designee all warranties extended to Contractor by Subcontractors and Suppliers. If an assignment of warranty requires the Supplier and/or Subcontractor to consent to same, then Contractor shall secure the Supplier's and/or Subcontractor's consent to assign said warranties to Owner.

² This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

- B. As noted in Section 18.10, the Owner, Bond Trustee, the City, DIA,³ and Developer shall be beneficiaries under all warranties (if any) set forth in this Contract and any contracts with Subcontractors and Suppliers, as applicable. Contractor shall reasonably cooperate with the Owner to assign and deliver all warranties under the Agreement and any Subcontractor and Supplier agreements to the Owner's designees. All such warranties shall name the Owner, Bond Trustee, the City, DIA and Developer as beneficiaries.

18.12 *Direct Purchase of Materials*

- A. Owner represents to Contractor that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Contractor with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials ("**Direct Purchase Materials**") necessary for the completion of the Work directly from the suppliers to take advantage of Owner's tax exempt status.
- B. Within 10 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Contractor with a list of materials that will be treated as Direct Purchase Materials.
- C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials; except, however, the City or its agent shall acknowledge such purchase orders in writing prior to issuance. Such purchase orders shall include Owner's consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the Owner and if the original contract contemplated sale of materials and installation by same person, the change order needs to reflect sale of materials and installation by different legal entities.
- D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Contractor. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works; (2) the vendor's invoice will be issued directly to the governmental entity; (3) payment of the vendor's invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of delivery by the vendor.
- E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Contractor as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Contractor.

³ This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

- F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.
- G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Contractor, as Owner's agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties and guarantees for all material and products as required under the Contract Documents.
- H. All warranties, performance and payment bonds, indemnification provisions, and other rights provided by Contractor to Owner as part of Contract shall apply to all Direct Purchase Materials, as though Contractor had purchased the Direct Purchase Materials.
- I. In conducting a direct purchase of materials hereunder, Owner and Contractor shall use the Request Form, Purchase Order, and Certificate of Entitlement included with the Project Manual.

18.13 *Construction Defects.*

CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

18.14 *Public Records*

Contractor understands and agrees that all documents of any kind provided to the Owner in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Contractor acknowledges that the designated public records custodian for the Owner is **Craig Wrathell ("Public Records Custodian")**. Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the Owner to perform the service; 2) upon request by the Public Records Custodian, provide the Owner with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which 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 the contract term if the Contractor does not transfer the records to the Public Records Custodian of the Owner; and 4) upon completion of the contract, transfer to the Owner, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT, c/o CRAIG WRATHELL, WRATHELL, HUNT & ASSOCIATES, LLC, WRATHELLC@WHHASSOCIATES.COM, (877)276-0889, 2300 GLADES ROAD, SUITE 410W, BOCA RATON, FLORIDA 33431.

18.15 *Restriction on Removal of Fill Dirt from Work Site*

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.

18.16 *Contractor's Certifications*

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 section:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
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.

18.17 *Public Entity Crimes*

Pursuant to Section 287.133(2)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Contractor represents that in entering into this Contract, the Contractor, nor any of its Subcontractors or Suppliers, has not been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor, or Subcontractors or Suppliers, is placed on the convicted vendor list, the Contractor shall immediately notify the Owner whereupon this Contract may be terminated in whole or in part by the Owner for cause.

18.18 *Scrutinized Companies*

Contractor represents that in entering into this Contract, neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents, or any Subcontractors or Suppliers, is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes, the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.473, Florida Statutes, is engaged in a boycott of Israel, or is engaged in business operations in Cuba or Syria and in the event such status changes, Contractor shall immediately notify Owner whereupon this Contract may be terminated in whole or in part by the Owner for cause.

18.19 *Audits.*

Notwithstanding anything to the contrary herein, Contractor shall maintain comprehensive books, records and documents (including electronic storage media) relating to any services performed under this Contract and for a period of at least six years from and after completion of final payment for any services hereunder, or such other period as required by law, whichever is later (“Audit Term”). If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the Audit Term shall be deemed extended and the books, records and documents shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Contract, at no additional cost to Owner. The Contractor agrees that Owner or any of its duly authorized representatives shall, until the expiration of the Audit Term, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract. The Contractor agrees that payment made under the Contract shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. Further, the Contractor shall comply with all audit, inspections, investigations and record keeping requirements set forth in the Redevelopment Agreement (including but not limited to at Section 10.21), which are hereby incorporated by this reference and shall be incorporated into all subcontracts with Subcontractors and Suppliers.

18.20 *Non-Discrimination Provision.*

In conformity with the requirements of Section 126.404, Ordinance Code, the Contractor represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Contract. The Contractor agrees that, on written request, to the extent not prohibited by privacy laws or other laws, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the Ordinance Code, provided however, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written or any employee files.

18.21 *Publicity.*

Except to the extent necessary to perform its obligations under this Contract, and/or to respond to any public records request or other legally required disclosure, Contractor shall not, without the prior written consent of the Owner, discuss, publicize, or otherwise disclose the existence or terms of this Contract, with anyone except authorized professional representatives (including without limitation auditors and legal representatives) of Contractor, regulatory agency staff, representatives of Developer, and any other contractors or consultants hired by the Owner. Contractor shall not use Owner’s name, trademarks, or logos in any written materials, including without limitation press releases, or advertisements, without Owner’s prior written consent, unless necessary for Contractor to perform its services or as required by law.

18.22 *Brownfield Site Rehabilitation Agreement*

Contractor acknowledges that there are, or may be, certain environmental obligations and risk with respect to the project site. Specifically, without limitation, Contractor acknowledges that the project site is a “brownfield site” and is subject to that certain BSRA. Contractor acknowledges that under the BSRA and Laws and Regulations, the project site is subject to various requirements including approval of plans, reports, institutional controls, and engineering controls, which requirements may be subject to change by the appropriate regulatory agencies (“BSRA Requirements”). In connection with the BSRA and BSRA Requirements, the following documents were recorded in the public records of Duval County, Florida and encumber the all or portions of the Site: the Declaration of Restrictive Covenant dated February 12, 2013, in Official Records Book 16254, page 1001 of the public records of Duval County, Florida, as amended by that certain First Amendment to Declaration of Restrictive Covenant dated August 25, 2014, in Official Records Book 16922, page 294 of the public records of Duval County, Florida, as may be amended (collectively, the “BSRA Declaration”). Contractor acknowledges and agrees that all services provided under this Contract shall be conducted in a manner consistent with and in compliance with the BSRA, the BSRA Requirements, the BSRA Declaration, the FDEP Closure Order (as defined in the Redevelopment Agreement), and applicable environmental and other Laws and Regulations applicable to the project site.

18.23 *No Lien Rights*

Contractor agrees that Owner 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 Owner or the Owner’s property, there are no lien rights available to any person providing materials or services for improvements in connection with the Project.

18.24 *Pre-Construction Meetings; Critical Path Diagram; CRA Project*

This section applies only to the CRA Project. The Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape) consists of a portion of the CRA Project. The Contractor shall meet with the DIA and the Owner no later than ten (10) days prior to the date set forth in the Notice to Proceed fixing the date on which the Contract Times will commence to run for the portion of the CRA Project constituting the Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape). At such meeting, the Owner, with assistance from the Contractor and Engineer, shall provide to the DIA a logical network diagram describing all components of the construction of the CRA Project, including the Phase 2 Seawall and Retaining Wall Replacement Project, the Phase 3 – CRA Project, and Phase 3B – CRA Project, to be constructed, in a critical path format (“Critical Path Diagram”), in accordance with the Performance Schedule established pursuant to the Redevelopment Agreement. The Contractor, subject to review by the Owner and Engineer, shall update the Critical Path Diagram monthly and shall submit the updated diagram with each Application for Payment. Additionally, at such meeting, the Contractor, subject to review by the Owner and Engineer, shall submit a complete schedule of values for the construction of the portion of the CRA Project constituting the Phase 3B – CRA Project (Parks, Riverwalk, and Streetscape) and a projected cash flow statement for the remaining time period of the project, which shall also be updated monthly to show all items completed, and which shall also be submitted with each Application for Payment. Owner, with assistance from the Contractor and Engineer, shall provide to the DIA the schedule of values and projected cash flow statements received for the entirety of the CRA Project including the Phase 2 Seawall and Retaining Wall Replacement Project, the Phase 3 – CRA Project, and Phase 3B – CRA Project.

18.25 *Additional Requirements for Applications for Payments; CRA Project*

This section applies only to the CRA Project. The Contractor recognizes that the Owner intends to seek reimbursement from the DIA for the cost of the Work associated with the CRA Project.

Toward that end, the Contractor shall ensure that all Applications for Payment include all of the requirements of the Contract and additionally include any items included pursuant to the Disbursement Agreement. Among other requirements, each Application for Payment shall certify in detail, reasonably acceptable to the Owner, (a) the cost of the labor that has been performed and the materials that have been incorporated into the Project under construction, and (b) the amount of the disbursement that Contractor is seeking. Each Application for Payment shall be accompanied by the following supporting data: (i) invoices, waivers of mechanic's and materialmen's liens as of the date of the Application for Payment, (ii) AIA Forms G702 and G703 certified by the Contractor for the completed Project under construction, and (iii) the updated Critical Path Diagram and other documents referenced in Section 18.24 above.

18.26 *Additional Requirements for Change Orders; CRA Project*

This section applies only to the CRA Project. The Contractor acknowledges that the Owner must coordinate any material amendments to the Contract with the DIA pursuant to Section 7.10 of the Disbursement Agreement. The Contractor agrees to cooperate and assist the Owner with this process, and shall take into account any additional time when preparing schedules as well as preparing and implementing any Change Orders.

18.27 *Jacksonville Small and Emerging Businesses*

The Contractor acknowledges that pursuant to Section 7.26 of the Disbursement Agreement the Owner must comply with Municipal Ordinance Code Sections 126.601 et seq. Toward that end, the Contractor agrees to cooperate and assist the Owner in fulfilling this requirement by (i) entering into contracts with DIA-certified Jacksonville Small and Emerging Businesses ("JSEB") to provide materials or services in an aggregate amount of at least twenty percent (20%) of the Contract Price ("JSEB Goal"), as determined in consultation with the Owner; or (ii) demonstrate "Good Faith Efforts" were made to achieve the JSEB Goal, in accordance with and as further described in Code Sections 126.601 et seq. Additionally, Contractor agrees to cooperate and assist the Owner with any JSEB related reporting requirements pursuant to the Redevelopment Agreement and/or Disbursement Agreement.

18.28 *TIME IS OF THE ESSENCE.*

The Contractor recognizes and agrees that the Owner must complete the CDD Project and CRA Project by the timelines outlined in the Project Manual, **INCLUDING BUT NOT LIMITED TO THE REQUIREMENT TO COMPLETE THE CRA PROJECT BY DECEMBER 31, 2024**, and that the failure to do so may result in the loss of millions of dollars of funding pursuant to the terms of the Redevelopment Agreement. Accordingly, TIME IS OF THE ESSENCE with respect to the design and construction of the CDD Project and CRA Project.

18.29 *Escalation.*

The Contract Price for this Project has been calculated based on the current prices for the component building materials. However, the market for construction materials is considered to be volatile, and sudden price increases could occur. The Contractor agrees to use his best efforts to obtain the lowest possible prices from available construction material Suppliers. However, the Contract Price may be adjusted in the event extraordinary or highly inflationary increases in the costs of the occur during the Project, through no fault of Contractor, and would result in a substantial inequity to Contractor without such adjustment. Specified materials and indexes will be identified at the time of entering into the Standard Form of Agreement having either a Lump Sum Price or a Cost Plus with Guaranteed Maximum Price.

18.30 *Additional Notice to the City and DIA under Article 16.*

Any party providing notice pursuant to Article 16 of these General Conditions shall additionally provide notice to the City and the DIA using the contact information included in Section 10.3 of the Redevelopment Agreement.

18.31 *E-Verify Requirements*

Contractor shall comply with and perform all applicable provisions of Section 448.095, Florida Statutes. Accordingly, beginning January 1, 2021, to the extent required by Florida Statute, Contractor shall register with and use the United States Department of Homeland Security's E-Verify system to verify the work authorization status of all newly hired employees. The Owner may terminate this Contract immediately for cause if there is a good faith belief that the Contractor has knowingly violated Section 448.091, Florida Statutes.

If Contractor anticipates entering into agreements with a subcontractor for the Work, Contractor will not enter into the Subcontractor agreement without first receiving an affidavit from the Subcontractor regarding compliance with Section 448.095, Florida Statutes, and stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of the agreement and provide a copy to the Owner upon request.

In the event that the Owner has a good faith belief that a Subcontractor has knowingly violated Section 448.095, Florida Statutes, but Contractor has otherwise complied with its obligations hereunder, the Owner shall promptly notify the Contractor. The Contractor agrees to immediately terminate the agreement with the Subcontractor upon notice from the Owner. Further, absent such notification from the Owner, Contractor or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1), Florida Statutes, shall promptly terminate its agreement with such person or entity.

By entering into this Contract, Contractor represents that no public employer has terminated a contract with Contractor under Section 448.095(5)(c), Florida Statutes, within the year immediately preceding the date of this Contract.

18.32 *Playground Equipment.*

This Contract requires the preparation of the playground site for the installation of certain playground equipment (the "**Playground Equipment**"). Contractor acknowledges that the District has and/or will engage KOMPAN, Inc., and/or its affiliates (collectively, "KOMPAN"), to design, manufacture, supply, and install the Playground Equipment. By entering into this Contract with Owner, Contractor hereby acknowledged and agrees that part of the Work includes preparing the playground site for the installation of the Playground Equipment to the specified site conditions stated in the CRA Project Manual, which include KOMPAN's site requirements, and working and coordinating with KOMPAN in order to complete such Work.

18.33 *Artist Subcontract – Central Park Sculpture and TVM.*

The Contract requires the fabrication and installation of certain artwork (the "**Central Park Sculpture**") on certain City properties located within the District by THEVERYMANY, LLC, a New York limited liability company ("TVM"). The Central Park Sculpture will be funded by the DIA consistent with the Redevelopment Agreement. TVM was previously engaged to undertake conceptual design of the Art Project. At such time as directed to do so by Owner, Contractor hereby agrees to enter into a subcontract with TVM for the fabrication and installation of the Artwork that is substantially

in the form provided in the Project Manual, and to act as agent for the District in connection with said subcontract. The Art Project is included as a Bid Alternate Improvement under Paragraph 11.02.

18.34 *Artist Subcontract – Interactive Artworks and International Art.*

The Contract requires the fabrication and installation of certain interactive artwork (the “**Interactive Artworks**”) on certain City properties located within the District by artists Anaisa Franco and Michael DiCarlo’s company International Art & Services, LLC, a New York limited liability company (“**International Art**”). The Interactive Artworks will be funded by the DIA consistent with the Redevelopment Agreement. International Art was previously engaged to undertake conceptual design of the Interactive Artworks. At such time as directed to do so by Owner, Contractor hereby agrees to enter into a subcontract with International Art for the fabrication, and installation of the Interactive Artworks that is substantially in the form provided in the Project Manual, and to act as agent for the District in connection with said subcontract. The Interactive Artworks are included as a Bid Alternate Improvement under Paragraph 11.02.

**THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT
PHASE 3B – CRA PROJECT
(PARKS, RIVERWALK, AND STREETScape IMPROVEMENTS)**

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

The following supplements establish insurance limits and other requirements relating to Article 6 of the *Standard General Conditions of the Construction Contract*, EJCDC Document No. C-700 (Rev. 1), 2013 Edition (the “**General Conditions**”), as well as identify certain reports relating to subsurface conditions and hazardous conditions at the site, which reports relate to Article 5 of the General Conditions. Other changes have been marked directly in underlined and strike-through on 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

Pursuant to Paragraph 5.03.A. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

- a. Boundary survey, prepared by Perret and Associates, Inc., dated April 13, 2018.
- b. Preliminary Report for Geotechnical Exploration, prepared by Meskel & Associates Engineering, dated October 10, 2018.
- c. Geotechnical Engineering Report, The District IPO # 2 (Prudential Drive), prepared by ECS Florida, LLC, dated August 23, 2019.
- d. Interim Geotechnical Engineering Report, The District IPO #3 (CRA Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 28, 2019.
- e. Geotechnical Engineering Report, The District IPO #4 (CDD Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 30, 2019.
- f. JEA Utility Easement Agreement, dated July, 12 2018.

Pursuant to Paragraph 5.03.A. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications: those surveys and reports listed above

SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE

Pursuant to paragraphs 5.06.A and 5.06.B., the following reports and drawings related to Hazardous Environmental Conditions at the Site are known to Owner:

- a. Second Amendment to Brownfield Site Rehabilitation Agreement and Clean Closure Plan, last dated December 22, 2022, between FDEP, JEA, Elements Development of Jacksonville, LLC and District Community Development District.
- b. Site Rehabilitation Completion Order (SRCO) with Controls, dated August 17, 2017.
- c. Proposed Groundwater Monitoring Program and Hydraulic Containment System Operation Schedule, prepared by Kimley-Horn and Associates, Inc., dated May 15, 2019 (approved by FDEP 23, 2019)
- d. Soil Management Plan, Stormwater Improvements, Utility Construction and Construction Dewatering Addendum, prepared by Kimley-Horn and Associates, Inc., dated February 5, 2021 (approved by FDEP February 24, 2021)
- e. Second Amendment to Brownfield Site Rehabilitation Agreement and Clean Closure Plan, last dated December 22, 2022, between FDEP, JEA, Elements Development of Jacksonville, LLC and District Community Development District.
- f. Dewatering Plan Modification prepared by Kimley-Horn and Associates, Inc., dated December 14, 2020.
- g. Remedial Acton Plan Modification, prepared by ECS Florida, LLC, dated February 15, 2021. (approved by FDEP February 23, 2021)
- h. The District General Information for Health and Safety Plan Preparation, prepared by Kimley-Horn and Associates, Inc., date January 11, 2021.
- i. Areas of Contamination Letter to C. Kruchell of FDEP from J. Sheasley of Kimley-Horn and Associates, Inc. regarding delineation of two areas of contamination, dated April 5, 2022.

ARTICLE 6 – BONDS AND INSURANCE

6.03 Contractor's Liability Insurance

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

- K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:
 - 1. Workers' Compensation under Paragraph 6.03.A. of the General Conditions:
 - a. State Worker's Compensation and Employer's Liability – Greater of statutorily required amount or \$1,000,000 per occurrence / \$1,000,000 aggregate / \$1,000,000 per disease
 - b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, etc.) (only required to the extent applicable) – Greater of statutorily required amount or \$1,000,000
 - c. ~~Employer's Liability – \$1,000,000 per occurrence / \$1,000,000 aggregate / \$1,000,000 per disease~~

2. Commercial General Liability Insurance under Paragraph 6.03.B. of the General Conditions, which includes Contractual Liability Insurance under Paragraph 6.03.C. of the General Conditions:

- a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - \$2,000,000
- b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - \$2,000,000
- c. Products-Completed Operations – \$2,000,000
- d. Personal and Advertising Injury – \$2,000,000
- e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.

3. Automobile Liability under paragraph 6.03.D. of the General Conditions:

- a. Bodily Injury:
 - Each Person \$1,000,000
 - Each Accident \$1,000,000
- Property Damage:
 - Each Occurrence \$1,000,000

4. Pollution Insurance, and Pollution Legal Liability (covering third-party injury and property damage claims, including clean-up costs) \$10,000,000

5. Protection and Indemnity (Watercraft) (provided however that the Contractor shall only provide such insurance if and when applicable to the Work)

Insurance \$1,000,000

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

- ~~a. General Aggregate \$1,000,000~~
- ~~b. Bodily Injury and Property Damage~~
 - ~~Combined Each Occurrence \$2,000,000~~

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

- ~~a. General Aggregate \$15,000,000~~
- ~~b. Each Occurrence \$15,000,000~~

~~8. Design Professional Liability Insurance (notwithstanding Exhibit P, Contractor shall renew such insurance on an annual basis and for a period of 10 years after completion of the Work, and any such insurance policy shall include a retroactive date back to the effective date of this Contract):~~

- ~~a. General Aggregate \$15,000,000~~

~~b. Each Occurrence \$15,000,000~~

- L. The Contractor's commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: all of the Indemnitees and Kimley-Horn & Associates, Inc., and its respective officers, directors, members, partners, employees, agents, consultants, managers, staff, supervisors, and subcontractors.

- M. Such insurance as listed above is in addition to all other insurance required under the Contract. Further, the Contractor shall comply with the provisions of the General Conditions and these Supplementary Conditions as they relate to insurance requirements, provided that Contractor shall additionally satisfy the insurance requirements set forth in **Exhibit P** of the Redevelopment Agreement to the extent such insurance requirements are greater than those set forth in the General Conditions and Supplementary Conditions.

EXHIBIT P – REDEVELOPMENT AGREEMENT

**Exhibit P
Insurance Requirements of Developer and CDD**

Without limiting its liability under this Agreement Contract, the Developer, CDD or its General Contractor (for this Exhibit P, collectively the “Contractor”) shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker’s Compensation Employer’s Liability	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000 General Aggregate \$2,000,000 Products & Comp. Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence \$ 50,000 Fire Damage \$ 5,000 Medical Expenses
-------------------------------------	--

The policy shall be endorsed to provide a separate aggregate limit of liability applicable to the Work via a form no more restrictive than the most recent version of ISO Form CG 2503

Contractor shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the project. The amount of products/completed operations coverage maintained during the ten year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Contractor in the combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Work.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability \$15,000,000 per Claim
\$15,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

Builders Risk %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: Developer, Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$5,000,000 per Loss
\$5,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

Watercraft Liability \$1,000,000 Per Occurrence
(to the extent that watercraft is utilized in the services of this Agreement)

Umbrella Liability \$15,000,000 Each Occurrence/ Aggregate.

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

In the event that any part of the work to be performed hereunder shall require the Contractor or Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, the Developer shall, before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to DIA and the City, Engineer, and Program Management Firm(s) (when program management services are provided).

The Contractor shall not be permitted to enter upon or perform any work on City's property until such insurance has been furnished to the satisfaction of the City. The insurance herein specified is in addition to any other insurance which may be required by the City, and shall be kept in effect at all times while work is being performed on or about the City Parcels.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the DIA, City of Jacksonville and their respective members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.

- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of DIA and the City of Jacksonville and their respective members, officials, officers employees and agents.
- C. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by DIA, the City or any DIA or City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will DIA or the City of Jacksonville and their members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- E. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to DIA, City or DIA's or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by DIA or City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Contractor shall provide the DIA and City Certificates of Insurance that shows the corresponding DIA Agreement Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the DIA and City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Contractor shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the DIA or City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Agreement and this Exhibit P to its Insurance Agent affirming: (1) that the Agent has personally reviewed the insurance requirements of the Project Documents, and (2) that the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Bonds and Other Performance Security. CDD shall not perform or commence any construction services for the CRA Infrastructure Improvements until the following performance bond and labor and material payment bond or other performance security have been delivered to DIA and City: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to DIA and City on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Public Infrastructure Improvement performed under this Agreement, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the CRA Infrastructure Improvements. No qualification or modifications to the Bond forms are permitted.

To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

CONTRACT AMOUNT		RATING	RATING
\$ 500,000 TO \$1,000,000	A-	CLASS IV	
\$1,000,000 TO \$2,500,000	A-	CLASS V	
\$2,500,000 TO \$5,000,000	A-	CLASS VI	
\$5,000,000 TO \$10,000,000	A-	CLASS VII	
\$10,000,000 TO \$25,000,000	A-	CLASS VIII	
\$25,000,000 TO \$50,000,000	A-	CLASS IX	
\$50,000,000 TO \$75,000,000	A-	CLASS X	

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

5



Memorandum

To: District CDD Chairman and Board of Supervisors

From: William J. Schilling Jr., P.E. – CDD Engineer

Date: November 14, 2023

Subject: Update regarding contract negotiations for the Phase 3B CDD Project and request that the Board allow the Chairman to sign a construction contract on behalf of the CDD with UCC Group, Inc. or another qualified contractor for the Phase 3B CDD Project

CDD staff commenced negotiations with UCC Group, Inc. (“**UCC**”) immediately following the District Board of Supervisors meeting held on October 16, 2023. To date, UCC and District staff have conducted numerous negotiations meetings and have completed two iterations of revisions to the UCC bid numbers. While progress has been made in reducing UCC’s bid numbers to be more “in-line” with the District’s budgets for the Phase 3B CDD Project improvements, further negotiations are required. Accordingly, District staff are not able to present a final contract to the District Board of Supervisors at their November 14, 2023 meeting. Further, District staff have initiated discussions with two other construction firms to determine if they are qualified and able to provide the construction services contemplated for the Phase 3B CDD Project Improvements.

Accordingly, District staff is requesting that the District Board of Supervisors authorize the Chairman to sign a construction contract, valued at up to \$5.5 million (including allowances) on behalf of the CDD with UCC or another qualified contractor for the Phase 3B CDD Project. The form of the contract will be in substantial conformance with the Standard Form of Agreement, Standard General Conditions, and Supplementary Conditions contained in the Phase 3B CDD Project Request for Proposals (“**RFP**”), dated August 22, 2023. The subject Standard Form of Agreement, Standard General Conditions, and Supplementary Conditions are attached to this Memorandum.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)
PHASE 3B– CDD PROJECT (STREETScape IMPROVEMENTS)**

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AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)
PHASE 3B – CDD PROJECT (STREETSCAPE IMPROVEMENTS)

THIS AGREEMENT is by and between The District Community Development District (“Owner”) and _____ (“Contractor”).

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

1.01 *Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **The Phase 3B – CDD Project (Streetscape Improvements)** consists of constructing, among other things, new hardscape, landscaping and irrigation, landscape lighting, electrical “load centers”, plugs, site furnishings, wayfinding signage, and other miscellaneous streetscape improvements, as shown in the District’s construction plans for “RiversEdge Streetscape Improvements Plan” – Bid Set, dated August 18, 2023, and as more fully described in the engineering documents and specifications contained within or reasonably inferred from the Contract Documents. The Phase 3B – CDD Project (Streetscape Improvements) consists of a portion of the CDD Project.*

ARTICLE 2 – THE PROJECT

2.01 The Project, of which the Work under the Contract Documents is a part, is generally described as follows: The District Community Development District – Phase 3B – CDD Project (Streetscape Improvements)

ARTICLE 3 – ENGINEER

3.01 The part of the Project that pertains to the Work has been designed by:

Kimley-Horn and Associates, Inc.
12740 Gran Bay Parkway West, Suite 2350
Jacksonville, Florida 32258

3.02 The Owner has retained Kimley-Horn and Associates, Inc. (“Engineer”) to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

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

4.02 *Contract Times: Dates*

A. ~~The Work will be substantially completed on or before _____, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions on or before _____.~~
30 calendar days thereafter.

{or}

4.02 *Contract Times: Days*

- A. The Work will be substantially completed 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.
- B. Parts of the Work shall be substantially completed on or before ____ _____.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):
 - 1. Substantial Completion: Contractor shall pay Owner \$2,000.00 (Two Thousand Dollars and No Cents) for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 - 2. Completion of Remaining Work: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$2,000.00 (Two Thousand Dollars and No Cents) for each day that expires after such time until the Work is completed and ready for final payment.
 - 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.
 - 4. Liquidated damages shall not be assessed until thirty days (30) after the date of Substantial completion.
 - 5. Contractor's liability for Liquidated Damages under this Section 4.03 shall be subject to a total aggregate cap of \$1,000,000 (One Million Dollars and No Cents).
- B. ~~Bonus: Contractor and Owner further recognize the Owner will realize financial and other benefits if the Work is completed prior to the time specified for Substantial Completion. Accordingly, Owner and Contractor agree that as a bonus for early completion, Owner shall pay Contractor \$_____ for each day prior to the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract) that the Work is substantially complete. The maximum value of the bonus shall be limited to \$_____.~~

4.04 *Special Damages*

- A. In addition to the amount provided for liquidated damages, 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.

ARTICLE 5 – CONTRACT PRICE

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

- A. For all Work other than Unit Price Work, a lump sum of: \$_____.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions. Unit Pricing, as shown in the Contractor’s Bid Tabulation Summary attached hereto, shall be used in connection with pricing for change orders. Bid Alternate Improvements, as shown in the Contractor’s Bid Tabulation Summary attached hereto, include the following:

- 1. Bike Lane; Concrete with Color Hardener \$_____
- 2. Bike Lane; Asphalt with Color Pave Ready Mix \$_____

- 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) \$_____.~~
- D. ~~For all Work, at the prices stated in Contractor’s Bid, attached hereto as an exhibit.~~

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 30th 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 (i.e., by the fifth of the month) 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.

- 1. Pursuant to Section 255.078, Florida Statutes, Owner may withhold from each progress payment made to the Contractor an amount not exceeding 5 percent of the payment as retainage. Five percent of the Contract Price may be retained by Owner until Final Completion, acceptance of the Work by the Owner, and Final Payment to the Contractor.

- ~~2. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract~~

- a. ~~_____ percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and~~
- b. ~~_____ percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).~~

- B. ~~Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to _____ percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less _____ percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.~~

6.03 *Final Payment*

- A. ~~Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06. Upon final completion and acceptance of the Work in accordance with paragraph 15.06.B of the General Conditions and subject to final acceptance by District Engineer, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.B.~~

6.04 *Procedure for Change of Payment.*

Owner shall make all payments to Contractor by wire transfer {"Payment Information"} as follows:

SEE ADDENDUM C TO STANDARD GENERAL CONDITIONS

Owner shall only change the Payment Information if requested orally and in writing by _____ . The District shall have no obligation to confirm the identity of such person. Owner shall make no changes to the Payment Information if it does not receive the oral and written confirmations as stated herein. If Owner makes any change to the Payment Information without first receiving the confirmations stated herein, it shall be solely responsible for any monies lost or stolen and not paid to Contractor as a result of Owner's failure to use the Payment Information when making payment.

ARTICLE 7 – INTEREST

7.01 ~~All amounts not paid when due shall bear interest at the rate of _____ percent per annum. All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.74, Florida Statutes.~~

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work and has correlated those personal observations with the requirements of the Contract Documents. Prior to execution of the Contract, the Contractor has examined the Site and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, among other things, (i) the location, condition, layout, and nature of the Site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – CONTRACT DOCUMENTS

9.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement, as modified herein (pages 1 to ____, inclusive).
 - 2. Performance bond (pages 1 to ____, inclusive).
 - 3. Payment bond (pages 1 to ____, inclusive).
 - 4. ~~Other bonds.~~
 - a. ~~____ (pages ____ to ____, inclusive).~~
 - 5. General Conditions, as modified therein (pages 1 to ____, inclusive).
 - 6. Supplementary Conditions, as modified therein (together, "**Supplementary Conditions**"):
 - a. Supplementary Conditions Relating to Insurance Requirements, Subsurface Conditions, and Hazardous Conditions (pages 1 to ____, inclusive).
 - b. Contractor's On-Site Security Plan (pages ____ to ____, inclusive).
 - 7. ~~Specifications as listed in the table of contents of the Project Manual.~~
 - 8. Specifications and Drawings (not attached but incorporated by reference) consisting of: ~~____ sheets with each sheet bearing the following general title: _____~~ **[or]** the Drawings listed on the attached sheet index.
 - a) Construction Plans for "RiversEdge Streetscape – Hardscape, Planting, Irrigation" – Bid Set, dated August 18, 2023
 - b) Construction Plans for "RiversEdge Parks and Riverwalk" – Bid Set, dated August 18, 2023. (CRA Park Projects Only)
 - c) Boundary survey, prepared by Perret and Associates, Inc., dated April 13, 2018.

- d) Preliminary Report for Geotechnical Exploration, prepared by Meskel & Associates Engineering, dated October 10, 2018.
 - e) Geotechnical Engineering Report, The District IPO # 2 (Prudential Drive), prepared by ECS Florida, LLC, dated August 23, 2019.
 - f) Interim Geotechnical Engineering Report, The District IPO #3 (CRA Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 28, 2019.
 - g) Geotechnical Engineering Report, The District IPO #4 (CDD Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 30, 2019.
 - h) Second Amendment to Brownfield Site Rehabilitation Agreement and Clean Closure Plan, last dated December 22, 2022, between FDEP, JEA, Elements Development of Jacksonville, LLC and District Community Development District.
 - i) Site Rehabilitation Completion Order (SRCO) with Controls dated August 17, 2017.
 - j) Proposed Groundwater Monitoring Program and Hydraulic Containment System Operation Schedule, prepared by Kimley-Horn and Associates, Inc., dated May 15, 2019 (approved by FDEP 23, 2019)
 - k) Soil Management Plan, Stormwater Improvements, Utility Construction and Construction Dewatering Addendum, prepared by Kimley-Horn and Associates, Inc., dated February 5, 2021 (approved by FDEP February 24, 2021)
 - l) Soil Management Plan Second Addendum (Revised June 30, 2022), dated June 17, 2022, prepared by Kimley-Horn and Associates, Inc.
 - m) Dewatering Plan Modification prepared by Kimley-Horn and Associates, Inc., dated December 14, 2020.
 - n) Remedial Action Plan Modification, prepared by ECS Florida, LLC, dated February 15, 2021, (approved by FDEP February 23, 2021)
 - o) The District General Information for Health and Safety Plan Preparation, prepared by Kimley-Horn and Associates, Inc., date January 11, 2021.
 - p) Areas of Contamination Letter to C. Kruchell of FDEP from J. Sheasley of Kimley-Horn and Associates, Inc. regarding delineation of two areas of contamination, dated April 5, 2022.
 - q) JEA Utility Easement Agreement, dated July, 12 2018.
9. ~~Addenda (numbers ___ to ___, inclusive).~~
10. Exhibits to this Agreement (enumerated as follows):
- a. Direct Purchase Forms
 - b. Project Manual
 - c. Contractor's RFP Response dated September 22, 2023

11. 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.
 12. The Redevelopment Agreement among the City of Jacksonville, the Downtown Investment Authority, Elements Development of Jacksonville, LLC, and Owner for Redevelopment of the JEA Southside Generator Parcel, dated July 12, 2018, together with all agreements and exhibits thereto thereto and as may be amended and/or restated from time to time.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
 - C. There are no Contract Documents other than those listed above in this Article 9.
 - D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.02 Assignment of Contract

- A. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), 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 Documents.

10.03 Successors and Assigns

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

10.04 Severability

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

[SIGNATURES TO FOLLOW]

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

This Agreement will be effective on _____, 2023 (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

District Community Development District

By: _____

By: _____

Title: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: _____

Title: _____

Address for giving notices:

Address for giving notices:

c/o Wrathell, Hunt & Associates, LLC

2300 Glades Road, Suite 410W

Boca Raton, Florida 33431

License No.: _____
(where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

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
PHASE 3B – CDD PROJECT (STREETScape IMPROVEMENTS)**

Prepared by



Issued and Published Jointly by



Endorsed by



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

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

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

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

has declined to address. A demand for money or services by a third party is not a Claim.

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

and/or other similar approvals issued by governmental bodies, agencies, and authorities.

24. *Liens*—Charges, security interests, or encumbrances upon Contract-related funds, real property, or personal property.
25. *Milestone*—A principal event in the performance of the Work that the Contract requires Contractor to achieve by an intermediate completion date or by a time prior to Substantial Completion of all the Work.
26. *Notice of Award*—The written notice by Owner to a Bidder of Owner’s acceptance of the Bid.
27. *Notice to Proceed*—A written notice by Owner 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.
28. *Owner*—The individual or entity with which Contractor has contracted regarding the Work, and which has agreed to pay Contractor for the performance of the Work, pursuant to the terms of the Contract.
29. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor’s plan to accomplish the Work within the Contract Times.
30. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the Work to be performed under the Contract Documents is a part.
31. *Project Manual*—The written documents prepared for, or made available for, procuring and constructing the Work, including but not limited to the Bidding Documents or other construction procurement documents, geotechnical and existing conditions information, the Agreement, bond forms, General Conditions, Supplementary Conditions, and Specifications. The contents of the Project Manual may be bound in one or more volumes.
32. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site. As used herein, the term Resident Project Representative or “RPR” includes any assistants or field staff of Resident Project Representative.
33. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
34. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer’s review of the submittals and the performance of related construction activities.
35. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor’s Applications for Payment.
36. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Contract Documents.

37. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
38. *Specifications*—The part of the Contract that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
39. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
40. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
41. *Successful Bidder*—The Bidder whose Bid the Owner accepts, and to which the Owner makes an award of contract, subject to stated conditions.
42. *Supplementary Conditions*—The part of the Contract that amends or supplements these General Conditions.
43. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
44. *Technical Data*—Those items expressly identified as Technical Data in the Supplementary Conditions, with respect to either (a) subsurface conditions at the Site, or physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) or (b) Hazardous Environmental Conditions at the Site. If no such express identifications of Technical Data have been made with respect to conditions at the Site, then the data contained in boring logs, recorded measurements of subsurface water levels, laboratory test results, and other factual, objective information regarding conditions at the Site that are set forth in any geotechnical or environmental report prepared for the Project and made available to Contractor are hereby defined as Technical Data with respect to conditions at the Site under Paragraphs 5.03, 5.04, and 5.06.
45. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including but not limited to those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, fiber optic transmissions, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
46. *Unit Price Work*—Work to be paid for on the basis of unit prices.
47. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.

48. *Work Change Directive*—A written directive to Contractor issued on or after the Effective Date of the Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
49. *Redevelopment Agreement* – That certain *Redevelopment Agreement among the City, DIA, and Developer for Redevelopment of the JEA Southside Generator Parcel* originally dated and effective as of July 12, 2018, as may be amended and/or restated from time to time, and together with all agreements thereto, exhibits thereto, and that certain *Joinder Agreement dated April 23, 2019, among the Owner, City, DIA, and Developer, whereby the Owner agreed to be bound by the terms of the Redevelopment Agreement.*
50. *Disbursement Agreement* – That certain *CRA Infrastructure Improvements Costs Disbursement Agreement*, originally dated and effective as of December 22, 2020,, as may be amended and/or restated from time to time, by and between the DIA, Owner, and Developer.
51. *BSRA* – That certain *Brownfield Site Rehabilitation Agreement and Clean Closure Plan and Clean Closure Plan* effectively dated August 1, 2001, as subsequently amended on *July 12, 2018, December 22, 2022, and as may be amended from time to time.*
52. *CDD Project* – This refers to the CDD Infrastructure Improvements as defined in the *Redevelopment Agreement*. The Agreement shall identify whether the Project consists of all or a portion of the CDD Project or the CRA Project. The Phase 3B – CDD Project (Streetscape Improvements) consists of a portion of the CDD Project.
53. *CRA Project* – This refers to the CRA Infrastructure Improvements as defined in the *Redevelopment Agreement*. The Agreement shall identify whether the Project consists of all or a portion of the CDD Project or the CRA Project.
54. *Indemnitees* – Include, together, the Owner, the City of Jacksonville (“City”), Downtown Investment Authority (“DIA”), Elements Development of Jacksonville, LLC (“Developer”), Preston Hollow Capital, LLC, and their respective officers, directors, Supervisors, Board Members, City Council members, employees, staff, managers, representatives, successors, and assigns of each and any of all of the foregoing entities and individuals.
55. *Allowances* – *those certain Streetscape Directional Signage as further identified under “Allowances” in Contractor’s Bid Tabulation Summary.*

1.02 Terminology

- A. The words and terms discussed in the following paragraphs are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and

shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Article 10 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 15.03 or 15.04).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
 2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
 3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.
 4. If the Contract Documents establish an obligation of Contractor with respect to specific services, materials, or equipment, but do not expressly use any of the four words “furnish,” “install,” “perform,” or “provide,” then Contractor shall furnish and install said services, materials, or equipment complete and ready for intended use.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. *Bonds:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Contractor’s Insurance:* When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or

elsewhere in the Contract), the certificates and other evidence of insurance required to be provided by Contractor in accordance with Article 6.

- C. *Evidence of Owner's Insurance:* After receipt of the executed counterparts of the Agreement and all required bonds and insurance documentation, Owner shall promptly deliver to Contractor, with copies to each named insured and additional insured (as identified in the Supplementary Conditions or otherwise), the certificates and other evidence of insurance required to be provided by Owner under Article 6.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor four printed copies of the Contract (including one fully executed counterpart of the Agreement), and one copy in electronic portable document format (PDF). Additional printed copies will be furnished upon request at the cost of reproduction.
- B. Owner shall maintain and safeguard at least one original printed record version of the Contract, including Drawings and Specifications signed and sealed by Engineer and other design professionals. Owner shall make such original printed record version of the Contract available to Contractor for review. Owner may delegate the responsibilities under this provision to Engineer.

2.03 *Before Starting Construction*

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

2.04 *Preconstruction Conference; Designation of Authorized Representatives*

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

2.05 *Initial Acceptance of Schedules*

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

2.06 *Electronic Transmittals*

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

ARTICLE 3 – DOCUMENTS: INTENT, REQUIREMENTS, REUSE

3.01 *Intent*

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents.
- C. Unless otherwise stated in the Contract Documents, if there is a discrepancy between the electronic or digital versions of the Contract Documents (including any printed copies derived from such electronic or digital versions) and the printed record version, the printed record version shall govern.
- D. The Contract supersedes prior negotiations, representations, and agreements, whether written or oral.

- E. Engineer will issue clarifications and interpretations of the Contract Documents as provided herein.

3.02 *Reference Standards*

A. Standards Specifications, Codes, Laws and Regulations

1. Reference in the Contract Documents to standard specifications, manuals, reference standards, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard specification, manual, reference standard, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Contract if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
2. No provision of any such standard specification, manual, reference standard, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the part of the Contract Documents prepared by or for Engineer. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the part of the Contract Documents prepared by or for Engineer.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Verification of Figures and Field Measurements:* Before undertaking each part of the Work, Contractor shall carefully study the Contract Documents, and check and verify pertinent figures and dimensions therein, particularly with respect to applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy that Contractor discovers, or has actual knowledge of, and shall not proceed with any Work affected thereby until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.
2. *Contractor's Review of Contract Documents:* If, before or during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) actual field conditions, (c) any standard specification, manual, reference standard, or code, or (d) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 7.15) until the conflict, error, ambiguity, or discrepancy is resolved, by a clarification or interpretation by Engineer, or by an amendment or supplement to the Contract Documents issued pursuant to Paragraph 11.01.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the part of the Contract Documents prepared by or for Engineer shall

take precedence in resolving any conflict, error, ambiguity, or discrepancy between such provisions of the Contract Documents and:

- a. the provisions of any standard specification, manual, reference standard, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference as a Contract Document); or
- b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation). In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall submit a Request for Information to the Engineer within a reasonable amount of time after discovery for clarification of the perceived ambiguity(s), however, unless the RFI response provides otherwise, the Contractor shall (i) provide the better quality or greater quality of Work, or (ii) comply with the more stringent requirement, either or both in accordance with the Engineer's interpretation.

3.04 *Requirements of the Contract Documents*

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

3.05 *Reuse of Documents*

- A. Contractor and its Subcontractors and Suppliers shall not:
 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions, or reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer; or
 2. have or acquire any title or ownership rights in any other Contract Documents, reuse any such Contract Documents for any purpose without Owner's express written consent, or violate any copyrights pertaining to such Contract Documents.

- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 – COMMENCEMENT AND PROGRESS OF THE WORK

4.01 *Commencement of Contract Times; Notice to Proceed*

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

4.02 *Starting the Work*

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

4.03 *Reference Points*

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

4.04 *Progress Schedule*

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.05 as it may be adjusted from time to time as provided below.
 - 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 shall be submitted in accordance with the requirements of Article 11.
- B. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, or during any appeal process, except as permitted by Paragraph 16.04, or as Owner and Contractor may otherwise agree in writing.

4.05 *Delays in Contractor's Progress*

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Times and Contract Price, provided however that Contractor first furnishes Owner with written notice of any such delay, disruption or interference and Owner fails to promptly cure such delay, disruption or interference. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such

adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall 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 and Contract Price, provided however that any such equitable adjustment to Contract Price shall be limited to actual direct costs incurred by Contractor (and Owner shall not be responsible for consequential damages, including but not limited to lost profits, overhead, opportunity costs, or other similar costs). Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays, disruption, and interference described in this paragraph. Causes of delay, disruption, or interference that may give rise to an adjustment in Contract Times under this paragraph include limited to the following:
 - 1. severe and unavoidable natural catastrophes such as fires, floods, epidemics, and earthquakes;
 - 2. acts or failures to act of utility owners (other than those performing other work at or adjacent to the Site by arrangement with the Owner, as contemplated in Article 8); and
 - 3. acts of war or terrorism.
- D. Delays, disruption, and interference to the performance or progress of the Work resulting from the existence of a differing subsurface or physical condition, an Underground Facility that was not shown or indicated by the Contract Documents, or not shown or indicated with reasonable accuracy, and those resulting from Hazardous Environmental Conditions, are governed by Article 5.
- E. Paragraph 8.03 governs delays, disruption, and interference to the performance or progress of the Work resulting from the performance of certain other work at or adjacent to the Site.
- F. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor.
- G. Contractor must submit any Change Proposal seeking an adjustment in Contract Price or Contract Times under this paragraph within 30 days of the commencement of the delaying, disrupting, or interfering event.

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

5.01 *Availability of Lands*

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work.
- B. ~~Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which permanent improvements are to be made and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.~~
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

5.02 *Use of Site and Other Areas*

- A. *Limitation on Use of Site and Other Areas:*
 - 1. Contractor shall confine construction equipment, temporary construction facilities, the storage of materials and equipment, and the operations of workers to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and such other adjacent areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for (a) damage to the Site; (b) damage to any such other adjacent areas used for Contractor's operations; (c) damage to any other adjacent land or areas; and (d) for injuries and losses sustained by the owners or occupants of any such land or areas; provided that such damage or injuries result from the performance of the Work or from other actions or conduct of the Contractor or those for which Contractor is responsible. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of Contractor unless otherwise specified in writing signed by both Parties. Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site of the Work and all adjacent areas.
 - 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 7.12, or otherwise; (b) promptly attempt to settle the claim as to all parties through negotiations with such owner or occupant, or otherwise resolve the claim by arbitration or other dispute resolution proceeding, or at law; and (c) to the fullest extent permitted by Laws and Regulations, indemnify, defend, and hold harmless ~~Indemnitees~~Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against any such claim, and against all liabilities, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or

arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused directly or indirectly, in whole or in part by, or based upon, Contractor's negligent, reckless or intentionally wrongful performance of the Work, or because of other negligent, reckless or intentionally wrongful actions or conduct of the Contractor or those for which Contractor is responsible.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work the Contractor shall keep the Site and other adjacent areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site and adjacent areas all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading of Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent structures or land to stresses or pressures that will endanger them.

5.03 *Subsurface and Physical Conditions*

- A. *Reports and Drawings:* The Supplementary Conditions identify:
 - 1. ~~Those reports known to Owner of explorations and tests of subsurface conditions at or adjacent to the Site and from which the Engineer prepared the Contract Drawings and Specifications;~~
 - 2. ~~Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities);), and from which the Engineer prepared the Contract Drawings and Specifications; and~~
 - 3. Technical Data contained in such reports and drawings.
- B. *Reliance by Contractor on Technical Data Not 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 upon the accuracy of the Technical Data (as defined in Article 1) contained in any geotechnical or environmental report prepared for the Project and made available to Contractor. Except for such reliance on Technical Data, Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, with respect to:~~
 - 1. ~~the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or~~
 - 2. ~~other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or~~

3. ~~any Contractor interpretation of or conclusion drawn from any Technical Data or any such other data, interpretations, opinions, or information.~~

Contractor 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 foreseen (and excluding unforeseen) risks, hazards, and difficulties in connection therewith.

5.04 *Differing Subsurface or Physical Conditions*

- A. *Notice by Contractor:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed at the Site either:
 1. is of such a nature as to establish that any Technical Data on which Contractor is entitled to rely (if any) as provided in Paragraph 5.03 is materially inaccurate; or
 2. is of such a nature as to require a change in the Drawings or Specifications; or
 3. differs materially from that shown or indicated in the Contract Documents; or
 4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

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

- B. *Engineer's Review:* After receipt of written notice as required by the preceding paragraph, Engineer will promptly review the subsurface or physical condition in question; determine the necessity of Owner's obtaining additional exploration or tests with respect to the condition; conclude whether the condition falls within any one or more of the differing site condition categories in Paragraph 5.04.A above; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. *Owner's Statement to Contractor Regarding Site Condition:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.
- D. *Possible Price and Times Adjustments:*
 1. Contractor shall be entitled to an equitable adjustment in Contract Price or Contract Times, or both, to the extent that the existence of a differing subsurface or physical condition, or any related delay, disruption, or interference, causes an increase or

decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must fall within any one or more of the categories described in Paragraph 5.04.A;
 - b. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times with respect to a subsurface or physical condition if:
- a. Contractor knew of the existence of such condition at the time Contractor made a commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract, or otherwise; or
 - b. the existence of such condition reasonably could have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas expressly required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 5.04.A.
3. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.
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, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the subsurface or physical condition in question.

5.05 *Underground Facilities*

- A. *Contractor's Responsibilities:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or adjacent to the Site, if any, is based on information and data furnished to Owner or Engineer by the owners of such Underground Facilities, including Owner, or by others. The information and data shown or indicated in the Contract Documents shall not relieve Contractor of its obligations to contact local utilities and confirm existing utility locations (Florida's Call Before You Dig Law). ~~Unless it is otherwise expressly provided in the Supplementary Conditions:~~
1. Owner and Engineer do not warrant or guarantee the accuracy or completeness of any such information or data provided by others; and
 2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all information and data regarding existing Underground Facilities at the Site;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents as being at the Site;
 - c. coordination of the Work with the owners (including Owner) of such Underground Facilities, during construction; and

- d. the safety and protection of all existing Underground Facilities at the Site, and repairing any damage thereto resulting from the Work.
- B. *Notice by Contractor:* If Contractor believes that an Underground Facility that is uncovered or revealed at the Site was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 7.15), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer.
- C. *Engineer's Review:* Engineer will promptly review the Underground Facility and conclude whether such Underground Facility was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy; obtain any pertinent cost or schedule information from Contractor; prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the Underground Facility in question; determine the extent, if any, to which a change is required in the Drawings or Specifications to reflect and document the consequences of the existence or location of the Underground Facility; and advise Owner in writing of Engineer's findings, conclusions, and recommendations. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. *Owner's Statement to Contractor Regarding Underground Facility:* After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor (with a copy to Engineer) regarding the Underground Facility in question, addressing the resumption of Work in connection with such Underground Facility, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations in whole or in part.
- E. *Possible Price and Times Adjustments:*
 1. Contractor shall be entitled to an equitable adjustment in the Contract Price or Contract Times, or both, to the extent that any existing Underground Facility at the Site that was not shown or indicated in the Contract Documents, or was not shown or indicated with reasonable accuracy, or any related delay, disruption, or interference, causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated the existence or actual location of the Underground Facility in question;
 - b. With respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraph 13.03;
 - c. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times; and
 - d. Contractor gave the notice required in Paragraph 5.05.B.
 2. If Owner and Contractor agree regarding Contractor's entitlement to and the amount or extent of any adjustment in the Contract Price or Contract Times, or both, then any such adjustment shall be set forth in a Change Order.

3. Contractor may submit a Change Proposal regarding its entitlement to or the amount or extent of any adjustment in the Contract Price or Contract Times, or both, no later than 30 days after Owner's issuance of the Owner's written statement to Contractor regarding the Underground Facility in question.

5.06 *Hazardous Environmental Conditions at Site*

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

Contractor the written notice required by Paragraph 5.06.F. If Contractor or anyone for whom Contractor is responsible created the Hazardous Environmental Condition in question, then Owner may remove and remediate the Hazardous Environmental Condition, and impose a set-off against payments to account for the associated costs.

- F. Contractor shall not resume Work in connection with such Hazardous Environmental Condition or in any affected area until after Owner has obtained any required permits related thereto, and delivered written notice to Contractor either (1) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or (2) specifying any special conditions under which such Work may be resumed safely.
- G. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, then within 30 days of Owner's written notice regarding the resumption of Work, Contractor may submit a Change Proposal, or Owner may impose a set-off.
- H. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work, following the contractual change procedures in Article 11. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 8.
- I. To the ~~fullest~~ extent permitted by Laws and Regulations, but without waiving any limitations of liability set forth in Section 758.28, Florida Statutes or other provisions of law, Owner shall indemnify and hold harmless Contractor, and Subcontractors, and Engineer, and the officers, directors, members, partners, employees, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition (1) was not shown or indicated in the Drawings, Specifications, or other Contract Documents, identified as Technical Data entitled to limited reliance pursuant to Paragraph 5.06.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 shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- J. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, ~~defend,~~ and hold harmless 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, 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) to the extent arising out of or relating to the 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, or to a Hazardous Environmental Condition to the extent created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 5.06.J shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

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

ARTICLE 6 – BONDS AND INSURANCE

6.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish a performance bond and a payment bond in the forms included as part of the Contract Documents (or, at the Owner’s election, an alternative form agreed to by the parties and approved by the Downtown Investment Authority), and each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all of Contractor’s obligations under the Contract. These bonds shall remain in effect for the duration provided for in the bonds~~until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 15.08, whichever is later, except as provided otherwise by Laws or Regulations, the Supplementary Conditions, or other specific provisions of the Contract.~~ Contractor shall also furnish such other bonds as are required by the Supplementary Conditions or other specific provisions of the Contract.
- B. All bonds shall be in the form prescribed by the Contract except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (as amended and supplemented) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. A bond signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual’s authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed the accompanying bond. In addition, each bond shall be on an Owner-approved form and the payment bond shall contain the following language: “This Bond is hereby amended so that the provisions and limitations of Section 255.05 or Sections 713.23 and 713.245, Florida Statutes, whichever are applicable, are incorporated by reference herein.”
- C. Contractor shall obtain the required bonds from surety companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds in the required amounts. The surety must be from a surety company acceptable to the Owner.
- D. If the surety on a bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in any state or jurisdiction where any part of the Project is located, or the surety ceases to meet the requirements above, then Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the bond and surety requirements above.
- E. If Contractor has failed to obtain a required bond, Owner may exclude the Contractor from the Site and exercise Owner’s termination rights under Article 16.
- F. Upon request, Owner shall provide a copy of the payment bond to any Subcontractor, Supplier, or other person or entity claiming to have furnished labor or materials used in the performance of the Work.

6.02 *Insurance—General Provisions*

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

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

6.03 Contractor's Insurance

- A. *Workers' Compensation:* Contractor shall purchase and maintain workers' compensation and employer's liability insurance for:
1. claims under workers' compensation, disability benefits, and other similar employee benefit acts.
 2. United States Longshoreman and Harbor Workers' Compensation Act and Jones Act coverage (if applicable).
 3. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees (by stop-gap endorsement in monopolist worker's compensation states).
 4. ~~Foreign voluntary worker compensation (if applicable).~~
- B. *Commercial General Liability—Claims Covered:* Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Contractor, on an occurrence basis, against:
1. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees.
 2. claims for damages insured by reasonably available personal injury liability coverage.
 3. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.
- C. *Commercial General Liability—Form and Content:* Contractor's commercial liability policy shall be written on a 1996 (or later) ISO commercial general liability form (occurrence form) and include the following coverages and endorsements:
1. Products and completed operations coverage:
 - a. Such insurance shall be maintained for ~~three~~ ten years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured (as identified in the Supplementary Conditions or elsewhere in the Contract) evidence of continuation of such insurance at final payment and ~~three~~ ten years thereafter.
 2. Blanket contractual liability coverage, to the extent permitted by law, including but not limited to coverage of Contractor's contractual indemnity obligations in Paragraph 7.18.
 3. Broad form property damage coverage.
 4. Severability of interest.
 5. Underground, explosion, and collapse coverage.
 6. Personal injury coverage.
 7. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or their equivalent.
 8. For design professional additional insureds, ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent.

- D. *Automobile liability*: Contractor shall purchase and maintain automobile liability insurance against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- E. *Umbrella or excess liability*: Contractor shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the paragraphs above. Subject to industry-standard exclusions, the coverage afforded shall follow form as to each and every one of the underlying policies.
- F. *Contractor's pollution liability insurance*: Contractor shall purchase and maintain a policy covering third-party injury and property damage claims, including clean-up costs, as a result of pollution conditions arising from Contractor's operations and completed operations. This insurance shall be maintained for no less than ~~thirteen~~ ten years after final completion.
- G. *Additional insureds*: The Contractor's commercial general liability, automobile liability, umbrella or excess, and pollution liability policies shall include and list as additional insureds Owner, ~~and~~ Engineer, the City, DIA, the Developer, Preston Hollow Capital, LLC, and any individuals or entities identified in the Supplementary Conditions; include coverage for the respective officers, directors, members, partners, employees, agents, consultants, officials, managers, Board members, Council members, staff, supervisors, and subcontractors of each and any of all such additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis. Contractor shall obtain all necessary endorsements to support these requirements.
- H. *Contractor's professional liability insurance*: If Contractor will provide or furnish professional services under this Contract, through a delegation of professional design services or otherwise, then Contractor shall be responsible for purchasing and maintaining applicable professional liability insurance. This insurance shall provide protection against claims arising out of performance of professional design or related services, and caused by a negligent error, omission, or act for which the insured party is legally liable. It shall be maintained throughout the duration of the Contract and for a minimum of ~~twoten~~ ten years after Substantial Completion. If such professional design services are performed by a Subcontractor, and not by Contractor itself, then the requirements of this paragraph may be satisfied through the purchasing and maintenance of such insurance by such Subcontractor.
- I. *General provisions*: The policies of insurance required by this Paragraph 6.03 shall:
1. include at least the specific coverages provided in this Article.
 2. be written for not less than the limits of liability provided in this Article and in the Supplementary Conditions, or required by Laws or Regulations, whichever is greater.
 3. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed, or renewal refused until at least ~~1030~~ 30 days prior written notice has been given to Contractor. Within three days of receipt of any such written notice, Contractor shall provide a copy of the notice to Owner, Engineer, and each other insured under the policy.
 4. remain in effect at least until final payment (and longer if expressly required in this Article) and at all times thereafter when Contractor may be correcting, removing, or

replacing defective Work as a warranty or correction obligation, or otherwise, or returning to the Site to conduct other tasks arising from the Contract Documents.

5. be appropriate for the Work being performed and provide protection from claims that may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable.
- J. The coverage requirements for specific policies of insurance must be met by such policies, and not by reference to excess or umbrella insurance provided in other policies.

6.04 *Owner's Liability Insurance*

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

6.05 *Property Insurance*

- A. *Builder's Risk:* Unless otherwise provided in the Supplementary Conditions, Contractor shall purchase and maintain builder's risk insurance upon the Work on a completed value basis, in the amount of the full insurable replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the Owner, and Contractor as named insureds, and any individuals or entities required by the Supplementary Conditions, including but not limited to the City, DIA, and/or Developer, to be insured under such builder's risk policy, as insureds or named insureds and/or loss payees, at the Owner's option. For purposes of the remainder of this Paragraph 6.05, Paragraphs 6.06 and 6.07, and any corresponding Supplementary Conditions, the parties required to be insured shall collectively be referred to as "insureds."
 2. be written on a builder's risk "all risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire; lightning; windstorm; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; flood; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; water damage (other than that caused by flood); and such other perils or causes of loss as may be specifically required by the Supplementary Conditions. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake; volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance may be provided through other insurance policies acceptable to Owner and Contractor.

3. cover, as insured property, at least the following: (a) the Work and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Work, including Owner-furnished or assigned property; (b) spare parts inventory required within the scope of the Contract; and (c) temporary works which are not intended to form part of the permanent constructed Work but which are intended to provide working access to the Site, or to the Work under construction, or which are intended to provide temporary support for the Work under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
 4. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects).
 5. extend to cover damage or loss to insured property while in temporary storage at the Site or in a storage location outside the Site (but not including property stored at the premises of a manufacturer or Supplier).
 6. extend to cover damage or loss to insured property while in transit.
 7. allow for partial occupation or use of the Work by Owner, such that those portions of the Work that are not yet occupied or used by Owner shall remain covered by the builder's risk insurance.
 8. allow for the waiver of the insurer's subrogation rights, as set forth below.
 9. provide primary coverage for all losses and damages caused by the perils or causes of loss covered.
 10. not include a co-insurance clause.
 11. include an exception for ensuing losses from physical damage or loss with respect to any defective workmanship, design, or materials exclusions.
 12. include performance/hot testing and start-up.
 13. be maintained in effect, subject to the provisions herein regarding Substantial Completion and partial occupancy or use of the Work by Owner, until the Work is complete.
- B. *Notice of Cancellation or Change:* All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 6.05 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least ~~1030~~ 90 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured.
- C. *Deductibles:* The purchaser of any required builder's risk or property insurance shall pay for costs not covered because of the application of a policy deductible.
- D. *Partial Occupancy or Use by Owner:* If Owner will occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 15.04, then Owner (directly, if it is the purchaser of the builder's risk policy, or through Contractor) will provide notice of such occupancy or use to the builder's risk insurer. The builder's risk insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy; rather, those portions of the Work that are occupied or used by Owner may

come off the builder's risk policy, while those portions of the Work not yet occupied or used by Owner shall remain covered by the builder's risk insurance.

- E. *Additional Insurance*: If Contractor elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Paragraph 6.05, it may do so at Contractor's expense.
- F. *Insurance of Other Property*: If the express insurance provisions of the Contract do not require or address the insurance of a property item or interest, such as tools, construction equipment, or other personal property owned by Contractor, a Subcontractor, or an employee of Contractor or a Subcontractor, then the entity or individual owning such property item will be responsible for deciding whether to insure it, and if so in what amount.

6.06 *Waiver of Rights*

- A. All policies purchased in accordance with Paragraph 6.05, expressly including the builder's risk policy, shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insureds thereunder, or against Engineer or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors. Owner and Contractor waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Engineer, its consultants, all Subcontractors, all individuals or entities identified in the Supplementary Conditions as insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner or Contractor as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. ~~Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, for:~~
 - 1. ~~loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and~~
 - 2. ~~loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial occupancy or use pursuant to Paragraph 15.04, after Substantial Completion pursuant to Paragraph 15.03, or after final payment pursuant to Paragraph 15.06.~~
- C. ~~Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 6.06.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them.~~

- D. Contractor shall be responsible for assuring that the agreement under which a Subcontractor performs a portion of the Work contains provisions whereby the Subcontractor waives all rights against Owner, Contractor, all individuals or entities identified in the Supplementary Conditions as insureds, the Engineer and its consultants, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by builder's risk insurance and any other property insurance applicable to the Work.

6.07 *Receipt and Application of Property Insurance Proceeds*

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

ARTICLE 7 – CONTRACTOR'S RESPONSIBILITIES

7.01 *Supervision and Superintendence*

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

7.02 *Labor; Working Hours*

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday. Contractor will not perform Work on a Saturday, Sunday, or any legal holiday. Contractor may perform Work outside regular working hours or on Saturdays,

Sundays, or legal holidays only with Owner's written consent, which will not be unreasonably withheld.

1. The Contractor shall be responsible, whether previously scheduled or not, for the payment of Owner's cost of overtime inspection outside of the working hours described above. The Contractor will be required to pay for overtime inspection services on unscheduled work, work which is delayed by Suppliers or Subcontractors and any other work performed for the convenience of the Contractor as he deems necessary to meet the schedule. Owner shall be responsible for any overtime necessary that arises out of Owner's delay.

7.03 *Services, Materials, and Equipment*

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

7.04 *"Or Equals"*

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the Contract Price has been based upon Contractor furnishing such item as specified. The specification or description of such an item is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or equal" item is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment, or items from other proposed suppliers under the circumstances described below.
 1. If Engineer in its sole discretion determines that an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, Engineer shall deem it an "or equal" item. For the purposes of this paragraph, a proposed item of material or equipment will be considered functionally equal to an item so named if:
 - a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;

- 3) it has a proven record of performance and availability of responsive service;
and
 - 4) it is not objectionable to Owner.
- b. Contractor certifies that, if approved and incorporated into the Work:
- 1) there will be no increase in cost to the Owner or increase in Contract Times;
and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.
- B. *Contractor's Expense*: Contractor shall provide all data in support of any proposed "or equal" item at Contractor's expense.
- C. *Engineer's Evaluation and Determination*: Engineer will be allowed a reasonable time to evaluate each "or-equal" request. Engineer may require Contractor to furnish additional data about the proposed "or-equal" item. Engineer will be the sole judge of acceptability. No "or-equal" item will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an "or-equal", which will be evidenced by an approved Shop Drawing or other written communication. Engineer will advise Contractor in writing of any negative determination.
- D. *Effect of Engineer's Determination*: Neither approval nor denial of an "or-equal" request shall result in any change in Contract Price. The Engineer's denial of an "or-equal" request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents.
- E. *Treatment as a Substitution Request*: If Engineer determines that an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item, Contractor may request that Engineer consider the proposed item as a substitute pursuant to Paragraph 7.05.

7.05 *Substitutes*

- A. Unless the specification or description of an item of material or equipment required to be furnished under the Contract Documents contains or is followed by words reading that no substitution is permitted, Contractor may request that Engineer authorize the use of other items of material or equipment under the circumstances described below. To the extent possible such requests shall be made before commencement of related construction at the Site.
1. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is functionally equivalent to that named and an acceptable substitute therefor. Engineer will not accept requests for review of proposed substitute items of material or equipment from anyone other than Contractor.
 2. The requirements for review by Engineer will be as set forth in Paragraph 7.05.B, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
 3. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:

- a. shall certify that the proposed substitute item will:
 - 1) perform adequately the functions and achieve the results called for by the general design,
 - 2) be similar in substance to that specified, and
 - 3) be suited to the same use as that specified.
 - b. will state:
 - 1) the extent, if any, to which the use of the proposed substitute item will necessitate a change in Contract Times,
 - 2) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and
 - 3) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty.
 - c. will identify:
 - 1) all variations of the proposed substitute item from that specified, and
 - 2) available engineering, sales, maintenance, repair, and replacement services.
 - d. shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including but not limited to changes in Contract Price, shared savings, costs of redesign, and claims of other contractors affected by any resulting change.
- B. *Engineer's Evaluation and Determination:* Engineer will be allowed a reasonable time to evaluate each substitute request, and to obtain comments and direction from Owner. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No substitute will be ordered, furnished, installed, or utilized until Engineer's review is complete and Engineer determines that the proposed item is an acceptable substitute. Engineer's determination will be evidenced by a Field Order or a proposed Change Order accounting for the substitution itself and all related impacts, including changes in Contract Price or Contract Times. Engineer will advise Contractor in writing of any negative determination.
- C. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- D. *Reimbursement of Engineer's Cost:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- E. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute at Contractor's expense.
- F. *Effect of Engineer's Determination:* If Engineer approves the substitution request, Contractor shall execute the proposed Change Order and proceed with the substitution.

The Engineer's denial of a substitution request shall be final and binding, and may not be reversed through an appeal under any provision of the Contract Documents. Contractor may challenge the scope of reimbursement costs imposed under Paragraph 7.05.D, by timely submittal of a Change Proposal.

7.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor may retain Subcontractors and Suppliers for the performance of parts of the Work. Such Subcontractors and Suppliers must be acceptable to Owner.
- B. Contractor shall retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of designated parts of the Work if required by the Contract to do so.
- C. Subsequent to the submittal of Contractor's Bid or final negotiation of the terms of the Contract, Owner may not require Contractor to retain any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against which Contractor has reasonable objection.
- D. Prior to entry into any binding subcontract or purchase order, Contractor shall submit to Owner the identity of the proposed Subcontractor or Supplier (unless Owner has already deemed such proposed Subcontractor or Supplier acceptable, during the bidding process or otherwise). Such proposed Subcontractor or Supplier shall be deemed acceptable to Owner unless Owner raises a substantive, reasonable objection within five days.
- E. Owner may require the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work. Owner also may require Contractor to retain specific replacements; provided, however, that Owner may not require a replacement to which Contractor has a reasonable objection. If Contractor has submitted the identity of certain Subcontractors, Suppliers, or other individuals or entities for acceptance by Owner, and Owner has accepted it (either in writing or by failing to make written objection thereto), then Owner may subsequently revoke the acceptance of any such Subcontractor, Supplier, or other individual or entity so identified solely on the basis of substantive, reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity.
- F. If Owner requires the replacement of any Subcontractor, Supplier, or other individual or entity retained by Contractor to perform any part of the Work, then Contractor shall be entitled to an adjustment in Contract Price or Contract Times, or both, with respect to the replacement; and Contractor shall initiate a Change Proposal for such adjustment within 30 days of Owner's requirement of replacement.
- G. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of the right of Owner to the completion of the Work in accordance with the Contract Documents.
- H. ~~On a monthly basis Contractor shall submit to Engineer a complete list of all Subcontractors and Suppliers having a direct contract with Contractor, and of all other Subcontractors and Suppliers known to Contractor at the time of submittal.~~
- I. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions.
- J. Contractor shall be solely responsible for scheduling and coordinating the work of Subcontractors, Suppliers, and all other individuals or entities performing or furnishing any of the Work.

- K. Contractor shall restrict all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work from communicating with Engineer or Owner, except through Contractor or in case of an emergency, or as otherwise expressly allowed herein.
- L. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- M. All Work performed for Contractor by a Subcontractor or Supplier shall be pursuant to an appropriate contractual agreement that specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.
- N. Owner may furnish to any Subcontractor or Supplier, to the extent practicable, information about amounts paid to Contractor on account of Work performed for Contractor by the particular Subcontractor or Supplier.
- O. Nothing in the Contract Documents:
 - 1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier, or other individual or entity; nor
 - 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any money due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- P. Contractor shall promptly notify Owner in writing of any dispute between Contractor and any Subcontractor or Supplier, and Contractor shall take reasonable action to resolve any such dispute within 30 days of becoming aware of it.

7.07 *Patent Fees and Royalties*

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.
- B. ~~To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.~~
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify, 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, 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) to the extent 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.

7.08 *Permits*

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

7.09 *Taxes*

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

7.10 *Laws and Regulations*

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations, applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor or those for which Contractor is responsible 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, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work or other action. ~~It shall not be Contractor's responsibility to make certain that the Work described in the Contract Documents is in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.~~
- C. Owner or Contractor may give notice to the other party of any changes after the submission of Contractor's Bid (or after the date when Contractor became bound under a negotiated contract) in Laws or Regulations having an effect on the cost or time of performance of the Work, including but not limited to changes in Laws or Regulations having an effect on procuring permits and on sales, use, value-added, consumption, and other similar taxes. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times resulting from such changes, then within 30 days of such notice Contractor may submit a Change Proposal, or Owner may initiate a Claim.

7.11 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written

interpretations and clarifications, and approved Shop Drawings. Contractor shall keep such record documents in good order and annotate them to show changes made during construction. These record documents, together with all approved Samples, will be available to Engineer for reference. Upon completion of the Work, Contractor shall deliver these record documents to Engineer.

7.12 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.
- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owner; the owners of adjacent property, Underground Facilities, and other utilities; and other contractors and utility owners performing work at or adjacent to the Site, when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property or work in progress. Among other requirements, the Contractor or subcontractor performing trench excavation work on the Project shall comply with the applicable trench safety standards.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 7.12.A.2 or 7.12.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and protection shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and

Contractor in accordance with Paragraph 15.06.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- G. Contractor's duties and responsibilities for safety and protection shall resume whenever Contractor or any Subcontractor or Supplier returns to the Site to fulfill warranty or correction obligations, or to conduct other tasks arising from the Contract Documents.

7.13 *Safety Representative*

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

7.14 *Hazard Communication Programs*

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

7.15 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

7.16 *Shop Drawings, Samples, and Other Submittals*

A. *Shop Drawing and Sample Submittal Requirements:*

1. Before submitting a Shop Drawing or Sample, Contractor shall have:
 - a. reviewed and coordinated the Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials and equipment offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be set forth in a written communication

separate from the Shop Drawings or Sample submittal; and, in addition, in the case of Shop Drawings by a specific notation made on each Shop Drawing submitted to Engineer for review and approval of each such variation.

- B. *Submittal Procedures for Shop Drawings and Samples:* Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals. Each submittal will be identified as Engineer may require.
1. *Shop Drawings:*
 - a. Contractor shall submit the number of copies required in the Specifications.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 7.16.D.
 2. *Samples:*
 - a. Contractor shall submit the number of Samples required in the Specifications.
 - b. Contractor shall clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 7.16.D.
 3. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Other Submittals:* Contractor shall submit other submittals to Engineer in accordance with the accepted Schedule of Submittals, and pursuant to the applicable terms of the Specifications.
- D. *Engineer's Review:*
1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
 2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto.
 3. Engineer's review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
 4. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 7.16.A.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or

Sample. Engineer will document any such approved variation from the requirements of the Contract Documents in a Field Order.

5. Engineer's review and approval of a Shop Drawing or Sample shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 7.16.A and B.
6. Engineer's review and approval of a Shop Drawing or Sample, or of a variation from the requirements of the Contract Documents, shall not, under any circumstances, change the Contract Times or Contract Price, unless such changes are included in a Change Order.
7. Neither Engineer's receipt, review, acceptance or approval of a Shop Drawing, Sample, or other submittal shall result in such item becoming a Contract Document.
8. Contractor shall perform the Work in compliance with the requirements and commitments set forth in approved Shop Drawings and Samples, subject to the provisions of Paragraph 7.16.D.4.

E. *Resubmittal Procedures:*

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

7.17 *Contractor's General Warranty and Guarantee*

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible; or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;
 3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
 4. use or occupancy of the Work or any part thereof by Owner;
 5. any review and approval of a Shop Drawing or Sample submittal;
 6. the issuance of a notice of acceptability by Engineer (or other similar acceptance by Owner);
 7. any inspection, test, or approval by others; or
 8. any correction of defective Work by Owner.
- D. If the Contract requires the Contractor to accept the assignment of a contract entered into by Owner, then the specific warranties, guarantees, and correction obligations contained in the assigned contract shall govern with respect to Contractor's performance obligations to Owner for the Work described in the assigned contract.
- E. Contractor shall assign to Owner all warranties extended to Contractor by Suppliers and Subcontractors. If an assignment of warranty requires the Supplier or Subcontractor to consent to same, then Contractor shall secure the Supplier's or Subcontractor's consent to assign said warranties to Owner.
- F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy required by law.

7.18 *Indemnification*

- A. ~~To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable.~~

To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, and for breach of Contract, Contractor shall indemnify, hold harmless, and defend Indemnitees from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligent, reckless, or intentionally wrongful acts or omissions 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.

In the event that any indemnification, defense or hold harmless provision of this Contract is determined to be unenforceable, the provision shall be reformed to give the provision the maximum effect allowed by Florida law and for the benefit of the Indemnitees. The Contractor shall ensure that any and all Subcontractors, and Suppliers, include this express paragraph for the benefit of the Indemnitees.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 7.18.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:
 - 1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
 - 2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- D. The total liability of Contractor arising under, in connection with, or out of this Agreement, whether in contract, tort, or any legal theory of recovery, shall be limited to the greater of any applicable insurance limits under this Agreement or \$15,000,000.00 (Fifteen Million Dollars and No Cents) as provided in Section 6.02 of these Standard General Conditions. The parties agree that, pursuant to Section 725.06, Florida Statutes (to the extent applicable), this monetary limitation bears a reasonable commercial relationship to the contract and was part of the project specifications or bid documents.
- E. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, LOST PROFITS, LOST BUSINESS OPPORTUNITY, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT. THIS PROVISION IN NO WAY WAIVES OR LIMITS THE SOVEREIGN IMMUNITY GRANTED TO OWNER UNDER THE FLORIDA CONSTITUTION AS CODIFIED IN SECTION 768.28, FLORIDA STATUTES, AS AMENDED.

7.19 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable Laws and Regulations.
- B. If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, or approvals performed by such design

professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.

- D. Pursuant to this paragraph, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 7.16.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria specified by Owner or Engineer.

ARTICLE 8 – OTHER WORK AT THE SITE

8.01 *Other Work*

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

8.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, to perform other work at or adjacent to the Site with Owner's employees, or to arrange to have utility owners perform work at or adjacent to the Site, the following will be set forth in the Supplementary Conditions or provided to Contractor prior to the start of any such other work:

1. the identity of the individual or entity that will have authority and responsibility for coordination of the activities among the various contractors;
2. an itemization of the specific matters to be covered by such authority and responsibility; and
3. the extent of such authority and responsibilities.

All contractors and subcontractors shall be required to use good faith efforts to coordinate their respective performance of any work at or adjacent to the Site.

- B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination with assistance from Contractor.

8.03 *Legal Relationships*

- A. If, in the course of performing other work at or adjacent to the Site for Owner, the Owner's employees, any other contractor working for Owner, or any utility owner for whom the Owner is responsible causes damage to the Work or to the property of Contractor or its Subcontractors, or delays, disrupts, interferes with, or increases the scope or cost of the performance of the Work, through actions or inaction, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor must submit any Change Proposal seeking an equitable adjustment in the Contract Price or the Contract Times under this paragraph within 30 days of the damaging, delaying, disrupting, or interfering event. The entitlement to, and extent of, any such equitable adjustment shall take into account information (if any) regarding such other work that was provided to Contractor in the Contract Documents prior to the submittal of the Bid or the final negotiation of the terms of the Contract. When applicable, any such equitable adjustment in Contract Price shall be conditioned on Contractor assigning to Owner all Contractor's rights against such other contractor or utility owner with respect to the damage, delay, disruption, or interference that is the subject of the adjustment. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- B. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site. If Contractor fails to take such measures and as a result damages, delays, disrupts, or interferes with the work of any such other contractor or utility owner, then Owner may impose a set-off against payments due to Contractor, and assign to such other contractor or utility owner the Owner's contractual rights against Contractor with respect to the breach of the obligations set forth in this paragraph.
- C. When Owner is performing other work at or adjacent to the Site with Owner's employees, Contractor shall be liable to Owner for damage to such other work, and for the reasonable direct delay, disruption, and interference costs incurred by Owner as a result of Contractor's failure to take reasonable and customary measures with respect to Owner's other work. In response to such damage, delay, disruption, or interference, Owner may impose a set-off against payments due to Contractor.
- D. If Contractor damages, delays, disrupts, or interferes with the work of any other contractor, or any utility owner performing other work at or adjacent to the Site, through Contractor's failure to take reasonable and customary measures to avoid such impacts, or if any claim arising out of Contractor's actions, inactions, or negligence in performance of the Work at

or adjacent to the Site is made by any such other contractor or utility owner against Contractor, Owner, or Engineer, then Contractor shall (1) promptly attempt to settle the claim as to all parties through negotiations with such other contractor or utility owner, or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law, and (2) indemnify, 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, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such damage, delay, disruption, or interference.

ARTICLE 9 – OWNER’S RESPONSIBILITIES

9.01 *Communications to Contractor*

- A. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

9.02 *Replacement of Engineer*

- A. Owner may at its discretion appoint an engineer to replace Engineer, provided Contractor makes no reasonable objection to the replacement engineer. The replacement engineer’s status under the Contract Documents shall be that of the former Engineer.

9.03 *Furnish Data*

- A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

9.04 *Pay When Due*

- A. Owner shall make payments to Contractor when they are due as provided in the Agreement.

9.05 *Lands and Easements; Reports, Tests, and Drawings*

- A. Owner’s duties with respect to providing lands and easements are set forth in Paragraph 5.01.
- B. Owner’s duties with respect to providing engineering surveys to establish reference points are set forth in Paragraph 4.03.
- C. Article 5 refers to Owner’s identifying and making available to Contractor copies of reports of explorations and tests of conditions at the Site, and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

9.06 *Insurance*

- A. Owner’s responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 6.

9.07 *Change Orders*

- A. Owner’s responsibilities with respect to Change Orders are set forth in Article 11.

9.08 *Inspections, Tests, and Approvals*

- A. Owner’s responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 14.02.B.

9.09 *Limitations on Owner's Responsibilities*

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

9.10 *Undisclosed Hazardous Environmental Condition*

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 5.06.

9.11 *Evidence of Financial Arrangements*

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents (including obligations under proposed changes in the Work).

9.12 *Safety Programs*

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- B. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

ARTICLE 10 – ENGINEER'S STATUS DURING CONSTRUCTION

10.01 *Owner's Representative*

- A. Engineer will be Owner's representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in the Contract.

10.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor's executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer's efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer 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 10.08. Particularly, but without limitation, during or as a result of Engineer's visits or observations of Contractor's Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions

and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

10.03 *Project Representative*

- A. If Owner and Engineer have agreed that Engineer will furnish a Resident Project Representative to represent Engineer at the Site and assist Engineer in observing the progress and quality of the Work, then the authority and responsibilities of any such Resident Project Representative will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 10.08. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer's consultant, agent, or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

10.04 *Rejecting Defective Work*

- A. Engineer has the authority to reject Work in accordance with Article 14.

10.05 *Shop Drawings, Change Orders and Payments*

- A. Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, are set forth in Paragraph 7.16.
- B. Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, are set forth in Paragraph 7.19.
- C. Engineer's authority as to Change Orders is set forth in Article 11.
- D. Engineer's authority as to Applications for Payment is set forth in Article 15.

10.06 *Determinations for Unit Price Work*

- A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor as set forth in Paragraph 13.03.

10.07 *Decisions on Requirements of Contract Documents and Acceptability of Work*

- A. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth herein for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

10.08 *Limitations on Engineer's Authority and Responsibilities*

- A. Neither Engineer's authority or responsibility under this Article 10 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to

comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.
- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 15.06.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals, that the results certified indicate compliance with the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 10.08 shall also apply to the Resident Project Representative, if any.

10.09 *Compliance with Safety Program*

- A. While at the Site, Engineer's employees and representatives will comply with the specific applicable requirements of Owner's and Contractor's safety programs (if any) of which Engineer has been informed.

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

11.01 *Amending and Supplementing Contract Documents*

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

submit any Claim seeking an adjustment of the Contract Price or the Contract Times, or both, no later than 60 days after issuance of the Work Change Directive.

3. *Field Orders*: Engineer may authorize minor changes in the Work if the changes do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such changes will be accomplished by a Field Order and will be binding on Owner and also on Contractor, which shall perform the Work involved promptly. If Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, then before proceeding with the Work at issue, Contractor shall submit a Change Proposal as provided herein.

11.02 *Owner-Authorized Changes in the Work*

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work, 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. Such changes shall be supported by Engineer's recommendation, to the extent the change involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters. Such changes may be accomplished by a Change Order, if Owner and Contractor have agreed as to the effect, if any, of the changes on Contract Times or Contract Price; or by a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved; or, in the case of a deletion in the Work, promptly cease construction activities with respect to such deleted Work. Added or revised Work shall be performed under the applicable conditions of the Contract Documents. Nothing in this paragraph shall obligate 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.

11.03 *Unauthorized Changes in the Work*

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents, as amended, modified, or supplemented, except in the case of an emergency as provided in Paragraph 7.15 or in the case of uncovering Work as provided in Paragraph 14.05.

11.04 *Change of Contract Price*

- A. The Contract Price may only be changed by a Change Order. Any Change Proposal for an adjustment in the Contract Price shall comply with the provisions of Paragraph 11.06. Any Claim for an adjustment of Contract Price shall comply with the provisions of Article 12.
- B. An adjustment in the Contract Price will be determined as follows:
 1. where the Work involved is covered by unit prices contained in the Contract Documents, then by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 13.03); or
 2. where the Work involved is not covered by unit prices contained in the Contract Documents, then by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 11.04.C.2); or
 3. where the Work involved is not covered by unit prices contained in the Contract Documents and the parties do not reach mutual agreement to a lump sum, then on the basis of the Cost of the Work (determined as provided in Paragraph 13.01) plus a

Contractor's fee for overhead and profit (determined as provided in Paragraph 11.04.C).

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

11.05 *Change of Contract Times*

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

11.06 *Change Proposals*

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

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

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

11.07 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders covering:
1. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
 2. changes in Contract Price resulting from an Owner set-off, unless Contractor has duly contested such set-off;
 3. changes in the Work which are: (a) ordered by Owner pursuant to Paragraph 11.02, (b) required because of Owner's acceptance of defective Work under Paragraph 14.04 or Owner's correction of defective Work under Paragraph 14.07, or (c) agreed to by the parties, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
 4. changes in the Contract Price or Contract Times, or other changes, which embody the substance of any final and binding results under Paragraph 11.06, or Article 12.

- B. If Owner or Contractor refuses to execute a Change Order that is required to be executed under the terms of this Paragraph 11.07, it shall be deemed to be of full force and effect, as if fully executed.

11.08 *Notification to Surety*

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

ARTICLE 12 – CLAIMS

12.01 *Claims*

- A. *Claims Process:* The following disputes between Owner and Contractor shall be submitted to the Claims process set forth in this Article:
 - 1. Appeals by Owner or Contractor of Engineer's decisions regarding Change Proposals;
 - 2. Owner demands for adjustments in the Contract Price or Contract Times, or other relief under the Contract Documents; and
 - 3. Disputes that Engineer has been unable to address because they do not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters.
- B. *Submittal of Claim:* The party submitting a Claim shall deliver it directly to the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto; in the case of appeals regarding Change Proposals within 30 days of the decision under appeal. The party submitting the Claim shall also furnish a copy to the Engineer, for its information only. The responsibility to substantiate a Claim shall rest with the party making the Claim. In the case of a Claim by Contractor seeking an increase in the Contract Times or Contract Price, or both, Contractor shall certify that the Claim is made in good faith, that the supporting data are accurate and complete, and that to the best of Contractor's knowledge and belief the amount of time or money requested accurately reflects the full amount to which Contractor is entitled.
- C. *Review and Resolution:* The party receiving a Claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the Claim through the exchange of information and direct negotiations. The parties may extend the time for resolving the Claim by mutual agreement. All actions taken on a Claim shall be stated in writing and submitted to the other party, with a copy to Engineer.
- D. *Mediation:*
 - 1. At any time after initiation of a Claim, Owner and Contractor may mutually agree to mediation of the underlying dispute. The agreement to mediate shall stay the Claim submittal and response process.
 - 2. If Owner and Contractor agree to mediation, then after 60 days from such agreement, either Owner or Contractor may unilaterally terminate the mediation process, and the Claim submittal and decision process shall resume as of the date of the termination. If the mediation proceeds but is unsuccessful in resolving the dispute, the Claim submittal and decision process shall resume as of the 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 shall be final and binding unless within 30 days of such action the other party invokes the procedure set forth in Article 17 for final resolution of disputes.
- F. *Denial of Claim*: If efforts to resolve a Claim are not successful, the party receiving the Claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the Claim within 90 days, then either Owner or Contractor may at any time thereafter submit a letter to the other party indicating that as a result of the inaction, the Claim is deemed denied, thereby commencing the time for appeal of the denial. A denial of the Claim shall be final and binding unless within 30 days of the denial the other party invokes the procedure set forth in Article 17 for the final resolution of disputes.
- G. *Final and Binding Results*: If the parties reach a mutual agreement regarding a Claim, whether through approval of the Claim, direct negotiations, mediation, or otherwise; or if a Claim is approved in part and denied in part, or denied in full, and such actions become final and binding; then the results of the agreement or action on the Claim shall be incorporated in a Change Order to the extent they affect the Contract, including the Work, the Contract Times, or the Contract Price.

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

13.01 Cost of the Work

- A. *Purposes for Determination of Cost of the Work*: The term Cost of the Work means the sum of all costs necessary for the proper performance of the Work at issue, as further defined below. ~~The provisions of this Paragraph 13.01 are used for two distinct purposes:~~
 1. ~~To determine Cost of the Work when Cost of the Work is a component of the Contract Price, under cost plus fee, time and materials, or other cost based terms; or~~
 2. ~~To determine the value of a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price. When the value of any such adjustment is determined on the basis of Cost of the Work, Contractor is entitled only to those additional or incremental costs required because of the change in the Work or because of the event giving rise to the adjustment.~~
- B. *Costs Included*: Except as otherwise may be agreed to in writing by Owner, costs included in the Cost of the Work shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 13.01.C, and shall include only the following items:
 1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 13.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - b. Rentals of all construction equipment and machinery, and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.
 - c. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - d. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - e. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 6.05), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.

- f. The cost of utilities, fuel, and sanitary facilities at the Site.
 - g. The costs of premiums for all bonds and insurance that Contractor is required by the Contract Documents to purchase and maintain.
- C. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 13.01.B.1 or specifically covered by Paragraph 13.01.B.4. The payroll costs and other compensation excluded here are to be considered administrative costs covered by the Contractor's fee.
 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.
 3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraph 13.01.B.
- D. *Contractor's Fee:* ~~When the Work as a whole is performed on the basis of cost plus, Contractor's fee shall be determined as set forth in the Agreement.~~ When the value of any Work covered by a Change Order, Change Proposal, Claim, set-off, or other adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 11.04.C.
- E. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to this Article 13, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

13.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:* Contractor agrees that:
1. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 2. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

- C. *Contingency Allowance*: Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

13.03 *Unit Price Work*

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Payments to Contractor for Unit Price Work will be based on actual quantities.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of the following paragraph.
- E. Within 30 days of Engineer's written decision under the preceding paragraph, Contractor may submit a Change Proposal, or Owner may file a Claim, seeking an adjustment in the Contract Price if:
 - 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement;
 - 2. there is no corresponding adjustment with respect to any other item of Work; and
 - 3. Contractor believes that it is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price, and the parties are unable to agree as to the amount of any such increase or decrease.

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

14.01 *Access to Work*

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and authorities having jurisdiction will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

14.02 *Tests, Inspections, and Approvals*

- A. Contractor shall give Engineer timely notice of readiness of the Work (or specific parts thereof) for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- B. Owner shall retain and pay for the services of an independent inspector, testing laboratory, or other qualified individual or entity to perform all inspections and tests expressly required by the Contract Documents to be furnished and paid for by Owner, except that costs incurred in connection with tests or inspections of covered Work shall be governed by the provisions of Paragraph 14.05.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
- D. Contractor shall be responsible for arranging, obtaining, and paying for all inspections and tests required:
 - 1. by the Contract Documents, unless the Contract Documents expressly allocate responsibility for a specific inspection or test to Owner;
 - 2. to attain Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work;
 - 3. by manufacturers of equipment furnished under the Contract Documents;
 - 4. for testing, adjusting, and balancing of mechanical, electrical, and other equipment to be incorporated into the Work; and
 - 5. for acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.

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

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

14.03 *Defective Work*

- A. *Contractor's Obligation:* It is Contractor's obligation to assure that the Work is not defective.
- B. *Engineer's Authority:* Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. *Notice of Defects:* Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.

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

14.04 *Acceptance of Defective Work*

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner prefers to accept it, Owner may do so (subject, if such acceptance occurs prior to final payment, to Engineer's confirmation that such acceptance is in general accord with the design intent and applicable engineering principles, and will not endanger public safety). Contractor shall pay all claims, costs, losses, and damages attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness), and for the diminished value of the Work to the extent not otherwise paid by Contractor. If any such acceptance occurs prior to final payment, the necessary revisions in the Contract Documents with respect to the Work shall be incorporated in a Change Order. If the parties are unable to agree as to the decrease in the Contract Price, reflecting the diminished value of Work so accepted, then Owner may impose a reasonable set-off against payments due under Article 15. If the acceptance of defective Work occurs after final payment, Contractor shall pay an appropriate amount to Owner.

14.05 *Uncovering Work*

- A. Engineer has the authority to require additional inspection or testing of the Work, whether or not the Work is fabricated, installed, or completed.
- B. If any Work is covered contrary to the written request of Engineer, then Contractor shall, if requested by Engineer, uncover such Work for Engineer's observation, and then replace the covering, all at Contractor's expense.
- C. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, then Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, and provide all necessary labor, material, and equipment.
 - 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, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, then Contractor may submit a Change Proposal within 30 days of the determination that the Work is not defective.

14.06 *Owner May Stop the Work*

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

14.07 *Owner May Correct Defective Work*

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, then Owner may, without prejudice to other remedies the Owner may have, after seven days written notice to Contractor, correct or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 14.07, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this paragraph.
- C. All claims, costs, losses, and damages incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 14.07 will be charged against Contractor as set-offs against payments due under Article 15. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work. If payments then or thereafter due to the Contractor are not sufficient to cover such claims, costs, losses, and damages, the Contractor shall pay the difference to Owner.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 14.07.

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

15.01 *Progress Payments*

- A. *Basis for Progress Payments:* The Schedule of Values established as provided in Article 2 will serve as the basis for progress payments and will be incorporated into a form of Application

for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed during the pay period, as determined under the provisions of Paragraph 13.03. Progress payments for cost-based Work will be based on Cost of the Work completed by Contractor during the pay period.

B. *Applications for Payments:*

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. ~~If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens, and 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.~~

As an absolute condition precedent to payment from Owner to Contractor, Contractor shall furnish and submit to Owner a complete, accurate and up-to-date list of all Subcontractors and/or Suppliers (together, "List of Subcontractors") in writing furnishing labor or material, or both, in connection with the Work as well as the total amount paid to each Subcontractor and/or Supplier as of the date of the Application for Payment. Contractor shall furnish the List of Subcontractors together with each and every Application for Payment submitted to Owner. Each List of Subcontractors furnished to Owner shall be dated the same date as the Application for Payment with which it is submitted and shall be complete and accurate through such date. Contractor shall not be entitled to receive payment pursuant to its Application for Payment until a List of Subcontractors has been furnished to Owner therewith and Contractor has complied with all other contractual conditions precedent to receipt of payment.

As an additional condition precedent to payment from Owner to Contractor, Contractor shall furnish to Owner together with each and every Application for Payment, a Lien Waiver and Release for all potential lienors, including all Subcontractors and Suppliers identified in the List of Subcontractors furnished to the Owner together with the same Application for Payment. All Lien Waivers and Releases provided by a Subcontractor or Supplier and furnished to the Owner by the Contractor shall waive and release any claim of lien for labor and/or materials provided by such Subcontractor or Supplier up through the date of the Pay Application and shall be in the form acceptable to the Owner or as required by the applicable law of the state where the project is located. Owner shall agree to accept conditional waivers/releases or liens from potential lienors and those identified in the List of Subcontractors (exclusive of the Contractor) to satisfy this condition of payment, however, if the Contractor provides any conditional waivers/releases of lien, the Contractor must replace the conditional waivers/releases of lien with unconditional waivers/releases of lien in the following Application for Payment. Contractor shall not be entitled to receive payment pursuant to its Application for Payment until it has provided a Lien

Waiver and Release as provided herein. Contractor understands and agrees that satisfaction of these conditions is an absolute condition precedent to Owner's obligation to make payment to Contractor.

All such Lien Waivers shall be in a form compliant with Section 255.05, Florida Statutes, and, because no lien rights are available, shall be waivers of the right to claim against the payment bond, as described in Section 255.05, Florida Statutes.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

C. *Review of Applications:*

1. Engineer will, within 10 days after receipt of each Application for Payment, including each resubmittal, either indicate in writing a recommendation of payment and present the Application to Owner, or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.
2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 13.03, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.

4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or
 - d. to make any examination to ascertain how or for what purposes Contractor has used the money paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 15.01.C.2.
6. Engineer will recommend reductions in payment (set-offs) necessary in Engineer's opinion to protect Owner from loss because:
 - a. the Work is defective, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work in accordance with Paragraph 14.07, or has accepted defective Work pursuant to Paragraph 14.04;
 - d. Owner has been required to remove or remediate a Hazardous Environmental Condition for which Contractor is responsible; or
 - e. Engineer has actual knowledge of the occurrence of any of the events that would constitute a default by Contractor and therefore justify termination for cause under the Contract Documents.

D. *Payment Becomes Due:*

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.~~ Owner shall make payment to the Contractor in the amount recommended (subject to the provisions of this Contract) in accordance with the prompt payment provisions contained in Sections 218.735 and 218.74, Florida Statutes. Contractor shall make payments due to Subcontractors and Suppliers within ten (10) days in accordance with the prompt payment provisions contained in Section 218.735(6), 218.735(7), and 218.74, Florida Statutes.

E. *Reductions in Payment by Owner:*

1. In addition to any reductions in payment (set-offs) recommended by Engineer, Owner is entitled to impose a set-off against payment based on any of the following:
 - a. claims have been made against Owner on account of Contractor's conduct in the performance or furnishing of the Work, or Owner has incurred costs, losses, or damages on account of Contractor's conduct in the performance or furnishing of the Work, including but not limited to claims, costs, losses, or damages from

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

15.02 *Contractor's Warranty of Title*

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

15.03 *Substantial Completion*

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

15.04 *Partial Use or Occupancy*

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

15.05 *Final Inspection*

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

15.06 *Final Payment*

A. *Application for Payment:*

After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection, and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents (as provided in Paragraph 7.11), and other documents, Contractor may make application for final payment.

1. The final Application for Payment shall be accompanied (except as previously delivered) by (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written

statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as Supplier warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees, (7) submission by the Contractor to the Engineer and the Owner of as-built drawings, (8) submission by the Contractor to the Owner of a complete list of Subcontractors and principal vendors on the Project, including addresses and telephone numbers, as well as the total amount paid to each Subcontractor and Supplier on the Project (9) submission by the Contractor to the Owner of an indexed, loose-leaf binder of complete installation, operation and maintenance manuals, including all manufacturers' literature, of equipment and materials used in the Work, (10) submission by the Contractor to the Owner, in an indexed, loose-leaf binder, of all inspection reports, permits and temporary and final certificates of occupancy (or equivalent) and licenses necessary for the occupancy of the project, (11) Conditional Waiver and Release of Lien Upon Final Payment (at a minimum compliant with § 255.05, Fla. Stat., § 713.20 Fla. Stat., or other applicable law) from itself as well as all subcontractors and suppliers providing labor, services or material to the Project, with Unconditional Waivers to be provided within ten calendar days, (12) a Contractor's Final Affidavit if required by state law where the Project is located (§ 713.06 Fla. Stat.), and (13) any and all other items required pursuant to the Contract Documents.

- a. ~~all documentation called for in the Contract Documents;~~
 - b. ~~consent of the surety, if any, to final payment;~~
 - c. ~~satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any Liens or other title defects, or will so pass upon final payment.~~
 - d. ~~a list of all disputes that Contractor believes are unsettled; and~~
 - e. ~~complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of the Work, and of Liens filed in connection with the Work.~~
2. ~~In lieu of the releases or waivers of Liens specified in Paragraph 15.06.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (a) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (b) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner~~

~~against any Lien, or Owner at its option may issue joint checks payable to Contractor and specified Subcontractors and Suppliers.~~

B. *Engineer's Review of Application and Acceptance:*

1. 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 will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of final payment and present the Application for Payment to Owner for payment. Such recommendation shall account for any set-offs against payment that are necessary in Engineer's opinion to protect Owner from loss for the reasons stated above with respect to progress payments. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable, subject to the provisions of Paragraph 15.07. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

- C. *Completion of Work:* The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment. 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 documents required under Section 7.11 have been delivered; all other required approvals and acceptances by city, county and state governments, or other authority having jurisdiction have been provided; 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.

- D. *Payment Becomes Due:* Thirty days after the presentation to Owner of the final Application for Payment and accompanying documentation, the amount recommended by Engineer (less any further sum Owner is entitled to set off against Engineer's recommendation, including but not limited to set-offs for liquidated damages and set-offs allowed under the provisions above with respect to progress payments) will become due and shall be paid by Owner to Contractor.

15.07 *Waiver of Claims*

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor. Owner expressly reserves claims and rights arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 15.05, from Contractor's failure to comply with the Contract Documents or the terms of any special guarantees specified therein, from outstanding Claims by Owner, or from Contractor's continuing obligations under the Contract Documents.

- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted or appealed under the provisions of Article 17.

15.08 *Correction Period*

- A. If within ~~one~~two years after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents, or by any specific provision of the Contract Documents), any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:
 - 1. correct the defective repairs to the Site or such other adjacent areas;
 - 2. correct such defective Work;
 - 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 - 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others, or to other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others).
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this paragraph are in addition to all other obligations and warranties. The provisions of this paragraph shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose. The establishment of the time period of two year period after the date of Substantial Completion, or such longer period of time as may be prescribed by law or by the items of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which its obligation to comply with the Contract Documents may be sought to be enforced, nor the time within which proceedings may be commenced to establish the Contractor's liability with respect to its obligations other than specifically to correct the Work.
- F. Contractor shall cooperate with the Owner to provide a warranty inspection of the Work, which shall be held approximately 11 months and/or 23 months (at the Owner's option)

after Substantial Completion of all the Work, and with representatives of the DIA (as the Work relates to the CRA Project).

ARTICLE 16 – SUSPENSION OF WORK AND TERMINATION

16.01 *Owner May Suspend Work*

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

16.02 *Owner May Terminate for Cause*

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

to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

- F. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.
- G. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 6.01.A, the provisions of that bond shall govern over any inconsistent provisions of Paragraphs 16.02.B and 16.02.D.
- H. In the event Owner improperly terminates this Contract for cause, the termination for cause shall be converted to a termination for convenience in accordance with the provisions of Section 16.03 below.

16.03 *Owner May Terminate For Convenience*

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

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

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 seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the contract and recover from Owner payment on the same terms as provided in Paragraph 16.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this paragraph are not intended to preclude Contractor from submitting a Change Proposal for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this paragraph.
- C. In the event that Contractor intends to terminate this Contract due to a default by the Owner, Contractor agrees that the City, DIA,¹ U.S. Bank Trust Company, National Association as Owner's bond trustee ("**Bond Trustee**"), or Developer may elect, in their individual sole discretion, either (i) to cure the default, and accede to the rights and obligations of the Owner under the Contract for the purpose of ensuring the completion of the Project; or (ii) alternatively, to cause the Contract to be terminated, take over the Work, and use an alternative contractor for that purpose. That said, the Owner shall not be released from its obligations under such Contract, and the City, DIA, Bond Trustee, and Developer shall not be obligated to take any action with respect to the Contract, or be subject to any liability thereunder, irrespective of any default thereunder by Owner.

¹This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

ARTICLE 17 – FINAL RESOLUTION OF DISPUTES

17.01 *Methods and Procedures*

- A. *Disputes Subject to Final Resolution:* The following disputed matters are subject to final resolution under the provisions of this Article:
 - 1. A timely appeal of an approval in part and denial in part of a Claim, or of a denial in full; and
 - 2. Disputes between Owner and Contractor concerning the Work or obligations under the Contract Documents, and arising after final payment has been made.
- B. *Final Resolution of Disputes:* For any dispute subject to resolution under this Article, Owner or Contractor may:
 - 1. elect in writing to invoke the dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agree with the other party to submit the dispute to another dispute resolution process; or
 - 3. if no dispute resolution process is provided for in the Supplementary Conditions or mutually agreed to, give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction.
- C. In the event Owner or Contractor is required to enforce this Agreement by court proceedings or otherwise, then the prevailing party shall be entitled to recover from the other party all fees and costs incurred, including reasonable attorney's fees and costs.

ARTICLE 18 – MISCELLANEOUS

18.01 *Giving Notice*

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

18.02 *Computation of Times*

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

18.03 *Cumulative Remedies*

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

18.04 *Limitation of Damages*

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

18.05 *No Waiver*

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

18.06 *Survival of Obligations*

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

18.07 *Controlling Law*

- A. This Contract is to be governed by the law of the state in which the Project is located. Venue for any dispute arising under this Contract shall lie exclusively in the Circuit Court in and for Duval County, Florida.

18.08 *Headings*

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

18.09 *Sovereign Immunity*

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

18.10 *Third Party Beneficiaries*

Bond Trustee, Developer, the City, and DIA,² shall be third party beneficiaries of this Contract, with the right to enforce all warranties, performance bonds, insurance, indemnification, and other provisions of this Contract.

18.11 *Assignment of Warranties*

- A. Contractor shall assign to Owner or Owner's designee all warranties extended to Contractor by Subcontractors and Suppliers. If an assignment of warranty requires the Supplier and/or Subcontractor to consent to same, then Contractor shall secure the Supplier's and/or Subcontractor's consent to assign said warranties to Owner.
- B. As noted in Section 18.10, the Owner, Bond Trustee, the City, DIA,³ and Developer shall be beneficiaries under all warranties (if any) set forth in this Contract and any contracts with

² This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

Subcontractors and Suppliers, as applicable. Contractor shall reasonably cooperate with the Owner to assign and deliver all warranties under the Agreement and any Subcontractor and Supplier agreements to the Owner's designees. All such warranties shall name the Owner, Bond Trustee, the City, DIA and Developer as beneficiaries.

18.12 Direct Purchase of Materials

- A. Owner represents to Contractor that Owner is a governmental entity exempt from Florida sales and use tax, and will provide Contractor with a copy of its Consumer Exemption Certificate. Owner may elect to implement a direct purchase arrangement whereby Owner will directly acquire certain materials ("Direct Purchase Materials") necessary for the completion of the Work directly from the suppliers to take advantage of Owner's tax exempt status.
- B. Within 10 days of the issuance of the Notice to Proceed or other written authorization for Work, Owner shall provide Contractor with a list of materials that will be treated as Direct Purchase Materials.
- C. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials; except, however, the City or its agent shall acknowledge such purchase orders in writing prior to issuance. Such purchase orders shall include Owner's consumer certificate of exemption number and shall require that the supplier provide the required shipping and handling insurance and provide for delivery with title and risk of loss transferring upon delivery at the jobsite and after acceptance by Owner. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the Owner and if the original contract contemplated sale of materials and installation by same person, the change order needs to reflect sale of materials and installation by different legal entities.
- D. Owner shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and furnish a copy of same to the Contractor. Each Certificate of Entitlement must have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax exempt purchase by a governmental entity, then the governmental entity will be responsible for any tax, penalties and interest determined to be due. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works; (2) the vendor's invoice will be issued directly to the governmental entity; (3) payment of the vendor's invoice will be made directly by the governmental entity to the vendor from public funds; (4) the governmental entity will take title to the tangible personal property from the vendor at the time of delivery by the vendor; and (5) the governmental entity assumes the risk of damage or loss at the time of delivery by the vendor.
- E. Upon delivery of the Direct Purchase Materials to the jobsite, the Owner, through Contractor as its agent, shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, Owner shall accept and take title to the Direct Purchase Materials through its agent, which is Contractor.
- F. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.

³ This provision provides rights to the City and DIA only to the extent contemplated by the Redevelopment Agreement.

- G. Upon acceptance of Direct Purchase Materials, Owner shall assume risk of loss of same until they are incorporated into the Project. Contractor, as Owner's agent, shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties and guarantees for all material and products as required under the Contract Documents.
- H. All warranties, performance and payment bonds, indemnification provisions, and other rights provided by Contractor to Owner as part of Contract shall apply to all Direct Purchase Materials, as though Contractor had purchased the Direct Purchase Materials.
- I. In conducting a direct purchase of materials hereunder, Owner and Contractor shall use the Request Form, Purchase Order, and Certificate of Entitlement included with the Project Manual.

18.13 Construction Defects.

CLAIMS FOR CONSTRUCTION DEFECTS ARE SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

18.14 Public Records

Contractor understands and agrees that all documents of any kind provided to the Owner in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, Florida Statutes. Contractor acknowledges that the designated public records custodian for the Owner is **Craig Wrathell ("Public Records Custodian")**. Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the Owner to perform the service; 2) upon request by the Public Records Custodian, provide the Owner with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes; 3) ensure that public records which 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 the contract term if the Contractor does not transfer the records to the Public Records Custodian of the Owner; and 4) upon completion of the contract, transfer to the Owner, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Owner in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT, c/o CRAIG WRATHELL, WRATHELL, HUNT & ASSOCIATES, LLC, WRATHELLC@WHHASSOCIATES.COM, (877)276-0889, 2300 GLADES ROAD, SUITE 410W, BOCA RATON, FLORIDA 33431.

18.15 Restriction on Removal of Fill Dirt from Work Site

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.

18.16 Contractor's Certifications

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 section:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
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.

18.17 Public Entity Crimes

Pursuant to Section 287.133(2)(a), Florida Statutes:

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime 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 in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

Contractor represents that in entering into this Contract, the Contractor, nor any of its Subcontractors or Suppliers, has not been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor, or Subcontractors or Suppliers, is placed on the convicted vendor list, the Contractor shall immediately notify the Owner whereupon this Contract may be terminated in whole or in part by the Owner for cause.

18.18 Scrutinized Companies

Contractor represents that in entering into this Contract, neither it nor any of its officers, directors, executives, partners, shareholders, members, or agents, or any Subcontractors or Suppliers, is on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, created pursuant to section 215.473, Florida Statutes, the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.473, Florida Statutes, is engaged in a boycott of Israel, or is engaged in business

operations in Cuba or Syria and in the event such status changes, Contractor shall immediately notify Owner whereupon this Contract may be terminated in whole or in part by the Owner for cause.

18.19 Audits.

Notwithstanding anything to the contrary herein, Contractor shall maintain comprehensive books, records and documents (including electronic storage media) relating to any services performed under this Contract and for a period of at least six years from and after completion of final payment for any services hereunder, or such other period as required by law, whichever is later (“Audit Term”). If an audit has been initiated and audit findings have not been resolved at the end of six (6) years, the Audit Term shall be deemed extended and the books, records and documents shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Contract, at no additional cost to Owner. The Contractor agrees that Owner or any of its duly authorized representatives shall, until the expiration of the Audit Term, have access to and the right to examine any books, documents, papers, and records of the Contractor involving transactions related to the Contract. The Contractor agrees that payment made under the Contract shall be subject to reduction for amounts charged thereto that are found on the basis of audit examination not to constitute allowable costs. Further, the Contractor shall comply with all audit, inspections, investigations and record keeping requirements set forth in the Redevelopment Agreement (including but not limited to at Section 10.21), which are hereby incorporated by this reference and shall be incorporated into all subcontracts with Subcontractors and Suppliers.

18.20 Non-Discrimination Provision.

In conformity with the requirements of Section 126.404, Ordinance Code, the Contractor represents that it has adopted and will maintain a policy of non-discrimination against employees or applicants for employment on account of race, religion, sex, color, national origin, age or handicap, in all areas of employment relations, throughout the term of this Contract. The Contractor agrees that, on written request, to the extent not prohibited by privacy laws or other laws, it will permit reasonable access to its records of employment, employment advertisement, application forms and other pertinent data and records, by the Executive Director of the Human Rights Commission, or successor agency or commission, for the purpose of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter 126, Part 4 of the Ordinance Code, provided however, that the Contractor shall not be required to produce for inspection records covering periods of time more than one (1) year prior to the day and year first above written or any employee files.

18.21 Publicity.

Except to the extent necessary to perform its obligations under this Contract, and/or to respond to any public records request or other legally required disclosure, Contractor shall not, without the prior written consent of the Owner, discuss, publicize, or otherwise disclose the existence or terms of this Contract, with anyone except authorized professional representatives (including without limitation auditors and legal representatives) of Contractor, regulatory agency staff, representatives of Developer, and any other contractors or consultants hired by the Owner. Contractor shall not use Owner’s name, trademarks, or logos in any written materials, including without limitation press releases, or advertisements, without Owner’s prior written consent, unless necessary for Contractor to perform its services or as required by law.

18.22 Brownfield Site Rehabilitation Agreement

Contractor acknowledges that there are, or may be, certain environmental obligations and risk with respect to the project site. Specifically, without limitation, Contractor acknowledges that the project site is a “brownfield site” and is subject to that certain BSRA. Contractor acknowledges that under the BSRA and Laws and Regulations, the project site is subject to various requirements including approval of plans, reports, institutional controls, and engineering controls, which requirements may be subject to change by the appropriate regulatory agencies (“BSRA Requirements”). In connection with the BSRA and BSRA Requirements, the following documents were recorded in the public records of Duval County, Florida and encumber the all or portions of the Site: the Declaration of Restrictive Covenant dated February 12, 2013, in Official Records Book 16254, page 1001 of the public records of Duval County, Florida, as amended by that certain First Amendment to Declaration of Restrictive Covenant dated August 25, 2014, in Official Records Book 16922, page 294 of the public records of Duval County, Florida, as may be amended (collectively, the “BSRA Declaration”). Contractor acknowledges and agrees that all services provided under this Contract shall be conducted in a manner consistent with and in compliance with the BSRA, the BSRA Requirements, the BSRA Declaration, the FDEP Closure Order (as defined in the Redevelopment Agreement), and applicable environmental and other Laws and Regulations applicable to the project site.

18.23 No Lien Rights

Contractor agrees that Owner 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 Owner or the Owner’s property, there are no lien rights available to any person providing materials or services for improvements in connection with the Project.

18.24 Jacksonville Small and Emerging Businesses

The Contractor acknowledges that pursuant to Section 7.26 of the Disbursement Agreement the Owner must comply with Municipal Ordinance Code Sections 126.601 et seq. Toward that end, the Contractor agrees to cooperate and assist the Owner in fulfilling this requirement by (i) entering into contracts with DIA-certified Jacksonville Small and Emerging Businesses (“JSEB”) to provide materials or services in an aggregate amount of at least twenty percent (20%) of the Contract Price (“JSEB Goal”), as determined in consultation with the Owner; or (ii) demonstrate “Good Faith Efforts” were made to achieve the JSEB Goal, in accordance with and as further described in Code Sections 126.601 et seq. Additionally, Contractor agrees to cooperate and assist the Owner with any JSEB related reporting requirements pursuant to the Redevelopment Agreement and/or Disbursement Agreement.

18.25 TIME IS OF THE ESSENCE.

The Contractor recognizes and agrees that the Owner must complete the CDD Project and CRA Project by the timelines outlined in the Project Manual and that the failure to do so may result in the loss of millions of dollars of funding pursuant to the terms of the Redevelopment Agreement. Accordingly, TIME IS OF THE ESSENCE with respect to the design and construction of the CDD Project and CRA Project.

18.26 Escalation.

The Contract Price for this Project has been calculated based on the current prices for the component building materials. However, the market for construction materials is considered to be volatile, and sudden price increases could occur. The Contractor agrees to use his best efforts to obtain the lowest possible prices from available construction material Suppliers. However, the Contract Price may be adjusted in the event extraordinary or highly inflationary increases in

the costs of the occur during the Project, through no fault of Contractor, and would result in a substantial inequity to Contractor without such adjustment. Specified materials and indexes will be identified at the time of entering into the Standard Form of Agreement having either a Lump Sum Price or a Cost Plus with Guaranteed Maximum Price.

18.27 Additional Notice to the City and DIA under Article 16.

Any party providing notice pursuant to Article 16 of these General Conditions shall additionally provide notice to the City and the DIA using the contact information included in Section 10.3 of the Redevelopment Agreement.

18.28 E-Verify Requirements

Contractor shall comply with and perform all applicable provisions of Section 448.095, Florida Statutes. Accordingly, beginning January 1, 2021, to the extent required by Florida Statute, Contractor shall register with and use the United States Department of Homeland Security's E-Verify system to verify the work authorization status of all newly hired employees. The Owner may terminate this Contract immediately for cause if there is a good faith belief that the Contractor has knowingly violated Section 448.091, Florida Statutes.

If Contractor anticipates entering into agreements with a subcontractor for the Work, Contractor will not enter into the Subcontractor agreement without first receiving an affidavit from the Subcontractor regarding compliance with Section 448.095, Florida Statutes, and stating that the Subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of the agreement and provide a copy to the Owner upon request.

In the event that the Owner has a good faith belief that a Subcontractor has knowingly violated Section 448.095, Florida Statutes, but Contractor has otherwise complied with its obligations hereunder, the Owner shall promptly notify the Contractor. The Contractor agrees to immediately terminate the agreement with the Subcontractor upon notice from the Owner. Further, absent such notification from the Owner, Contractor or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated s. 448.09(1), Florida Statutes, shall promptly terminate its agreement with such person or entity.

By entering into this Contract, Contractor represents that no public employer has terminated a contract with Contractor under Section 448.095(2)(c), Florida Statutes, within the year immediately preceding the date of this Contract.

**THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT
PHASE 3B – CDD PROJECT (STREETSCAPE IMPROVEMENTS)**

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

The following supplements establish insurance limits and other requirements relating to Article 6 of the *Standard General Conditions of the Construction Contract*, EJCDC Document No. C-700 (Rev. 1), 2013 Edition (the “**General Conditions**”), as well as identify certain reports relating to subsurface conditions and hazardous conditions at the site, which reports relate to Article 5 of the General Conditions. Other changes have been marked directly in underlined and strike-through on 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

Pursuant to Paragraph 5.03.A. of the General Conditions, the following reports of explorations and tests of subsurface conditions at or contiguous to the Site are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications:

- a. Boundary survey, prepared by Perret and Associates, Inc., dated April 13, 2018
- b. Preliminary Report for Geotechnical Exploration, prepared by Meskel & Associates Engineering, dated October 10, 2018.
- c. Geotechnical Engineering Report, The District IPO # 2 (Prudential Drive), prepared by ECS Florida, LLC, dated August 23, 2019.
- d. Interim Geotechnical Engineering Report, The District IPO #3 (CRA Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 28, 2019.
- e. Geotechnical Engineering Report, The District IPO #4 (CDD Infrastructure Improvements), prepared by ECS Florida, LLC, dated August 30, 2019.
- f. JEA Utility Easement Agreement, dated July, 12 2018.

Pursuant to Paragraph 5.03.A. of the General Conditions, the following drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) are known to Owner and were used by Engineer in the preparation of the Contract Drawings and Specifications: those surveys and reports listed above

SC-5.06 HAZARDOUS ENVIRONMENTAL CONDITIONS AT SITE

Pursuant to paragraphs 5.06.A and 5.06.B., the following reports and drawings related to Hazardous Environmental Conditions at the Site are known to Owner:

- a. Second Amendment to Brownfield Site Rehabilitation Agreement and Clean Closure Plan, last dated December 22, 2022, between FDEP, JEA, Elements Development of Jacksonville, LLC and District Community Development District.

- b. Site Rehabilitation Completion Order (SRCO) with Controls dated August 17, 2017
- c. Proposed Groundwater Monitoring Program and Hydraulic Containment System Operation Schedule, prepared by Kimley-Horn and Associates, Inc., dated May 15, 2019 (approved by FDEP 23, 2019)
- d. Soil Management Plan, Stormwater Improvements, Utility Construction and Construction Dewatering Addendum, prepared by Kimley-Horn and Associates, Inc., dated February 5, 2021 (approved by FDEP February 24, 2021)
- e. Second Amendment to Brownfield Site Rehabilitation Agreement and Clean Closure Plan, last dated December 22, 2022, between FDEP, JEA, Elements Development of Jacksonville, LLC and District Community Development District.
- f. Dewatering Plan Modification prepared by Kimley-Horn and Associates, Inc., dated December 14, 2020
- g. Remedial Acton Plan Modification, prepared by ECS Florida, LLC, dated February 15, 2021, (approved by FDEP February 23, 2021)
- h. The District General Information for Health and Safety Plan Preparation, prepared by Kimley-Horn and Associates, Inc., date January 11, 2021.
- i. Areas of Contamination Letter to C. Kruchell of FDEP from J. Sheasley of Kimley-Horn and Associates, Inc. regarding delineation of two areas of contamination, dated April 5, 2022.

ARTICLE 6 – BONDS AND INSURANCE

6.03 Contractor's Liability Insurance

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

- K. The limits of liability for the insurance required by this paragraph 6.03 shall provide coverage for not less than the following amounts:
 - 1. Workers' Compensation under Paragraph 6.03.A. of the General Conditions:
 - a. State Worker's Compensation and Employer's Liability – Greater of statutorily required amount or \$1,000,000 per occurrence / \$1,000,000 aggregate / \$1,000,000 per disease
 - b. Applicable Federal (e.g., United States Longshoreman and Harbor Workers' Compensation Act, Jones Act, etc.) (only required to the extent applicable) – Greater of statutorily required amount or \$1,000,000
 - 2. Commercial General Liability Insurance under Paragraph 6.03.B. of the General Conditions, which includes Contractual Liability Insurance under Paragraph 6.03.C. of the General Conditions:
 - a. Bodily Injury, Sickness, Disease or Death, and Property Damage, per Occurrence - \$2,000,000

- b. Bodily Injury, Sickness, Disease or Death, and Property Damage, Aggregate - \$2,000,000
 - c. Products-Completed Operations – \$2,000,000
 - d. Personal and Advertising Injury – \$2,000,000
 - e. Property Damage liability insurance will provide Explosion, Collapse, and Under-ground coverages where applicable.
3. Automobile Liability under paragraph 6.03.D. of the General Conditions:
- a. Bodily Injury:
 - Each Person \$1,000,000
 - Each Accident \$1,000,000
 - Property Damage:
 - Each Occurrence \$1,000,000
4. Pollution Insurance, and Pollution Legal Liability (covering third-party injury and property damage claims, including clean-up costs) \$5,000,000
5. Protection and Indemnity (Watercraft) (provided however that the Contractor shall only provide such insurance if and when applicable to the Work)
- Insurance \$1,000,000
7. Umbrella Insurance (above the Commercial Liability, Automobile Liability, Employers Liability, Pollution Insurance, Protection and Indemnity Insurance and Contractual Liability Insurance listed herein)
- a. General Aggregate \$15,000,000
 - b. Each Occurrence \$15,000,000
- L. The Contractor’s commercial general liability, contractual liability, automobile liability, umbrella, and pollution liability policies shall include and list as additional insureds the following: all of the Indemnitees and Kimley-Horn & Associates, Inc., and its respective officers, directors, members, partners, employees, agents, consultants, managers, staff, supervisors, and subcontractors.
- M. Such insurance as listed above is in addition to all other insurance required under the Contract. Further, the Contractor shall comply with the provisions of the General Conditions and these Supplementary Conditions as they relate to insurance requirements, provided that Contractor shall additionally satisfy the insurance requirements set forth in **Exhibit P** of the Redevelopment Agreement to the extent such insurance requirements are greater than those set forth in the General Conditions and Supplementary Conditions.

EXHIBIT P – REDEVELOPMENT AGREEMENT

**Exhibit P
Insurance Requirements of Developer and CDD**

Without limiting its liability under this Agreement Contract, the Developer, CDD or its General Contractor (for this Exhibit P, collectively the “Contractor”) shall at all times during the term of this Agreement procure prior to commencement of work and maintain at its sole expense during the life of this Agreement (and Contractor shall require its, subcontractors, laborers, materialmen and suppliers to provide, as applicable), insurance of the types and limits not less than amounts stated below:

Insurance Coverages

Schedule	Limits
Worker’s Compensation Employer’s Liability	Florida Statutory Coverage \$ 1,000,000 Each Accident \$ 1,000,000 Disease Policy Limit \$ 1,000,000 Each Employee/Disease

This insurance shall cover the Contractor (and, to the extent they are not otherwise insured, its subcontractors) for those sources of liability which would be covered by the latest edition of the standard Workers’ Compensation policy, as filed for use in the State of Florida by the National Council on Compensation Insurance (NCCI), without any restrictive endorsements other than the Florida Employers Liability Coverage Endorsement (NCCI Form WC 09 03), those which are required by the State of Florida, or any restrictive NCCI endorsements which, under an NCCI filing, must be attached to the policy (i.e., mandatory endorsements). In addition to coverage for the Florida Workers’ Compensation Act, where appropriate, coverage is to be included for the Federal Employers’ Liability Act, USL&H and Jones, and any other applicable federal or state law.

Commercial General Liability	\$2,000,000 General Aggregate \$2,000,000 Products & Comp. Ops. Agg. \$1,000,000 Personal/Advertising Injury \$1,000,000 Each Occurrence \$ 50,000 Fire Damage \$ 5,000 Medical Expenses
-------------------------------------	--

The policy shall be endorsed to provide a separate aggregate limit of liability applicable to the Work via a form no more restrictive than the most recent version of ISO Form CG 2503

Contractor shall continue to maintain products/completed operations coverage for a period of ten (10) years after the final completion of the project. The amount of products/completed operations coverage maintained during the ten year period shall be not less than the combined limits of Products/ Completed Operations coverage required to be maintained by Contractor in the combination of the Commercial General Liability coverage and Umbrella Liability Coverage during the performance of the Work.

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements other than those reasonably required by the City's Office of Insurance and Risk Management.

Automobile Liability \$1,000,000 Combined Single Limit
(Coverage for all automobiles, owned, hired or non-owned used in performance of the Agreement)

Such insurance shall be no more restrictive than that provided by the most recent version of the standard Business Auto Coverage Form (ISO Form CA0001) as filed for use in the State of Florida without any restrictive endorsements other than those which are required by the State of Florida, or equivalent manuscript form, must be attached to the policy equivalent endorsement as filed with ISO (i.e., mandatory endorsement).

Design Professional Liability \$15,000,000 per Claim
\$15,000,000 Aggregate

Any entity hired to perform professional services as a part of this Agreement shall maintain professional liability coverage on an Occurrence Form or a Claims Made Form with a retroactive date to at least the first date of this Agreement and with a ten (10) year reporting option beyond the annual expiration date of the policy.

Builders Risk %100 Completed Value of the Project

Such insurance shall be on a form acceptable to the City's Office of Insurance and Risk Management. The Builder's Risk policy shall include the SPECIAL FORM/ALL RISK COVERAGES. The Builder's Risk and/or Installation policy shall not be subject to a coinsurance clause. A maximum \$10,000 deductible for other than windstorm and hail. For windstorm and hail coverage, the maximum deductible applicable shall be 2% of the completed value of the project. Named insured's shall be: Developer, Contractor, the City, and respective members, officials, officers, employees and agents, the Engineer, and the Program Management Firms(s) (when program management services are provided). The City of Jacksonville, its members, officials, officers, employees and agents are to be named as a loss payee.

Pollution Liability \$5,000,000 per Loss
\$5,000,000 Annual Aggregate

Any entity hired to perform services as part of this Agreement for environmental or pollution related concerns shall maintain Contractor's Pollution Liability coverage. Such Coverage will include bodily injury, sickness, and disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to destruction of tangible property including resulting loss of use thereof, cleanup costs, and the loss of use of tangible property that has not been physically injured or destroyed; defense including costs charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages;

coverage for losses caused by pollution conditions that arises from the operations of the contractor including transportation.

Pollution Legal Liability \$5,000,000 per Loss
\$5,000,000 Aggregate

Any entity hired to perform services as a part of this Agreement that require disposal of any hazardous material off the job site shall maintain Pollution Legal Liability with coverage for bodily injury and property damage for losses that arise from the facility that is accepting the waste under this Agreement.

Watercraft Liability \$1,000,000 Per Occurrence
(to the extent that watercraft is utilized in the services of this Agreement)

Umbrella Liability \$15,000,000 Each Occurrence/ Aggregate.

The Umbrella Liability policy shall be in excess of the above limits without any gap. The Umbrella coverage will follow-form the underlying coverages and provides on an Occurrence basis all coverages listed above.

In the event that any part of the work to be performed hereunder shall require the Contractor or Subcontractors to enter, cross or work upon or beneath the property, tracks, or right-of-way of a railroad or railroads, the Developer shall, before commencing any such work, and at its expense, procure and carry liability or protective insurance coverage in such form and amounts as each railroad shall require.

The original of such policy shall be delivered to the railroad involved, with copies to DIA and the City, Engineer, and Program Management Firm(s) (when program management services are provided).

The Contractor shall not be permitted to enter upon or perform any work on City's property until such insurance has been furnished to the satisfaction of the City. The insurance herein specified is in addition to any other insurance which may be required by the City, and shall be kept in effect at all times while work is being performed on or about the City Parcels.

Additional Insurance Provisions

- A. Additional Insured: All insurance except Worker's Compensation and Professional Liability shall be endorsed to name the DIA, City of Jacksonville and their respective members, officials, officers, employees and agents as Additional Insured. Additional Insured for General Liability shall be in a form no more restrictive than CG2010 and CG2037, Automobile Liability CA2048.

- B. Waiver of Subrogation. All required insurance policies shall be endorsed to provide for a waiver of underwriter's rights of subrogation in favor of DIA and the City of Jacksonville and their respective members, officials, officers employees and agents.
- C. Contractor's Insurance Primary. The insurance provided by the Contractor shall apply on a primary basis to, and shall not require contribution from, any other insurance or self-insurance maintained by DIA, the City or any DIA or City members, officials, officers, employees and agents.
- D. Deductible or Self-Insured Retention Provisions. All deductibles and self-insured retentions associated with coverages required for compliance with this Agreement shall remain the sole and exclusive responsibility of the named insured Contractor. Under no circumstances will DIA or the City of Jacksonville and their members, officers, directors, employees, representatives, and agents be responsible for paying any deductible or self-insured retentions related to this Agreement.
- E. Contractor's Insurance Additional Remedy. Compliance with the insurance requirements of this Agreement shall not limit the liability of the Contractor or its Subcontractors, employees or agents to the City or others. Any remedy provided to DIA, City or DIA's or City's members, officials, officers, employees or agents shall be in addition to and not in lieu of any other remedy available under this Agreement or otherwise.
- F. Waiver/Estoppel. Neither approval by DIA or City nor failure to disapprove the insurance furnished by Contractor shall relieve Contractor of Contractor's full responsibility to provide insurance as required under this Agreement.
- G. Certificates of Insurance. Contractor shall provide the DIA and City Certificates of Insurance that shows the corresponding DIA Agreement Number in the Description, if known, Additional Insureds as provided above and waivers of subrogation. The certificates of insurance shall be mailed to the City of Jacksonville (Attention: Chief of Risk Management), 117 W. Duval Street, Suite 335, Jacksonville, Florida 32202.
- H. Carrier Qualifications. The above insurance shall be written by an insurer holding a current certificate of authority pursuant to chapter 624, Florida State or a company that is declared as an approved Surplus Lines carrier under Chapter 626 Florida Statutes. Such Insurance shall be written by an insurer with an A.M. Best Rating of A- VII or better.
- I. Notice. The Contractor shall provide an endorsement issued by the insurer to provide the DIA and City thirty (30) days prior written notice of any change in the above insurance coverage limits or cancellation, including expiration or non-renewal. If such endorsement is not provided, the Contractor shall provide a thirty (30) days written notice of any change in the above coverages or limits, coverage being suspended, voided, cancelled, including expiration or non-renewal.

- J. Survival. Anything to the contrary notwithstanding, the liabilities of the Contractor under this Agreement shall survive and not be terminated, reduced or otherwise limited by any expiration or termination of insurance coverage.
- K. Additional Insurance. Depending upon the nature of any aspect of any project and its accompanying exposures and liabilities, the DIA or City may reasonably require additional insurance coverages in amounts responsive to those liabilities, which may or may not require that the City also be named as an additional insured.
- L. Special Provisions: Prior to executing this Agreement, Contractor shall present this Agreement and this Exhibit P to its Insurance Agent affirming: (1) that the Agent has personally reviewed the insurance requirements of the Project Documents, and (2) that the Agent is capable (has proper market access) to provide the coverages and limits of liability required on behalf of Contractor.

Bonds and Other Performance Security. CDD shall not perform or commence any construction services for the CRA Infrastructure Improvements until the following performance bond and labor and material payment bond or other performance security have been delivered to DIA and City: Bonds - In accordance with the provisions of Section 255.05, Florida Statutes, Design-Builder shall provide to DIA and City on forms furnished by the City, a 100% Performance Bond and a 100% Labor and Material Payment Bond for each Public Infrastructure Improvement performed under this Agreement, each in an amount not less than an amount at least equal to the amount of the Direct Costs for the construction of the CRA Infrastructure Improvements No qualification or modifications to the Bond forms are permitted.

To be acceptable to Owner as Surety for Performance Bonds and Labor and Material Payment Bonds, a Surety Company shall comply with the following provisions:

- 1. The Surety Company shall have a currently valid Certificate of Authority, issued by the State of Florida, Department of Insurance, authorizing it to write surety bonds in the State of Florida.
- 2. The Surety Company shall have a currently valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title 31 of the United States Code.
- 3. The Surety Company shall be in full compliance with the provisions of the Florida Insurance Code.
- 4. The Surety Company shall have at least twice the minimum surplus and capital required by the Florida Insurance Code during the life of this agreement.
- 5. If the Contract Award Amount exceeds \$500,000, the Surety Company shall also comply with the following provisions:
 - a. The Surety Company shall have at least the following minimum ratings in the latest issue of A.M. Best's Key Rating Guide.

CONTRACT AMOUNT		RATING	RATING
\$ 500,000 TO \$1,000,000	A-		CLASS IV
\$1,000,000 TO \$2,500,000	A-		CLASS V
\$2,500,000 TO \$5,000,000	A-		CLASS VI
\$5,000,000 TO \$10,000,000	A-		CLASS VII
\$10,000,000 TO \$25,000,000	A-		CLASS VIII
\$25,000,000 TO \$50,000,000	A-		CLASS IX
\$50,000,000 TO \$75,000,000	A-		CLASS X

b. The Surety Company shall not expose itself to any loss on any one risk in an amount exceeding ten (10) percent of its surplus to policyholders, provided:

1) Any risk or portion of any risk being reinsured shall be deducted in determining the limitation of the risk as prescribed in this section. These minimum requirements shall apply to the reinsuring carrier providing authorization or approval by the State of Florida, Department of Insurance to conduct business in this state have been met.

2) In the case of the surety insurance company, in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the consent of the surety and for the protection of the surety shall be deducted.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

6

CHANGE ORDER NO.: 7

Owner: **The District Community Development District** Owner's Project No.: **2021-02**
 Engineer: **Kimley-Horn and Associates, Inc.** Engineer's Project No.: **045547005**
 Contractor: **J.B. Coxwell Contracting, Inc.** Contractor's Project No.:
 Project: **Phase 3 - CRA Project**
 Contract Name: **Agreement Between Owner and Contractor for Construction Contract (Stipulated Price) Phase 3 – CRA Project (Parks, Riverwalk, Trail, Boardwalk, and Roadways)**
 Date Issued: **November 14, 2023** Effective Date of Change Order: **November 14, 2023**

The Contract is modified as follows upon execution of this Change Order:

Description: **The Contract Price is being increased and the Contract Times are being extended by 60 days for construction of the Marsh Boardwalk.**

Attachments: Approved Contractor's Estimate.

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>3,829,422.09</u>	Original Contract Times: Substantial Completion: <u>826 days</u> Ready for final payment: <u>856 days</u>
Decrease from previously approved Change Orders: \$ <u>64,370.50</u>	Increase/Decrease from previously approved Change Orders: Substantial Completion: <u>N/A</u> Ready for final payment: <u>N/A</u>
Contract Price prior to this Change Order: \$ <u>3,765,051.59</u>	Contract Times prior to this Change Order: Substantial Completion: <u>826 days</u> Ready for final payment: <u>856 days</u>
Increase this Change Order: \$ <u>2,229,483.31</u>	Increase this Change Order: Substantial Completion: <u>60 days</u> Ready for final payment: <u>60 days</u>
Contract Price incorporating this Change Order: \$ <u>5,994,534.90</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>886 days</u> Ready for final payment: <u>916 days</u>

Recommended by Engineer (if required)		Accepted by Contractor	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____
Authorized by Owner		Approved by Funding Agency (if applicable)	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____



J.B. Coxwell Contracting, Inc.

6741 Lloyd Road West
Jacksonville, Florida 32254
Office (904) 786-1120 Fax (904) 783-2970

October 16, 2023

Bill Schilling
Kimley-Horn
12740 Gran Bay Parkway West
Jacksonville, FL 32258

RE: Rivers Edge CRA & CDD Phase III
County: Duval
JBCCI No. – 2127
FINAL REVISED Boardwalk Pricing

Dear Mr. Schilling,

Please find below **FINAL REVISED** pricing for the boardwalk per the plans dated August 2023.

Item	Description	Qty	U.P.	UOM	Total
1	General Conditions	1	LS	\$150,858.00	\$150,858.00
2	Survey/As-builts	1	LS	\$16,552.25	\$16,552.25
3	Erosion Control	1	LS	\$24,745.97	\$24,745.97
4	Clearing	1	LS	\$56,000.00	\$56,000.00
5	Earthwork at Abutments	1	LS	\$32,577.06	\$32,577.06
6	Concrete Abutments (3 Total)	1	LS	\$37,575.00	\$37,575.00
7	Lighting on Boardwalks	1	LS	\$44,825.00	\$44,825.00
7	Boardwalk (PT Substructure & decking, Ipe handrail SS Cables)	1	LS	\$1,774,166.90	\$1,774,166.90
8	Boardwalk Pedestrian Bridge	1	LS	\$47,235.10	\$47,235.10
9	Permit Allowance	1	LS	\$12,000.00	\$12,000.00
	Total				\$2,196,535.28
	With 1.5% Bond				\$2,229,483.31
	Contingency				
1	Landscaping	1	LS	\$47,177.90	\$47,177.90
2	Watering Allowance	1	LS	\$7,500.00	\$7,500.00
3	Sod	1	LS	\$3,500.00	\$3,500.00
	Total				\$58,177.90
	With 1.5% Bond				\$59,050.57

Please note, the boardwalk quote is provided by Nature Bridges who have constructed boardwalks across the southeast and most recently have completed a project at UNF. They will utilize a top-down build approach using lightweight hydraulic impact and material handling equipment that stays on top of the structure during construction causing minimal disturbance to the surrounding vegetation.

JBCCI provides the following exclusions:

- 1) Lighting conduits, wire, hardware, and light poles are excluded.
- 2) JBCCI will place a sleeve in the abutment for future lighting conduit.

- 3) Precast Concrete Caps at light poles are excluded. Our sub has included thickened lumber caps that will be part of the sign/sealed plan submittal which have been used at light pole locations on other projects.
- 4) Asphalt is excluded.
- 5) Concrete Abutments are included. All other concrete work is excluded.
- 6) Building Permit allowance is included.
- 7) Dewatering is excluded from the above pricing.
- 8) Earthwork at Abutments is included. All other earthwork is excluded.
- 9) Irrigation is excluded.
- 10) Watering allowance included for watering through establishment.
- 11) Signage is excluded.
- 12) Lighting Clarifications: Includes purchase of 4 fixtures, Underground SCH 40 PVC and wiring up to existing power source, installation of branch wiring in SCH 80 PVC with copper conductors on boardwalk, and Conduit to be surface mounted with stainless hardware.
- 13) Lighting pricing excludes installation of panel or disconnect to feed lighting.

Please find the below included materials for the above pricing. Materials differing from the plan materials will be part of the S&S submittal package. Please note, should any of these materials not be acceptable, additional costs shall apply.

- Boardwalk & Overlooks - Materials and installation of work as outlined below based on Nature Bridges "Top-Down" Construction.
- Timber pedestrian free-span bridge with glulam beams, timber decking, and SS cable railing (12' x 30' spanning existing shallow force main pipe).
- Piles - 9" Dia. PTSYP1 2.5 cca.
- Pile Caps - 10" x 10" #2 PTSYP1 .60 cca.
- Light Pole Pile Caps (4) - 12" x 12" #2 PTSYP1 .60 cca.
- Stringer - 3" x 12" #2 PTSYP1 .60 cca.
- Decking - 2" x 6" #1 PTSYP1 .15 ca-c.
- Railing Posts - 4" x 6" Ipe.
- Top & Bottom Railings - 2" x 4" Ipe.
- Rail Cap - 2" x 6" Ipe.
- Railing Infill - (8) 5/32" dia. SS3 (316) cables.
- Cross Bracing as required - 2" x 8" #1 PTSYP1 .15 ca-c.
- Structural hardware to be SS3.
- Deck Screws to be SS3.
- Engineering / Construction Drawings (Signed & Sealed).

If you have any questions, please let me know.

Sincerely,
J. B. COXWELL CONTRACTING, INC.

J. Matthew Dennis

Matthew Dennis
 Project Manager

Ltr. 20b

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

7



November 14, 2023

The District
Community Development District
City of Jacksonville, Florida

Amended and Restated
District Engineer's Report

Prepared by:
Kimley-Horn and Associates, Inc.
Jacksonville, Florida

Kimley»Horn

Amended and Restated District Engineer's Report

The District Community Development District *City of Jacksonville, Florida*

Prepared by:

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Jacksonville, Florida 32258
FBPE Registry No. 35106

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November 14, 2023

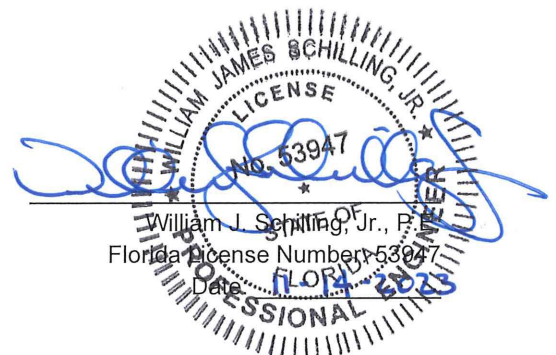


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Exhibit A – Vicinity Map

Exhibit B – Community Development District Boundary Map

Exhibit C – Conceptual Development Use Plan / Site Plan

Exhibit D – JEA Water and Sewer Availability Letter, dated January 30, 2022

Exhibit E – Off-Site Utility Tie-In

Exhibit F – Roadway Geometry Plan

Exhibit G – Off-site Roadway Improvement Area

1. Introduction

A. Amended and Restated District Engineer's Report

This Amended and Restated District Engineer's Report is being issued effective November 14, 2023 ("**2023 Amended Engineer's Report**"). The District Engineer's Report was originally issued on February 25, 2019 and subsequently amended on December 18, 2020 ("**2020 Engineer's Report**"), March 21, 2022 ("**2022 Engineer's Report**"), and amended and restated on November 28, 2022 ("**Amended Engineer's Report**"). This 2023 Amended Engineer's Report has been prepared in support of issuance of the CDD's (as hereinafter defined) Grant Revenue and Special Assessment Bonds ("**Bonds**") and to revise the associated Opinion of Preliminary Probable Construction Costs for the CIP.

B. Description of The District Community Development District

The District Community Development District ("**CDD**") is a special purpose unit of local government established by and located entirely within the City of Jacksonville. The CDD was established effective October 24, 2018 and pursuant to Chapter 190, *Florida Statutes*, for the purposes of financing, constructing, acquiring, operating and maintaining public infrastructure improvements.

By way of background, and in July 2018, the City of Jacksonville ("**City**"), the Downtown Investment Authority ("**DIA**") and Elements Development of Jacksonville, LLC ("**Developer**") entered into that certain *Redevelopment Agreement for Redevelopment of the JEA Southside Generator Parcel*, as amended as of May 4, 2021 and approved for amendment and restatement by the City of Jacksonville City Council on October 10, 2023 pursuant to Ordinance Number 2023-0622-E (the "**Ordinance**"), as such agreement may be further amended from time to time, the "**Redevelopment Agreement**". (The CDD joined the Redevelopment Agreement effective April 23, 2019.) Pursuant to the Redevelopment Agreement, the parties intend to redevelop an approximately 32-acre parcel of land – i.e., the land within the CDD's boundaries – along the south bank of the St. Johns River into a mixed-use development, including 1,170 residential units, 200 hotel rooms, 200,000 square feet of office space, 121,400 square feet of retail space, and 125 marina slips to be known as RiversEdge ("**Development**").

The Development will be supported by public infrastructure that is part of the "CDD Project" or the "CRA Project", as described in the Redevelopment Agreement¹ and described herein. Pursuant to the Redevelopment Agreement, the CDD will be responsible for constructing both the CDD Project as well as the CRA Project. The CDD's "Capital Improvement Plan" or "CIP", as used herein, refers to both the CDD Project and the CRA Project but with certain exceptions noted herein (i.e., the Water Taxi).

¹ Note, in the Redevelopment Agreement, the defined terms for the CDD Project and CRA Project are "CDD Infrastructure Improvements" and "CRA Infrastructure Improvements," respectively.

It is expected that, pursuant to the Redevelopment Agreement, and generally stated, all or portions of the costs of the CIP will be funded with proceeds from the CDD’s issuance of tax-exempt bonds, and up to \$23 million in costs for the CRA Project will be paid for and/or reimbursed by the DIA. Under the Redevelopment Agreement, all cost overruns for the CRA Project are the responsibility of the CDD and Developer.

The purpose of this report is to update the description of the CIP and its associated costs. A vicinity map of the CDD is included as Exhibit “A” along with the current CDD boundary as Exhibit “B”. The CDD will contain residential, office, commercial, recreation, and supporting facilities as indicated on the Conceptual Development Use Plan, also known as a Site Plan, contained in Exhibit “C”. The CIP will be constructed in three or more phases as determined by the CDD. The breakdown of anticipated land uses contained within the current CDD boundary is noted below in Table 1.

Please note that the acreages provided in Table 1 below are estimates and that final actual acreages will be determined upon final engineering design and construction plan approval. Further, the CDD, at the discretion of its Board of Supervisors, may elect to petition the City to add or remove land from the CDD as may be necessary in the future.

Table 1: Summary of Land Uses Proposed

Land Use	Gross Acres	Percentage
Riverfront and Marshfront Parks, Riverwalk and Overland Trail	4.52	14.04%
Riverfront Restaurants	0.79	2.45%
Mixed Use (Retail, Hotel, Residential, Office)	9.29	28.84%
Mixed Use (Retail, Residential)	2.23	6.92%
Residential	4.61	14.31%
School Board Parking Tract	1.73	5.37%
Road Right-of-way (CRA)	3.62	11.24%
Road Right-of-way (CDD)	4.45	13.82%
Open Space (CDD)	0.97	3.01%
TOTAL	32.21	100.0%

The Conceptual Development Use Plan, contained in Exhibit “C” depicts additional tracts of land adjacent to the CDD boundary that may be considered for incorporation into the CDD’s boundary in the future via a boundary amendment. These tracts are identified as

Tract 5B, Tract 12, Elements Owned Tract, and the Right-of-Way to be Vacated Tract. These tracts comprise approximately 1.94 acres, as summarized in Table 2 below.

Table 2: Summary of Additional Tracts that may be Considered for Incorporation

Tract	Gross Acres
5B	1.30
12	0.30
Elements Owned	0.14
Right-of-Way to be Vacated	0.20
TOTAL	1.94

If incorporated into the CDD, these tracts would be supported by and benefit from construction of the CIP. Additionally, the Conceptual Development Use Plan depicts the Prudential Drive Extension Tract (immediately adjacent to Tract 5B) containing approximately 0.38 acres. This tract is located outside of the CDD boundary and has been conveyed to the City of Jacksonville as right-of-way for the extension of Prudential Drive from its eastern terminus to the CDD’s western boundary.

C. Purpose and Scope of Report

The purpose and scope of this 2023 Amended Engineer’s Report is to provide an updated Opinion of Preliminary Probable Construction Costs for the capital improvements to be constructed and financed by the CDD as part of the CIP. The CDD’s assessment consultant will develop the financing and assessment methodology.

The portion of the CIP anticipated to be funded with proceeds from the CDD’s issuance of the Bonds is estimated to cost \$52,795,132 (CDD Project Cost with Optional Items of \$39,395,132 plus \$13,400,000 of CRA Project overrun). The breakdown of this amount is shown in Table 3 in Section 5.

NOTE: The full cost of the CIP includes both the CDD Project and the CRA Project and is estimated to be \$75,795,132 in total. Because DIA is expected to fund up to \$23 million of the CRA Project under the Redevelopment Agreement, the cost of the CIP to be funded by Bond proceeds is presented herein to be \$52,795,132, which represents the cost of the CDD Project with Optional Items (\$39,395,132) as well as \$13,400,000 in CRA Project cost overrun (\$36,400,000 CRA Project cost minus \$23,000,000 DIA funding cap). These latter CRA Project costs are reasonably included as potential CRA Project cost overruns. However, please note that the CIP is defined herein to include all of the CDD Project and CRA Project (with certain noted exceptions stated herein), and, accordingly, proceeds of the District’s tax-exempt Bonds may, except to the extent noted herein, be used to fund any portion of the CDD Project or CRA Project, regardless of whether the CRA Project

costs are in fact attributable to cost overruns as currently described. To the extent that any CDD bond money is spent by the CDD for CRA Project items and then later reimbursed by DIA under the Redevelopment Agreement as part of DIA's up to \$23 million obligation to fund the CRA Project, the reimbursed money will be placed into the District's construction account and used for the CDD Project, or to pay for CRA Project cost overruns, or otherwise used as permitted under the applicable trust indenture for the District's Bonds. Additionally, aside from the \$2 million CDD Marina Horizontal Infrastructure Contribution, included in Table 3 in Section 5, the public marina is excluded from the CDD Project costs herein as the CDD anticipates financing the construction of the marina using CDD tax-exempt bonds specifically issued for the marina improvements ("**Marina Bonds**") and separate from the Bonds. See Section 3.I herein for more details.

2. CDD Boundary and Property

A. CDD Boundary

Exhibit "B" delineates the current CDD boundary, which consists of 32.21 acres, more or less. The CDD is bounded on the North by the St. Johns River, on the West by the Duval County School Board property and Broadcast Place, on the East by undeveloped lands and a minor waterway connecting to the St. Johns River, and on the South by a substation and undeveloped lands owned by the Jacksonville Electric Authority ("**JEA**").

B. Description of Property

The property within the CDD is located in the City of Jacksonville within portions of Sections 44, 45 and 60, Township 2 South, Range 26 East in Duval County, Florida. The CDD falls within the City's Downtown Development of Regional Impact ("**DRI**") and the Downtown Overlay Zone.

C. Existing Infrastructure

The CDD is located within the JEA's water and sewer service area. JEA is a public utility provider. For potable water service, the JEA owns and maintains an existing 20-inch potable water main, located within the Reed Avenue, Montana Avenue, and Prudential Drive rights-of-way within the CDD's vicinity and just outside its boundaries. Based on JEA's Water and Sewer Availability Letter, dated January 30, 2022 and included as Exhibit "D", the point of water connection for the CDD will be to this existing 20-inch potable water main at the intersection of Broadcast Place and Reed Avenue.

For sanitary sewer service, the JEA owns and maintains an existing 48-inch gravity sanitary sewer main, located within the Reed Avenue right-of-way outside of the CDD's boundaries but within the CDD's vicinity. Based on JEA's Water and Sewer Availability Letter, dated January 30, 2022 and included as Exhibit "D", the point of sanitary sewer connection for the CDD will be to an existing manhole along this 48-inch sewer main near the intersection of Broadcast Place and Reed Avenue. The water and sewer connection points are depicted in the off-site utility tie-in map included as Exhibit "E". The JEA does not have

reclaimed water facilities in the project area at this time nor is it anticipated to have reclaimed water availability for the foreseeable future.

In the vicinity of the CDD, Prudential Drive is a four-lane undivided roadway and Broadcast Place is a two-lane undivided roadway. Access to the CDD is planned via the extension of Prudential Drive and the extension and realignment of Broadcast Place.

D. Underground Electric Line

Within the CDD property, the JEA holds a 50-foot wide utility easement that transitions to a 30-foot wide submerged utility easement for an 8-inch steel casing pipe. The easement boundaries are depicted on the off-site utility tie-in map included as Exhibit “E”.

3. Proposed CDD Infrastructure

<u>Development Summary (Approximate)</u>
<ul style="list-style-type: none"> • 1,170 Residential Units (including apartments, townhomes, and condos) • 200 Hotel Rooms • 200,000 s.f. Office Space • 121,400 s.f. Retail Space • 125 Marina Slips²

Summary of Proposed CDD Project Infrastructure

The CDD Project is currently anticipated to be constructed in three or more phases, as determined by the CDD, and will generally consist of the following categories:

- A. Roadways
- B. Parking Facilities
- C. Water and Sewer Utilities
- D. Earthwork Improvements
- E. Stormwater Management
- F. Landscaping and Irrigation

² The 125 marina slips are located outside of the CDD’s current boundary on the riparian rights of the associated upland parcels, which are within the CDD Boundary. Access to the marina slips, associated marina structures and facilities will be provided through the CDD. See description herein for more detail.

- G. Lighting and Underground Electric
- H. Pedestrian-only Promenade and Pocket Park
- I. Public Marina³
- J. Buried Foundation Demolition
- K. Riverfront Bulkhead (CDD Portion)
- L. Land Acquisition
- M. CDD and CRA Work Product

Infrastructure construction commenced in March 2021 and is expected to be completed within approximately four years, through spring 2025. The infrastructure described below is required to be developed under the Redevelopment Agreement, and applicable City development approvals, and will function as a system of improvements benefitting all lands within the CDD.

As of November 22, 2021, the Duval County School Board parking lot has been constructed and the land conveyed to the Duval County School Board.

A. Roadways

The roadways within the CDD will typically consist of two-lane urban sections with off-street bike lanes, curb and gutter, sidewalks, and on-street parking. The roadways will be constructed to provide access to the proposed uses and tracts within the CDD's boundaries. Roadway construction will include the following segments:

- Prudential Drive Extension – from the proposed roundabout at the Prudential Drive/Broadcast Place intersection to the proposed cul-de-sac terminus to be located east of the Back Bay Drive intersection.
- Broadcast Place Realignment – commencing at the proposed off-site realignment to the proposed roundabout at the Prudential Drive/Broadcast Place intersection and the proposed cul-de-sac at the northern-most terminus of Broadcast Place, adjacent to the St. Johns River.
- Health Walk Way – from RiversEdge Boulevard to a proposed cul-de-sac located south of the Prudential Drive Extension.
- Back Bay Drive – from Prudential Drive Extension to RiversEdge Boulevard.

Please refer to Exhibit "F" for the current Roadway Geometry Plan which is subject to change based upon final engineering design and construction plan approval. Approximately 120 linear feet of the Broadcast Place realignment, to be constructed by the

³ Note, aside from the \$2 million CDD Marina Horizontal Infrastructure Contribution included in Table 3 in Section 5, public marina costs are excluded from the CDD Project estimated costs herein as the CDD anticipates financing the construction of the marina with its Marina Bonds. See Section 3.I herein for more details.

CDD, is located outside of and immediately to the west of the CDD's boundary, as depicted on the Off-site Roadway Improvement Area exhibit (Exhibit "G").

The roadways will be constructed in accordance with City standards. Typically, the roads and on-street parking will consist of asphalt, limerock (or suitable alternative) and stabilized subbase with curb. The right-of-way design will include sidewalks, off-street bike lanes, lighting, landscaping and utilities such as water, sewer and drainage. The sidewalks are anticipated to be constructed of either concrete and/or pavers. It is anticipated that the roadways will provide ingress and egress for the entire CDD and the residents and businesses within the CDD will generate the vast majority of the trips anticipated for the roadways.

Site grading including preparation of roadway areas for installation of paving construction has commenced. Construction of limerock (or suitable alternative) roadway sub-base and asphalt paving will be initiated once all grading work has been completed. There are no impact fee credits or similar credits associated with the construction of any of the roadway improvements.

All roads located within the CDD will be open and available to the public. Public sidewalks and bike lanes located within the roadway rights-of-way are included in this category for cost purposes. The public roads, identified above, will be constructed by the CDD, and may be dedicated to the City for operations and maintenance. If the public roads are dedicated to the City, the CDD will obtain a right-of-way maintenance easement, permit or other approval to provide for the maintenance of any landscaping, hardscaping, irrigation, lighting and parking within the rights-of-way, to the extent applicable. Private roads within the CDD, if any, will be constructed by the Developer and will be owned and maintained by the Property Owners Association ("POA").

B. Parking Facilities

The CDD has funded and constructed parking facilities to be used by the Duval County School Board. The School Board parking has been constructed on a tract containing approximately 1.73 acres located in the northwest portion of the CDD adjacent to the existing Duval County School Board property located immediately to the west. This 1.73-acre tract was transferred to the School Board upon completion of construction of the parking lot in November 2021. The contractor's final cost of construction for this parking facility was \$982,181. As this parking facility tract is now owned by the Duval County School Board, a governmental entity, and provides a public benefit it will not be assessed in accordance with state law. Should this tract be converted to private ownership for development in the future it may be eligible for assessment at that time as this tract will be supported by and benefit from construction of the CIP

The Redevelopment Agreement requires construction of one hundred (100) public metered parking spaces for the marina and riverfront tracts. During construction these parking spaces will be temporarily located on the former off-street Duval County School Board parking lot referred to as the "Remainder Parcel" and depicted as Tract 5B on the Conceptual Development Use Plan (Exhibit "C"). The Developer will require the Tracts 1A,

2A, 4A, and 7A developers to each provide a minimum of 25 public metered off-street parking spaces within their respective surface parking lot(s) or structured parking facilities. This will result in a total of one hundred (100) permanent public metered parking spaces upon completion of construction on Tracts 1A, 2A, 4A, and 7A. As these permanent public metered parking spaces become available to the public, the temporary spaces on the "Remainder Parcel" will be eliminated. The costs for construction of the permanent public metered parking spaces will be privately funded and borne by the individual tract developers. Therefore, for purposes of the CDD CIP Cost Opinion, provided in Table 3, the Parking Facilities category does not include any cost for the one hundred (100) public metered parking spaces. Pursuant to the Redevelopment Agreement, and generally stated, the CDD or the respective tract owners will maintain the parking facilities, with standard enforcement to be conducted by the City.

C. Water and Sewer Utilities

The CDD's CIP includes potable water and sanitary sewer collection systems. The water and sewer utility systems have been designed in accordance with the applicable standards of each type of system. Potable water and sanitary sewer collection systems have been designed to the JEA, City and Florida Department of Environmental Protection ("FDEP") specifications.

The potable water lines will typically run within the rights-of-way of the roadways and at build out will provide a complete interconnected network of water lines. At build out the water lines will connect to the existing JEA connection point at the intersection of Broadcast Place and Reed Avenue. Fire hydrants will be installed according to COJ Fire Department Codes.

The sanitary sewer lines will consist of manholes and gravity PVC lines within the roadway rights-of-way. These will convey sewage flow to a new proposed Class II JEA owned and maintained lift station, located on the west side of Health Walk Way (near the proposed cul-de-sac), that will be constructed by the CDD. This new lift station will convey sewage to an existing manhole connecting to a 48-inch gravity sewer main near the intersection of Broadcast Place and Reed Avenue. The sewer main will direct the flow to a nearby existing JEA Pump Station on Utah Avenue. When constructed, the wastewater lines will provide service to all tracts within the CDD. There are no impact fee credits or similar credits associated with the construction of any of the utility improvements. Upon completion of the utilities, the CDD will convey them to the JEA for ownership, operation and maintenance. The District will not finance any laterals or utility lines on private property that are outside of public utility easements.

D. Earthwork Improvements

The CDD consists of near-flat terrain at low elevation. Earthwork will be required for construction activities associated with proposed grading, roadways, utilities, and stormwater control features, provided however that the CIP only includes those costs related to the CDD's roadway, utilities, and stormwater improvements – not for private development pads. There is a 2.5-foot clean soil cap over the entire property.

Contaminated soil is present beneath this soil cap. The cap may be modified to consist of asphalt pavement, concrete slabs, and/or building foundations. A Declaration of Restrictive Covenant ("**DRC**") requires approvals from the FDEP for disturbance of the cap and construction of stormwater controls or construction dewatering. Excavation below the cap is allowed provided the excavated soil is handled in accordance with Chapter 62-780 of the Florida Administrative Code ("**FAC**") and the DRC. The site is also subject to a Brownfield Site Rehabilitation Agreement ("**BSRA**"). Under the Interlocal Agreement authorized by the Redevelopment Agreement, the CDD will be responsible for groundwater monitoring for all of its own properties, as well as the City tracts.

E. Stormwater Management

The CDD stormwater management system will consist of inlets, pipes, swales, berms, and control structures. Existing stormwater features may not be modified without the prior approval of the FDEP and St. Johns River Water Management District ("**SJRWMD**") and new stormwater features will require approval. The stormwater management system will be designed in accordance with standards set by the City and the SJRWMD. A system of inlets, pipes, swales and berms will convey the runoff to the St. Johns River. Surface water permitting is required for the CDD through the City and SJRWMD and will require adherence to the SJRWMD's best management practices ("**BMP's**"). The City and SJRWMD's stormwater treatment requirements have been met via the purchase of stormwater mitigation credits from the City. The stormwater mitigation credits have been purchased from the City in lieu of constructing stormwater treatment facilities (i.e. – stormwater ponds or vaults) within the CDD and will provide a benefit to all improved lands within the CDD. The CIP's Stormwater Management category includes the stormwater credits that have been purchased by the CDD, in the amount of \$1,263,729, for the cost of mitigation for development of all lands within the CDD's current boundary.

The CDD will not use groundwater from the surficial aquifer, with the exception of groundwater recovery and treatment to address the known contaminant plume. Groundwater from the Floridan aquifer may be used for irrigational purposes only, but it is subject to approval by the FDEP, SJRWMD, and City. The CDD is subject to an active hydraulic control system ("**HCS**") that provides hydraulic containment of the groundwater contaminant plume. The CDD will own and operate the stormwater management system.

F. Landscaping and Irrigation

Landscaping and irrigation, to be owned and maintained by the CDD, are proposed within the public rights-of-way. Such ownership and maintenance will be established pursuant to a permit, easement or other approval from the City. The landscaping will consist of turf, shrub and tree plantings as well as a variety of plants and material. Landscaping may also incorporate hardscape that may include, but should not be limited to, walls and wall materials, stairs, shade structures and furniture. Landscaping that is owned and maintained by the CDD within the rights-of-way will be irrigated. This irrigation will be installed, owned, and maintained by the CDD.

G. Lighting and Underground Electric

Per Florida Statute Section 190.012(1)(d), the CDD shall have the ability to fund basic infrastructure improvements and community facilities including streetlights, alleys, landscaping, hardscaping, and the undergrounding of electric utility lines. As part of the CIP, the CDD will finance the undergrounding of electric utility lines by the placement of conduit. Lighting will be constructed in pedestrian and public parking areas and will be maintained by the CDD or by agreement with the JEA. Costs for conduit and lines to be used by private utilities such as electric, cable, gas and communication lines have not been included in the CIP for the CDD.

H. Pedestrian-only Promenade and Pocket Park

At the Downtown Development Review Board's ("DDRB's") May 13, 2021 meeting, the pedestrian-only promenade, referred to as Saunter Lane and located between RiversEdge Boulevard and the Prudential Drive extension, was relocated as a thirteen foot (13') wide multi-purpose path along the eastern side of Health Walk, from the Marshfront Park to RiversEdge Boulevard. This multi-purpose path is planned as a pedestrian walkway that will contain landscape and hardscape improvements. The cost associated with this multi-purpose path is included within the CIP's Public Roadways category. Additionally, a pocket park is planned to be constructed within the CDD. It is expected that this pocket park will be privately funded and constructed on a portion of one of the development tracts. Therefore, no cost associated with the pocket park is included within the CIP. It is expected that the multi-purpose path will be maintained by the District, available to the general public, and will be on land that is within the Health Walk right-of-way that will either be owned by the CDD or City. Although the CIP benefits the recreational amenities, such areas are not assessed pursuant to state law, as they are a common element for the benefit of the development and will be owned by a governmental entity. If the pocket park is constructed on a portion of one of the development tracts it may be subject to assessment.

I. Public Marina

The 125 slip public marina is a recreational amenity planned to consist of three anchored floating docks (Docks A, B, and C) and three fixed docks (Docks D, E, and F), as depicted on Exhibit "C" – Conceptual Development Use Plan. The largest dock (Dock C) will be centrally located along the CDD's frontage of the St. Johns River. Dock A, planned as part of the public marina and located west of the large central dock, is expected to contain a water taxi stop and transient boat docking facilities. The marina is also planned to include a beach kayak launch, located east of Dock F and accessible from the marsh boardwalk.

The water taxi stop, kayak launch, and transient boat docking facilities are CRA Project improvements required by the Redevelopment Agreement. The water taxi stop will be open to use by the general public. The water taxi service is currently privately operated under a franchise awarded by the City. In an abundance of caution, the Water Taxi Stop and costs associated with the Water Taxi's proportionate use of the common marina facilities, including but not limited to Dock A, while part of the CRA Project, will not be funded by the District's tax-exempt Bonds because the City will operate and maintain the

Water Taxi Stop under its own franchise agreement with a third party operator, which may or may not involve private interests.

The 125 slip public marina will be constructed, operated, and maintained by the CDD. The marina will include electric and water utilities, a fire protection system, and a marine pump-out system. A dockmaster building consisting of approximately 1,600 square feet that includes marina offices, restrooms, laundry, storage and communications facilities is planned as part of the marina. Aside from the \$2 million CRA Marina Horizontal Infrastructure Contribution included in Table 3 in Section 5, these public marina improvements will be constructed using the CDD's Marina Bond funds specifically issued for the marina improvements that will be separate from the Bond funds used for the balance of the CIP outlined in this 2023 Amended Engineer's Report. A District Engineer's Report for the 125 slip public marina will be issued under separate cover that will outline the capital improvement plan for the marina. Accordingly, the CIP outlined in this report allocates \$2 million in funding for the marina's horizontal infrastructure. Additionally, the water taxi stop, kayak launch, and transient boat docking facilities are identified in the CIP (Table 3 in Section 5) as part of the CRA Project. The public marina provides special benefits to the property within the District and to the District's residents, landowners, patrons, and Marina users because having access to such public docks will result in increased property values, as well as increased commercial, employment and residential growth in the area.

The District intends to obtain a submerged land lease from the Board of Trustees of the Internal Improvement Trust Fund for the water taxi stop, transient boat docking facilities, and marina areas located over State of Florida submerged lands. The District intends to obtain a perpetual easement from the Jacksonville Electric Authority for the kayak launch.

J. Buried Foundation Demolition

An abandoned buried concrete foundation, measuring approximately 100' wide, by 160' long, by 4' thick, was encountered on the property in the area of the relocated Broadcast Place right-of-way, north of the proposed roundabout. Demolition of this concrete foundation is required to allow for installation of the CIP utilities within the Broadcast Place right-of-way. The contractor's approved price proposal for this task is \$691,260.

K. Riverfront Bulkhead (CDD Portion)

The CRA Project includes the Riverfront Bulkhead (CRA Portion), which consists of construction of approximately 1,400 feet of new riverfront bulkhead and approximately 500 feet of new rip-rap riverfront embankment ("**CRA Bulkhead**"). Construction of the CRA Bulkhead is approximately 95 percent complete. To utilize the submerged lands contained within the existing concrete intake structure, formerly a part of the JEA Southside Generating Station, an estimated 270 feet of additional new riverfront bulkhead will be added as part of the CDD Project ("**CDD Bulkhead**"). Such additional CDD bulkhead will tie into the CRA Bulkhead and will be located on the river side of the eastern, western and northern portions of the intake structure to allow for it to be backfilled. Construction of the CDD Bulkhead, adjacent to the intake structure, will be a part of the CDD Project and will be funded by the CDD. The budget provided for this task, in Table 3 below, includes

additional costs anticipated to be incurred and funded by the CDD during construction of the CRA Project bulkhead.

L. Land Acquisition

The District has acquired and/or will acquire land as part of the CIP that is anticipated to include the rights-of-way for the CDD funded roadways (excluding land subject to the Land Swap Agreement that the District will use for the off-site extension of Prudential Drive to serve as the main entrance to the Development, which if conveyed to the District, will be conveyed at no cost), consisting of the Prudential Drive Extension, Broadcast Place Realignment, Back Bay Drive, and Health Walk, and the CDD Open Space areas, consisting of both uplands and submerged lands. In total, approximately 5.42 acres of land is planned to be acquired by the CDD, consisting of approximately 4.45 acres of public road rights-of-way and 0.97 acres of Open Space. CRA Project property is not included within these land acquisition figures.

M. CDD and CRA Work Product

This CIP category consists of professional and construction related services for the CDD Project and CRA Project. These services include, but are not limited to, surveying, geotechnical, environmental, land planning, civil engineering, landscape architecture, artist, legal and construction professional services associated with planning, design, and implementation of both the CDD Project and the CRA Project. The portion of these costs that may be financed by the District will be only costs for services associated with improvements that are financeable by the District.

4. Downtown Investment Authority Infrastructure Improvements (a/k/a CRA Project)

As noted above, the CDD will construct the CRA Project as part of the CIP. The original estimated cost of the CRA Project was approximately \$19.5 million, and, subject to the terms of the Redevelopment Agreement, DIA has agreed to fund up to \$23 million for the CRA Project. The District has reasonably included \$13.4 million for CRA Project overruns, as shown in the cost estimates presented herein. As with the CDD Project, the CRA Project as described below is required to be developed by the CDD under the Redevelopment Agreement, and applicable City development approvals, and will function as a system of improvements benefitting all lands within the CDD.

The CRA Project includes:

- **New Bulkhead** (CRA Portion) – Approximately 1,400 feet of new riverfront bulkhead and approximately 500 feet of new rip-rap riverfront embankment (i.e., the CRA Bulkhead).
- **Southbank Riverwalk** – A top of bank extension of the Southbank Riverwalk for a total of approximately 1,900 linear feet, to a minimum total width of twenty (20) feet as

follows: sixteen (16) feet of unobstructed new pathway and a minimum of four (4) feet of perimeter consisting of landscaping, furniture (i.e., benches), lighting, and trash receptacles. The extension shall be constructed with materials and furnishings (i.e., lighting, benches, shade structures, railing) matching the existing Southbank Riverwalk.

- **New Boardwalk** – Approximately 1,255 linear feet of New Boardwalk as follows: a minimum twelve (12) foot wide boardwalk through marsh on JEA owned land to connect the extension of the Southbank Riverwalk to an overland trail segment along the southern boundary of the Development. The boardwalk shall include platforms to accommodate furnishings (i.e., benches) as well as lighting.
- **Overland Trail** – Approximately 1,650 linear feet of new overland trail as follows: a minimum twelve (12) foot wide overland trail to connect new Boardwalk to the southwest corner of the Development.
- **City Parks** – The parks shall have approximately 820 linear feet of river frontage (length), and an average depth of 112 feet. Riverfront park shall include amenities (i.e., fitness equipment to enhance wellness theme), as well as Riverfront Activation Node elements and a pavilion/amphitheater.
- **Water Taxi Stop** – A new water taxi stop, new transient boat docking facilities and new kayak launch.
- **Prudential Drive Extension** – An extension of Prudential Drive with enhanced sidewalks, enhanced landscaping, bike lanes, and on-street parking. This extension is from the current terminus of Prudential Drive, located off-site to the west of the CDD boundary, to the proposed roundabout at the Prudential Drive/Broadcast Place intersection. This improvement includes the construction of the proposed roundabout at the Prudential Drive/Broadcast Place intersection.
- **Broadcast Place Extension** – An extension of Broadcast Place with enhanced sidewalks, enhanced landscaping, bike lanes, and on-street parking. This is from the proposed roundabout at the Prudential Drive/Broadcast Place intersection to the Broadcast Place northern terminus cul-de-sac and does not include construction of the northern terminus cul-de-sac.
- **RiversEdge Boulevard** – The construction of RiversEdge Boulevard, from Broadcast Place to its eastern terminus, with enhanced sidewalks, enhanced landscaping, and on-street parking.

The three CRA roadway segments (Prudential Drive Extension, Broadcast Place Extension, and RiversEdge Boulevard) will be constructed by the CDD and then upon completion, transferred to the City for ownership, operation and maintenance. Please see Exhibit "F" (Roadway Geometry Plan) which graphically depicts the CDD versus CRA roadways.

Pursuant to the agreements authorized under the Redevelopment Agreement, the CDD will maintain the four parks on the City tracts (i.e., the Central Riverfront Park, Northeastern Riverfront Park, Northwestern Riverfront Linear Park, and Marshfront Park), but will not be responsible for maintenance of the CRA's bulkhead or Riverwalk. As with the CDD-owned

parcs, any parks or other common areas included within the CRA Project are not assessed pursuant to state law, as they are common elements for the benefit of the Development (and are owned by governmental entities).

All components of the CIP are public improvements and will be open to the public, subject to City ordinances and/or District rules as appropriate. Further, all such improvements will be owned and operated by the District or another governmental entity (aside from the Water Taxi Stop) and will be located on property that is owned by the District or another governmental entity and/or placed on a perpetual easement that is held by the District or another governmental entity.

5. Community Development District Infrastructure Improvements

A. Summary of Opinion of Preliminary Probable Construction Costs

A summary of the opinion of preliminary probable construction costs (“**OPPCC**”) for the CIP is provided in Table 3. The CDD will finance the proposed infrastructure costs for the capital improvements noted below in part with the proceeds of its tax-exempt Bonds. The OPPCC has assumed fees for design and construction of the anticipated improvements.

Table 3: Summary of the Opinion of Preliminary Probable Construction Costs for Capital Improvements of The District Community Development District

Description	Costs Opinion
CDD Project Costs	
Public Roadways (Prudential Drive Extension, Broadcast Place Re-alignment, Health Walk, and Back Bay Drive) ⁽¹⁾	\$5,900,000
Parking Facilities (School Board Parking) ⁽²⁾	\$982,181
Potable Water	\$1,880,000
Sanitary Sewer	\$2,860,000
Earthwork Improvements ⁽³⁾	\$770,000
Stormwater Management ^{(3),(4)}	\$2,910,000
Landscaping and Irrigation	\$770,000
Lighting and Underground Electric	\$2,770,000
Pedestrian-only Promenade and Pocket Park ⁽⁵⁾	\$0
Buried Foundation Demolition	\$691,260

Riverfront Bulkhead (CDD Portion)	\$1,960,000
Land Acquisition ⁽⁶⁾	\$3,551,691
CDD and CRA Work Product	\$11,400,000
Deduction for Elimination of ARTEA Utility Improvements	(\$200,000)
Deduction for Estimated Sales Tax Savings	(\$200,000)
Total CDD Project	\$36,045,132
Optional CDD Project Costs	
CDD Marina Horizontal Infrastructure Contribution	\$2,000,000
City of Jacksonville CEI Contingency	\$350,000
General Contingency	\$1,000,000
Optional CDD Project Subtotal	\$3,350,000
Total CDD Project with Optional Items	\$39,395,132
CRA Project Costs⁽⁷⁾	
Riverfront Bulkhead (CRA Portion)	\$4,850,000
Southbank Riverwalk	\$3,320,000
New Boardwalk	\$2,330,000
Overland Trail	\$770,000
City Parks	\$16,730,000
Water Taxi Stop (Not included in CIP)	\$1,200,000
Kayak Launch	\$460,000
Prudential Drive Extension	\$1,480,000
Broadcast Place Extension	\$2,900,000
RiversEdge Boulevard	\$2,810,000
Deduction for Estimated City Tree Fund Credit	(\$450,000)
Total CRA Project	\$36,400,000
Total CDD and CRA Projects	\$75,795,132

Table 3 Footnotes:

- (1) All financed roadways and rights-of-way will be open for public use without restriction.
- (2) School Board public parking spaces.
- (3) Earthwork and grading on public property only.
- (4) Mitigation financed will not include any mitigation payments to non-governmental entities or mitigation work on private lands.
- (5) All financed roadways and rights-of-way will be open for public use without restriction. Costs for the Pedestrian-only Promenade are contained within the CIP’s Public Roadways category. Costs for the pocket park are anticipated to be privately funded.
- (6) CDD obtained an appraisal from Moody Williams Appraisal Group, dated December 14, 2020, for the land to be acquired by the CDD. The appraised value of the land, as documented in the appraisal, is \$5.59 million. Since the Developer’s cost basis value of the land (\$3,551,691) is less than the appraised value, the CDD will pay for the land based on the cost basis value.
- (7) All CDD Project and CRA Project improvements are public improvements and will be open for public use, subject to District rules and/or City ordinances as appropriate. In the event that CDD Project costs are lower than expected, excess bond proceeds may be used to fund more than the stated amount of the CRA Project costs (bearing in mind that certain costs may be reimbursed by DIA with monies being returned to the applicable acquisition and construction account).

B. Infrastructure Ownership and Maintenance

Table 4 summarizes the ownership and maintenance responsibilities anticipated for the design components listed in this report. As noted, the CDD will be responsible for construction of both the CDD Project and the CRA Project. Upon completion of construction and final certification, the infrastructure component will be turned over to the operation and maintenance entity. A summary of the ownership and maintenance of the proposed infrastructure is provided in Table 4 below.

Table 4: Infrastructure Ownership & Maintenance**

Infrastructure	Ownership	Maintenance*
The CDD Project		
Public Roadways and Dedicated Parking (CDD)	The District CDD or the City of Jacksonville if dedicated by CDD to the City	The District CDD or the City of Jacksonville if dedicated by CDD to the City
Parking (School Board Parking)	School Board	School Board
Potable Water	JEA	JEA
Sanitary Sewer	JEA	JEA

Earthwork Improvements	The District CDD	The District CDD
Stormwater Management	The District CDD	The District CDD
Landscaping and Irrigation	The District CDD	The District CDD
Lighting and Underground Electric	The District CDD	The District CDD
Pedestrian-only Promenade and Pocket Park	The District CDD	The District CDD
Public Marina	The District CDD	The District CDD
Bulkhead (CDD Portion)	The District CDD	The District CDD
The CRA Project		
Public Roadways (CRA)	The City of Jacksonville	The City of Jacksonville
Bulkhead (CRA Portion)	The City of Jacksonville	The City of Jacksonville
Riverwalk	The City of Jacksonville	The City of Jacksonville
Water Taxi Stop	The City of Jacksonville	The City of Jacksonville
City Parks (Central Riverfront Park, Northeastern Riverfront Park, Northwestern Riverfront Linear Park, and Marshfront Park)	The City of Jacksonville	The District CDD

*Pursuant to Section 6.6 of the RDA, the CDD may be selected to fund expenses for excess enforcement of parking regulations.

** Based on present expectations. Alternatively, the District may elect to enter into an agreement with the POA for the POA to maintain certain CDD improvements.

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

The opinion of probable construction cost estimates provided are reasonable to construct the required improvements and it is our professional opinion that the infrastructure improvements will serve as a system of improvements that benefit and add value to all lands within the CDD. The cost estimates are based on prices currently being experienced in the City of Jacksonville. Actual costs may vary depending on final engineering and approvals from regulatory agencies. It is further our opinion that there are no technical reasons known at this time that would prevent the implementation of the CIP, and that it is reasonable to assume that all necessary regulatory approvals will be obtained in due course.

Please note that the CIP as presented herein is based on current conceptual plans and market conditions which are subject to change. During development and implementation of the public infrastructure improvements as described for the CDD, it may be necessary to make modifications and/or deviations for the plans, and the CDD expressly reserves the right to do so.

6. Summary of Approvals

The following is a summary of approvals received, to date:

- The Downtown Investment Authority and Elements Development of Jacksonville, LLC entered into an Allocation of Development Rights Agreement, dated November 17, 2015. This Agreement assigned rights for development of up to 1,170 residential units, 200 hotel rooms, 288,500 square feet of commercial uses and 200,000 square feet of office uses within the CDD. These development rights were allocated in three separate phases (Phase I, Phase II, and Phase III). The Agreement specifies that the transportation mitigation requirements associated with the Phase I development rights have been satisfied. The DIA confirmed the Allocation of Development Rights Agreement on December 21, 2022 via Resolution 2022-12-05.
- A Site Rehabilitation Completion Order (“**SRCO**”) with conditions was provided for the Site by the FDEP on August 17, 2017. The SRCO stated that JEA had met the rehabilitation requirements for soil on the site based on the presence of a clean soil cap. The SRCO indicated that groundwater rehabilitation had been completed on the eastern portion of the property and that a groundwater contaminant plume on the western portion of the property is subject to a hydraulic containment system.
- The City of Jacksonville, The Downtown Investment Authority, and Elements Development of Jacksonville, LLC, entered into a Redevelopment Agreement (via Ordinance No. 2018-313-E) that was approved on June 12, 2018 and subsequently amended on May 4, 2021 and approved for amendment and restatement by the City of Jacksonville City Council on October 10, 2023.
- The U.S. Army Corps of Engineers (“**USACOE**”) issued permit number SAJ-2003-01425 for the construction of 1,034 linear feet of new bulkhead along the CDD's frontage of the St. Johns River.
- The SJRWMD issued Environmental Resource permit number 165883-1 on February 1, 2021 for construction of the retaining wall and bulkhead replacement along the St. Johns River.
- The SJRWMD issued a Minor Modification to Environmental Resource Permit number 165883-1 on September 24, 2021 allowing for the construction of rip-rap revetment in place of new retaining wall or bulkhead along the eastern portion of the CDD's property frontage along the St. Johns River.
- The FDEP issued approval for the bulkhead contractor's Notice of Intent to use the Generic Permit for Stormwater Discharge from Large and Small Construction Activities (NOI) on July 14, 2021.
- The JEA issued Groundwater Discharge Permit Number 2022 on February 10, 2022 for dewatering activities along the new riverfront retaining wall and bulkhead. The permit was modified on July 27, 2022 and expires on January 31, 2023.
- The City of Jacksonville issued 10-set Construction Plan approval on October 25, 2019 for construction of the School Board parking lot and the extension of Prudential Drive across the School Board property to the District's western property boundary.

- The SJRWMD issued Environmental Resource permit number 18269-22 on November 18, 2020 for construction of the School Board parking lot and the extension of Prudential Drive across the School Board property to the District's western property boundary.
- The City of Jacksonville issued Site Work – Tree Removal Permit Application L-21-405004.000 in May 2021 for construction of the School Board parking lot.
- The Duval County Public Schools Office of Building Code Enforcement issued Permit Number 3001081221.00S on August 12, 2021 for installation of the sleeve pipe and for connection of the irrigation system within the School Board parking lot to the irrigation controller located within the existing School Board building.
- The City of Jacksonville issued Electrical Permit Number E-21-408038.000 on May 19, 2021 for installation of the lighting within the School Board parking lot.
- The FDEP issued approval for the School Board parking lot contractor's Notice of Intent to use the Generic Permit for Stormwater Discharge from Large and Small Construction Activities (NOI) on April 1, 2021.
- The JEA issued Groundwater Discharge Permit #2021 on May 12, 2021 for dewatering activities on the School Board parking lot site.
- City of Jacksonville stormwater mitigation credits in the total amount of \$1,263,729 have been purchased by the CDD.
- The City of Jacksonville issued 10-set Construction Plan approval on January 10, 2022 for construction of the CIP Roadway, Utility, Hardscape, Planting and Irrigation Plans.
- The FDEP issued General Permit Number 0159044-960-DGSP on February 10, 2022 for construction of the CIP's potable water system.
- The SJRWMD issued Individual Permit Number 165883-4 on December 22, 2021 for construction of the marsh boardwalk
- Wetland Mitigation credits were purchased by the CDD in the total amount of \$15,200.00 from the Weyerhaeuser NR Company mitigation bank to mitigate for the marsh boardwalk's wetland impacts.
- The FDEP issued General Permit Number 0010400-663-DWC on February 17, 2022 for construction of the CIP's Domestic Wastewater Collection/Transmission system.
- The SJRWMD issued Individual Permit Number 165883-2 on March 1, 2022 for construction of the CIP's stormwater management system.
- The JEA Electrical Main design was approved on October 13th, 2022 for the RiversEdge – Phase 3 project.
- The City of Jacksonville issued Site Work – Tree Removal Permit Application L-22-484229.000 on March 2022 for construction of the RiversEdge Phase 3 project.
- The FDEP issued (Facility ID: FLR20EY07-001) approval for the RiversEdge – Phase 3 Contractor's Notice of Intent to use the Generic Permit for Stormwater Discharge from Large and Small Construction Activities (NOI) on November 12, 2021.

- The City of Jacksonville issued 10-set Construction Plan approval on July 13, 2023 for construction of the Parks and Riverwalk Plans.

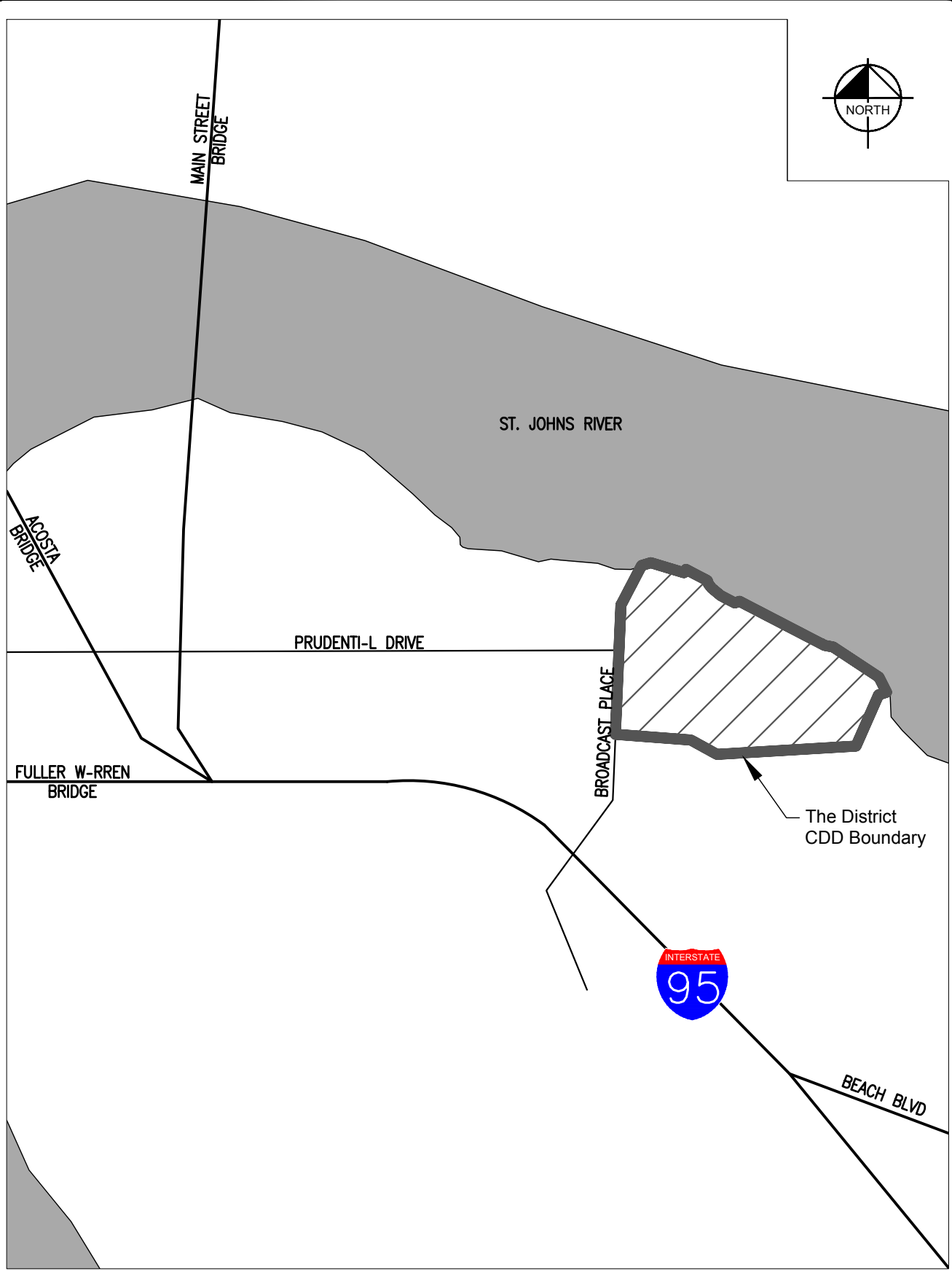
The following is a summary of anticipated approvals required, but not yet obtained, for development of the CDD CIP projects:

- JEA water and sewer utility approvals for the Riverwalk extension and City parks
- City of Jacksonville Electrical Permit approvals
- National Pollutant Discharge Elimination System (“**NPDES**”) Notice of Commencement (“**NOC**”)
- Submerged Land Lease approval for the public marina from the Board of Trustees of the Internal Improvement Trust Fund
- SJRWMD public marina permit approval
- USACOE public marina permit approval

EXHIBIT A

Vicinity Map

Drawing name: K:\JAX_Environmental\Elements\CAD\Location Map and Legal.dwg Vicinity Map Jul 13, 2018 8:34am by: Paloma.Mendoza



THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FLORIDA



VICINITY MAP

EXHIBIT B

Community Development District Boundary Map



LEGEND

- COMMUNITY DEVELOPMENT DISTRICT BOUNDARY
- COMMUNITY DEVELOPMENT DISTRICT AREA

**THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FL BOUNDARY MAP**



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 12740 GRAN BAY PARKWAY WEST, SUITE 2350
 JACKSONVILLE, FLORIDA 32258
 PHONE: 904-828-3900
 WWW.KIMLEY-HORN.COM CA 0000696

Drawing name: K:\AEC\Environment\Urban\LCD\2018-01-25- Conceptual Development Planning BOUNDARY Jan 25, 2018 12:40pm by: Kimmie-McCord

EXHIBIT C

Conceptual Development Use Plan / Site Plan

LAND USE LEGEND

- RESIDENTIAL
- MIXED USE RETAIL, RESIDENTIAL
- MIXED USE RETAIL, HOTEL, RESIDENTIAL AND/OR OFFICE
- RIVERFRONT RESTAURANTS
- POTENTIAL FUTURE CDD EXPANSION AREAS

SUMMARY OF LAND USE TABLE

TRACT	ACREAGE
1A	2.93
2A	2.23
3A	1.40
4A	3.64
5A	0.49
5B	1.30
6A	0.61
7A	1.62
9A	1.77
9B	1.35
9C	0.09
12	0.30
PARKS, RIVERWALK & OVERLAND TRAIL	4.52
OPEN SPACE (CDD)	0.97
RIVERFRONT RESTAURANTS	0.79
SCHOOL BOARD PARKING TRACT	1.73
ROAD RIGHT-OF-WAY	8.07
R.O.W. TO BE VACATED	0.20
PRUDENTIAL DRIVE EXTENSION	0.38
ELEMENTS OWNED	0.14
TOTAL ACREAGE	34.53



EXHIBIT D
JEA Water and Sewer Availability Letter
Dated January 30, 2022



Availability Letter

Grace Ergle

1/30/2022

Kimley Horn

12740 Gran Bay Parkway West Suite 2350

Jacksonville, Florida 32258

Project Name: The District

Availability #: 2020-3443

Attn: Grace Ergle

Thank you for your inquiry regarding the availability of Chilled Water, Electric, Reclaim, Sewer, Water. The above referenced number in this letter will be the number JEA uses to track your project. Please reference this number when making inquiries and submitting related documents. This availability letter will expire two years from the date above.

Point of Connection:

A summary of connection points for requested services are identified on the following page. JEA recognizes Connection Point #1 as the primary point of connection (POC); however, a secondary, conditional POC will be listed if available. JEA assumes no responsibility for the inaccuracy of any service connection portrayed on a JEA utility system record drawing. JEA requires field verification in the form of a Level A SUE of all POCs prior to any plan approval to ensure connection availability. Please note the Special Conditions stated in each section contain pertinent information and additional requirements as well as further instructions. In the event the point of connection is located within a JEA easement located on private property not owned by applicant, applicant shall be responsible to obtain a temporary construction easement (TCE) from the third party owner providing applicant with the right to construct the utilities. **The TCE will need to be provided by JEA prior to setting up a pre-construction meeting.**

Main Extensions and/or Offsite Improvements:

For all utilities located in the public Right of Way or JEA easement, the new WS&R utilities shall be dedicated to JEA upon completion and final inspection, unless otherwise noted. **It shall be the applicant's responsibility to engage the services of a professional engineer, licensed in the State of Florida.** All WS&R construction shall conform to current JEA Water, Sewer & Reuse Design Guidelines which may be found at:

https://www.jea.com/engineering_and_construction/water_and_wastewater_development/reference_materials/

Reservation of Capacity:

This availability response does not represent JEA's commitment for or reservation of WS&R capacity. In accordance with JEA's policies and procedures, commitment to serve is made only upon JEA's approval of your application for service and receipt of your payment of all applicable fees.

A detailed overview of the process can be found at JEA.com. This document along with other important forms and submittal processes can be found at

Sincerely,

Susan West
westsr@jea.com
(904) 665-7980

Availability Number: 2020-3443

Request Received On: 1/27/2022

Availability Response: 1/30/2022

Prepared by: Susan West

Expiration Date: 01/30/2024

Project Information

Name: The District

Address: 801 BROADCAST PL, JACKSONVILLE, FL 32207

County: Duval County

Type: Chilled Water,Electric,Reclaim,Sewer,Water

Requested Flow: 416770

Parcel Number: 080096 0020

Location: Intersection of Prudential Drive and Broadcast Place, JEA southside generating site

Description: Redevelopment of SSGS property into a mixed use project.

Potable Water Connection

Water Treatment Grid: South Grid

Connection Point #1: Existing 20" water main stub in the intersection of Broadcast Pl. and Reed Ave.

Connection Point #2:

Water Special Conditions: Connection point not reviewed for site fire protection requirements. Private fire protection analysis is required.

Sewer Connection

Sewer Grid: Buckman

Connection Point #1: Existing manhole on 48" gravity sewer main near the intersection of Broadcast Pl. and Reed Ave.

Connection Point #2:

If gravity flow cannot be achieved, connection to the JEA-owned sewer system for your project will require the design and construction of an onsite, JEA owned and maintained pump station, and a JEA dedicated force main (min. 4" dia.). Any food service establishment or

Sewer Special Conditions: commercial/institutional kitchen that is connected to the JEA sewer system is required to participate in the FOG program. Please contact 665-7404 for additional information. Industrial

effluent and/or process water may require pretreatment prior to discharge to JEA facilities.
Please coordinate with JEA Industrial Pretreatment at 904-665-5326 or ip@jea.com.

**Reclaimed Water
Connection**

Reclaim Grid: N/A

Connection Point #1:

Connection Point #2:

Reclaim Special Conditions:

Electric Availability:

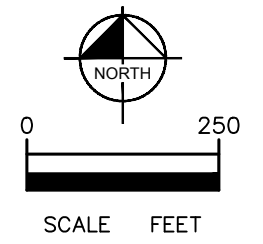
Electric Special Conditions: The subject property lies within the geographic area legally served by JEA. JEA will provide electric service as per JEA's most current Rules and Regulations.

Point of connection location(s) to be field verified by developer during project design. If needed,
General Conditions: a development meeting may be scheduled prior to submitting a plan set through the SagesGov portal. Copies of reference drawings may also be requested using the SagesGov portal.






**Subsequent steps you need
to take to get service:**

EXHIBIT E

Off-Site Utility Tie-In



LEGEND

-  COMMUNITY DEVELOPMENT DISTRICT BOUNDARY
-  JEA, WATER MAIN DISTRIBUTION
-  JEA, SEWER MAIN TRUNK
-  POTABLE WATER MAIN STUB
-  SANITARY MANHOLE

POTABLE WATER MAIN STUB
PRIMARY CONNECTION POINT

SANITARY MANHOLE
PRIMARY CONNECTION POINT

48" DUCTILE IRON PIPE
GRAVITY SANITARY SEWER

SANITARY SEWER FACILITY

50' PROPOSED UTILITY
EASEMENT

UNDERGROUND ELECTRIC LINE
(AS MARKED BY JEA)

20" DUCTILE IRON PIPE

TO POTABLE WATER FACILITY

PLEASE NOTE: WATER AND SEWER SERVICE CONNECTION POINTS PROVIDED BY THE JEA AVAILABILITY LETTER# 2020-3443

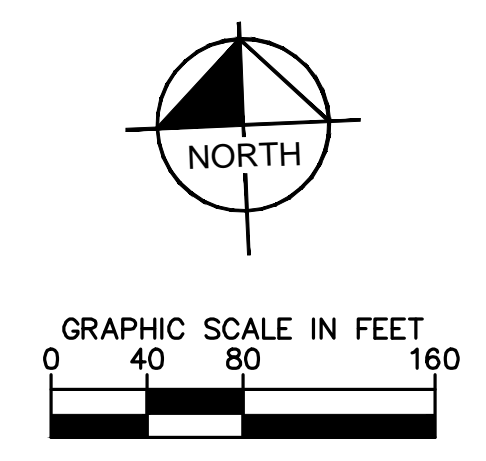
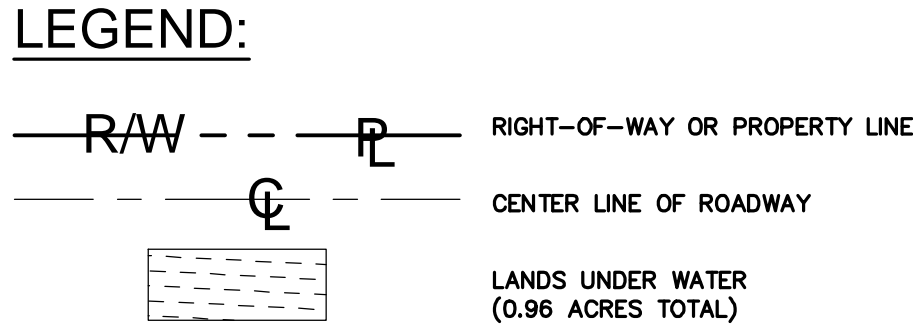
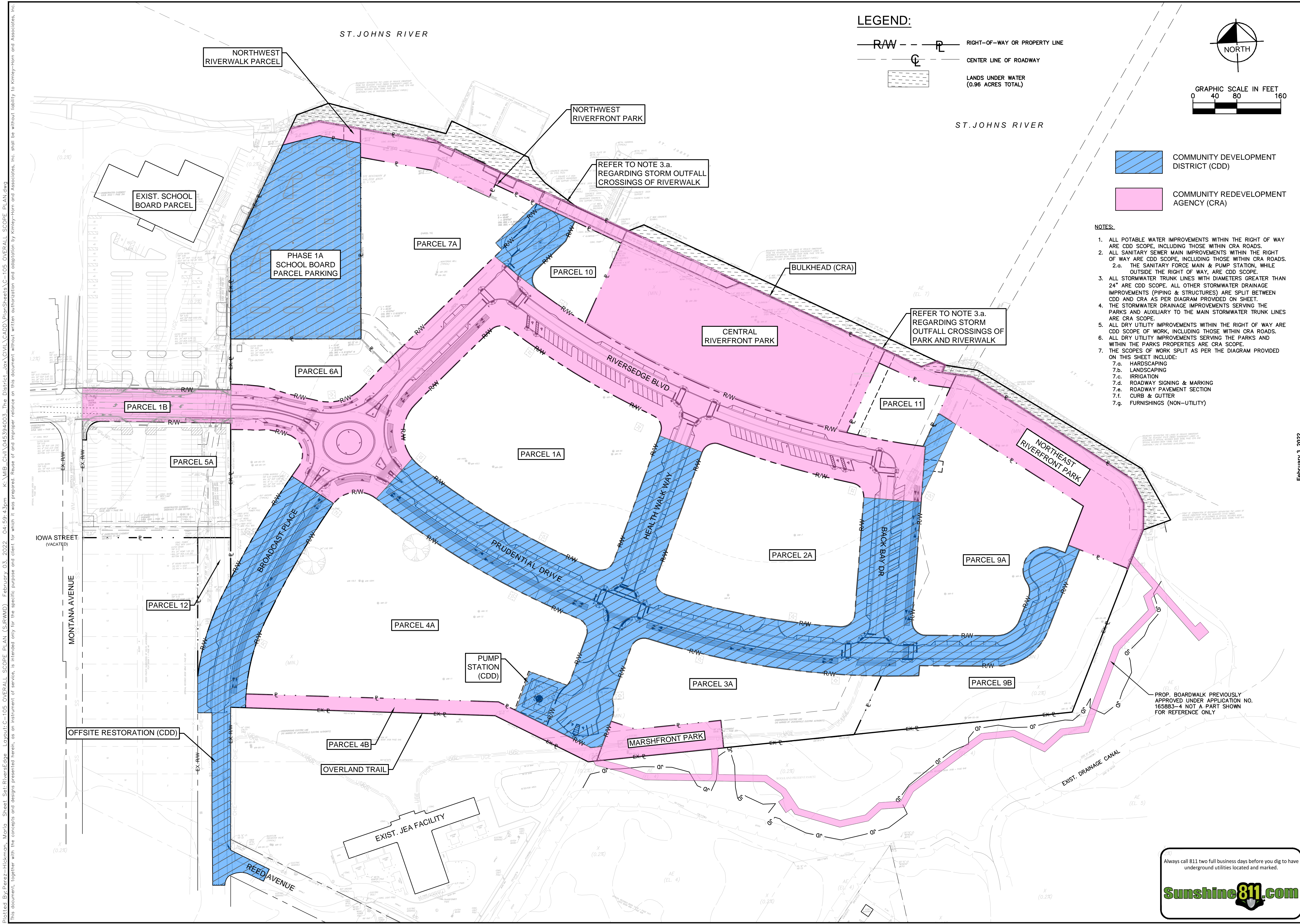


THE DISTRICT - OFF-SITE UTILITY TIE-IN
JACKSONVILLE, FL

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12740 GRAN BAY PARKWAY WEST, SUITE 2350
JACKSONVILLE, FLORIDA 32258
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EXHIBIT F

Roadway Geometry Plan



- [Blue Hatched Box] COMMUNITY DEVELOPMENT DISTRICT (CDD)
- [Pink Hatched Box] COMMUNITY REDEVELOPMENT AGENCY (CRA)

- NOTES:**
- ALL POTABLE WATER IMPROVEMENTS WITHIN THE RIGHT OF WAY ARE CDD SCOPE, INCLUDING THOSE WITHIN CRA ROADS.
 - ALL SANITARY SEWER MAIN IMPROVEMENTS WITHIN THE RIGHT OF WAY ARE CDD SCOPE, INCLUDING THOSE WITHIN CRA ROADS. 2.a. THE SANITARY FORCE MAIN & PUMP STATION, WHILE OUTSIDE THE RIGHT OF WAY, ARE CDD SCOPE.
 - ALL STORMWATER TRUNK LINES WITH DIAMETERS GREATER THAN 24" ARE CDD SCOPE. ALL OTHER STORMWATER DRAINAGE IMPROVEMENTS (PIPING & STRUCTURES) ARE SPLIT BETWEEN CDD AND CRA AS PER DIAGRAM PROVIDED ON SHEET.
 - THE STORMWATER DRAINAGE IMPROVEMENTS SERVING THE PARKS AND AUXILIARY TO THE MAIN STORMWATER TRUNK LINES ARE CRA SCOPE.
 - ALL DRY UTILITY IMPROVEMENTS WITHIN THE RIGHT OF WAY ARE CDD SCOPE OF WORK, INCLUDING THOSE WITHIN CRA ROADS.
 - ALL DRY UTILITY IMPROVEMENTS SERVING THE PARKS AND WITHIN THE PARKS PROPERTIES ARE CRA SCOPE.
 - THE SCOPES OF WORK SPLIT AS PER THE DIAGRAM PROVIDED ON THIS SHEET INCLUDE:
 - HARDSCAPING
 - LANDSCAPING
 - IRRIGATION
 - ROADWAY SIGNING & MARKING
 - ROADWAY PAVEMENT SECTION
 - CURB & GUTTER
 - FURNISHINGS (NON-UTILITY)

Plotted By: Perez-Hickmon, Mario. Sheet Set: RiversEdge - Layout: C-105 OVERALL SCOPE PLAN (SIRWMD) February 03, 2022 04:59:43pm K:\MIB_CIVIL\045394003-The District Jobs\CIVIL\CADD\PlanSheets\C-105 OVERALL SCOPE PLAN.dwg
 This document, together with the concepts and designs presented herein, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

REVISIONS PER SIRWMD COMMENTS & COORD.	NO.	REVISIONS	DATE	BY

Kimley & Horn
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February 3, 2022

AARON EDWARD BUCHLER, P.E.
 LICENSE NO. 54606
 STATE OF FLORIDA
 PROFESSIONAL ENGINEER

LICENSED PROFESSIONAL
AARON E. BUCHLER, P.E.
 FL LICENSE NUMBER 54606

KVA PROJECT 045394003
 DATE 12/22/2021
 SCALE: AS SHOWN
 DESIGNED BY: JUL
 DRAWN BY: JUL
 CHECKED BY: AB

OVERALL SCOPE PLAN
RIVERSEDGE
 CITY OF JACKSONVILLE, FLORIDA

SHEET NUMBER
C-105

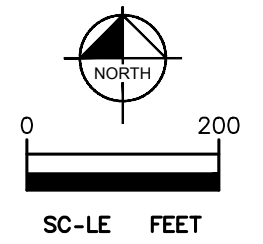
Always call 811 two full business days before you dig to have underground utilities located and marked.

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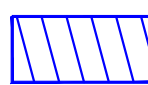
This item has been digitally signed and sealed by Aaron E. Buchler, P.E. on the date adjacent to the seal. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.

EXHIBIT G

Off-Site Roadway Improvement Area



LEGEND

-  COMMUNITY DEVELOPMENT DISTRICT BOUNDARY
-  OFF-SITE ROADWAY IMPROVEMENT AREA

THE DISTRICT - OFF-SITE ROADWAY IMPROVEMENT AREA
JACKSONVILLE, FL



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THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

8

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

Final 2023 Supplemental Special Assessment
Methodology Report

For the Grant Revenue and Special Assessment Refunding
and Improvement Bonds, Series 2023A-1 Bonds
and
for the Grant Revenue and Special Assessment Refunding
and Improvement Convertible Capital Appreciation Bonds,
Series 2023A-2 Bonds

November 14, 2023



Provided by:

Wrathell, Hunt and Associates, LLC
2300 Glades Road, Suite 410W
Boca Raton, FL 33431
Phone: 561-571-0010
Fax: 561-571-0013
Website: www.whhassociates.com

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1.0 Introduction

The District Community Development District (the “District”) is a +/- 32.21-acre community development district located in the City of Jacksonville (the “City”), Duval County, Florida. The District was established by Ordinance No. 2018-563-E adopted by the City Council of the City and effective on October 24, 2018.

The updated public infrastructure improvements planned for the District (as revised, the “Project”) are described in the Amended and Restated District Engineer’s Report dated November 14, 2023 (the “2023 Amended Engineer’s Report”). The 2023 Amended Engineer’s Report amends and restates the Original Engineer’s Report (defined below) and has been prepared to update and revise the Project and its cost estimates from those initially identified in the District Engineer’s Report originally issued February 25, 2019, as amended on December 18, 2020 (the “2020 Engineer’s Report”), amended and restated on March 21, 2022 (the “2022 Engineer’s Report”), and amended and restated on November 28, 2022 (the “Amended Engineer’s Report” and collectively with the 2020 Engineer’s Report and the 2022 Engineer’s Report, the “Original Engineer’s Report”). Portions of the Project have already been funded with proceeds of the Grant Revenue and Special Assessment Bonds, Series 2020 (the “Series 2020 Bonds”) and Grant Revenue and Special Assessment Bonds, Series 2022 (the “Series 2022 Bonds” and together with the Series 2020 Bonds the “Prior Bonds”), while other portions are subject to the DIA Funding Obligation¹ by the City’s Downtown Investment Authority (the “DIA”) in an amount not exceeding \$23,000,000.

1.1 Purpose

The District previously adopted that certain Supplemental Special Assessment Methodology Report dated December 14, 2020² (the “Original Master Report”) as supplemented by the 2022 Supplemental Special Assessment Methodology Report dated March 21, 2022 (the “2022 Report” and together with the Original Master Report, the “Prior Assessment Report”), as well as Amended and Restated Master Special Assessment Methodology Report dated November 28, 2022 (the “Amended and Restated Master Report”). The Original Master Report both established a master assessment methodology and applied such methodology to the details of the 2020 Bonds to allocate debt assessments (“Series 2020 Bond Assessments”) to properties within the District to secure

¹ Capitalized terms not otherwise defined herein shall have the same meaning as provided in the Prior Assessment Report (as defined herein).

² Note, prior to the Original Master Report, the District adopted that certain Master Special Assessment Methodology Report for the Issuance of Grant Revenue and Special Assessment Bonds adopted May 20, 2019, which was revised and replaced by the Original Master Report.

repayment of the Series 2020 Bonds. The 2022 Report applied the Original Master Report assessment methodology to the details of the Series 2022 Bonds allocating debt assessments (“Series 2022 Bond Assessments”) to the properties within the District to secure repayment of the Series 2022 Bonds. The Amended and Restated Master Report amended and restated the Original Master Report in full, and provided revisions reflecting changes to the development plan, financing plan, and the master special assessment methodology.

This Final 2023 Supplemental Special Assessment Methodology Report for the Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 Bonds and for the Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 Bonds (the “2023 Supplemental Report”) was developed to supplement the Amended and Restated Master Report as related to the refunding of all outstanding Prior Bonds and providing additional new funding for the remaining costs of the Project not otherwise funded by the Prior Bonds, the DIA Funding Obligation, or funded by the Developer (as defined further herein). This 2023 Supplemental Report allocates the debt associated with refunding the Prior Bonds and providing funding for additional Project costs based on the special benefits received from the public infrastructure improvements that comprise said Project. This 2023 Supplemental Report is designed to conform to the requirements of Chapter 170 and 190, Florida Statutes, with respect to special assessments and is consistent with our understanding of case law on this subject.

1.2 Scope of the 2023 Supplemental Report

This 2023 Supplemental Report presents the projections for refunding the Prior Bonds and providing funds for additional Project costs as described in the 2023 Amended Engineer’s Report and describes the method for the allocation of special benefits and the apportionment of special assessments resulting from the provision and funding of a portion of the Project.

1.3 Special Benefits and General Benefits

Public infrastructure improvements undertaken and funded by the District as part of the Project create special benefits and peculiar benefits, different in kind and degree than general benefits for properties within the District, as well as general benefits to the areas outside of the District, and to the public at large. However, these general benefits are incidental in nature and are readily

distinguishable from the special benefits which accrue to peculiar properties within the District, as the improvements comprising the Project enable properties within the District to be developed.

There is no doubt that the general public and property owners outside of the District will benefit from the provision of the Project. However, these benefits are only incidental since the Project is designed to provide special benefits peculiar to the properties within the District, including but not limited to allowing the development of property therein. Properties within the District are directly served by the Project and depend upon the improvements comprising the Project to satisfy the requirements of their development entitlements. This fact alone clearly demonstrates the special benefits received by the properties within the District.

The public infrastructure improvements that comprise the Project will provide the public infrastructure improvements necessary to make the lands within the District developable and saleable. The installation of such improvements will cause the value of the developable and saleable lands within the District to increase by more than the sum of the financed costs of the individual components of the Project. Even though the exact value of the special benefits provided by the Project is hard to estimate at this point, it is nevertheless greater than the costs associated with providing the same.

1.4 Requirements of a Valid Assessment Methodology

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

- 1) First, the properties assessed must derive a special benefit from the improvement/service provided.
- 2) Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.

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 received by the properties within the District from the Project are greater than the costs associated with providing these benefits. As set forth in the 2023 Amended Engineer's Report, the District Engineer estimates that public infrastructure

improvements that comprise the Project and which are necessary to support full development of property within the District will have a total cost of approximately \$75,795,132. The author of this 2023 Supplemental Report reasonably believes that even though the exact value of the special benefits provided by the Project is hard to estimate at this point, it is nevertheless greater than the costs associated with providing the same, including financing cost, as without the public infrastructure improvements that comprise the Project, the properties within the District would not be able to be fully developed and occupied by future residential and non-residential property owners of the community.

1.6 Organization of the 2023 Supplemental Report

Section Two describes the development program for the District as proposed by the Developer, as defined in Section 2 below.

Section Three provides a summary of the public infrastructure improvements that comprise the Project as set forth in the 2023 Amended Engineer's Report.

Section Four sets forth the current financing program for the District.

Section Five sets out the special assessment methodology for the "Series 2023A-1 Bonds" to be defined further herein) and the "Series 2023A-2 Bonds" (to be defined further herein and together with the Series 2023A-1 Bonds the "Series 2023A Bonds").

2.0 Development Program

2.1 Overview

The District serves the Rivers Edge development and is designed as a master-planned mixed-use development located in the City of Jacksonville, Duval County, Florida. The District is generally located on the south bank of the St. Johns River, east of Broadcast Place in the area known as the "Southbank District", directly across from Downtown Jacksonville. The District's boundaries currently consist of approximately 32.21 +/- acres (the "District Lands"); however, the District currently anticipates petitioning the City to add up to an additional 1.94 +/- acres (the "Expansion Property") to the District.

2.2 The Development Program

Land development in the District is expected to continue to be conducted by Elements Development of Jacksonville, LLC and/or its affiliates (the “Developer”), along with third party developers acquiring property from the Developer. Since the adoption of the Original Engineer’s Report and Prior Assessment Report, the development plan for the land within the current District boundaries has been revised. Based upon the most current information provided by the Developer, the current development plan for the District’s existing boundaries envisions a total of 1,170 residential dwelling units, 200 hotel rooms, 121,400 square feet of retail and 200,000 square feet of office uses, although land use types and unit numbers may change throughout the development period.

In the first half of 2024, it is anticipated that the Developer will close on the sale of two parcels (Tracts 3A and 9B) within the District Lands totaling approximately +/- 2.75 acres (“Series 2023A-1 Assessment Area”) with entitlements for 40 townhome units to Toll Brothers.

In addition, as discussed in the Amended and Restated Master Report, the Developer anticipates the following changes may occur in the near future affecting the District’s development plan: (1) the District may petition the City to incorporate into the District the Expansion Property (as defined in the Amended and Restated Master Report); and/or, (2) the School Board Parking Tract Conversion (as defined in the Amended and Restated Master Report). If both the incorporation of the Expansion Property into the District and the School Board Parking Tract Conversion were successful, the development plan for the land within the expanded District would include additional assessable lands to which the Developer would allocate its development plan entitlements and to which the District would allocate its Series 2023A Assessments. If either occurs, any additional Districts lands would be added to the Series 2023A-2 Assessment Area and the District may elect to reallocate the Series 2023A-2 Assessments consistent with this 2023 Supplemental Report. Table 1 in the *Appendix* illustrates the revised development plan for the District as discussed above.

Please note that, pursuant to the Redevelopment Agreement, the Development is additionally required to include a marina. The Developer’s plan for such envisions the development of a 125-slip public marina (“Marina”) constructed, operated, and maintained by the District for the benefit of the District’s residents, landowners, patrons, and Marina users. The Marina will be anchored on the District’s upland parcels (“Upland Parcels”) bordering the St. Johns

River, with its docks and marina slips extending out from such Upland Parcels over the adjacent river body and sovereign submerged lands located thereunder. The Upland Parcels, dockmaster building, utility service connections, and landward access to all Marina facilities (including the docks and marina slips) will be located within the District's boundaries, while the docks and marina slips extending over the water are outside the District's current boundaries. In order to fund a portion of the costs of the Marina, aside from the from the \$2,000,000 CDD Marina Horizontal Infrastructure Contribution which is included as part of the CDD Project (as defined further herein), the District issued Bond Anticipation Notes, Series 2022 (Taxable) (Public Marina Project) in the principal amount not to exceed \$5,000,0000 (the "Marina Bond Anticipation Notes"), and anticipates issuing additional Marina Revenue Bonds in the future.

As owner of the Upland Parcels, the District has the riparian right to access and use the St. Johns River, as well as construct the Marina reaching from the Upland Parcels to navigable water, when not objected to by the State of Florida ("State"). Therefore, the District intends to obtain a submerged land lease from the Board of Trustees of the Internal Improvement Trust Fund of the State for the portions of the Marina located over the State's sovereignty submerged land.

3.0 Project

3.1 Overview

The Project as described in the 2023 Amended Engineer's Report (referred to therein as the Capital Improvement Plan or CIP) includes (1) the CDD Project (as defined in the 2023 Amended Engineer's Report); and (2) the CRA Project (as defined in the 2023 Amended Engineer's Report). As indicated in the 2023 Amended Engineer's Report, the cost of the Project will be funded in part by the District with proceeds of the Series 2023A Bonds. The Series 2023A Bonds will fully refund the Prior Bonds and finance the increased costs of the Project. Additionally, the costs of the CRA Project will be funded in part by the DIA through a \$23,000,000 DIA Funding Obligation. Under the RDA, all cost overruns for the CRA Project in excess of the DIA Funding Obligation are the responsibility of the CDD and Developer. Pursuant to a completion agreement, the Developer will covenant to complete any non-optional portions of the Project to the extent such are not funded with the net proceeds of the Series 2023A Bonds or DIA Funding Obligation.

3.2 The CDD Project and the CRA Project

The public infrastructure improvements that are part of the Project include improvements that were defined in the RDA. Both projects comprising the Project are included public infrastructure improvements that are necessary for the development of the properties in the District.

The CDD Project includes, *inter alia*, public roadways, parking facilities, potable water, sanitary sewer, earthwork improvements, stormwater management, landscaping and irrigation, lighting and underground electric, demolition of existing buried foundations, and riverfront bulkhead, the revised costs of which, along with land acquisition, professional costs, and contingencies and after accounting for certain deductions, such as due to estimated savings of sales taxes have been estimated by the District Engineer in his 2023 Amended Engineer's Report at \$39,395,132. The CRA Project includes, *inter alia*, riverfront bulkhead, boardwalks (including an extension of the City's Riverwalk), trails, City parks, a Water Taxi stop, a kayak launch, and extensions of three existing public roadway segments, the revised costs of which have been estimated by the District Engineer in his 2023 Amended Engineer's Report at \$36,400,000, bringing the total revised costs of the Project to the sum of \$75,795,132. Please note that while the Water Taxi stop is part of the CRA Project and part of the Project, due to it being privately operated under a franchise awarded by the City, it was not and will not be funded by the District with proceeds of any tax-exempt bonds, such as the Series 2023A Bonds.

The public infrastructure improvements that are part of the Project are planned, designed, and will be permitted to function as one interrelated and integrated system of improvements benefiting all properties in the District. Table 2 in the *Appendix* presents the components of the CDD Project and the CRA Project as outlined by the District Engineer in the 2023 Amended Engineer's Report.

4.0 Financing Program

4.1 Overview

As noted above, the District has already embarked on a program of financing a portion of the costs of the Project with proceeds of the Prior Bonds. The Series 2020 Bonds generated approximately \$27,836,923.33 in construction proceeds while the Series 2022 Bonds generated approximately \$6,899,706.87 in construction

proceeds for a total of approximately \$34,736,630.20 to be used to finance the Project, thereby leaving approximately \$18,058,501.80 (\$75,795,132 in total Project costs less \$34,736,630.20 financed with proceeds of the Prior Bonds and less \$23,000,000 in DIA Funding Obligation) to be funded by a combination of Series 2023A Bonds issued by the District and, if needed, funds contributed by the Developer. As costs of the Water Taxi stop, estimated by the District Engineer at \$1,200,000, is not expected to be funded by the District with proceeds of tax-exempt bonds but instead are projected to be funded through the DIA Funding Obligation or by the Developer and contributed to the City at no cost, the District envisions the use of existing funds held in trust accounts associated with the Prior Bonds in the combined amount of approximately \$8,850,539.63, issuance of the Series 2023A Bonds in the principal amount of \$58,677,267.10 and utilization of a Developer contribution in the amount of \$283,271.49 to fund the unfunded Project costs in the estimated amount of \$18,058,501.80 and fund the costs of redemption of the Prior Bonds in the estimated aggregate amount of \$44,775,557.92.

Note, proceeds of the Series 2023A Bonds may, except to the extent noted herein, be used to fund any portion of the CDD Project or CRA Project, regardless of whether the CRA Project costs are in fact attributable to cost overruns as currently described. To the extent that any District bond money is spent by the District for CRA Project items and then later reimbursed by DIA under the Redevelopment Agreement as part its DIA Funding Obligation, the reimbursed money will be placed into the District's applicable construction account and used as permitted under the applicable trust indenture for the District.

4.2 Types of Bonds Proposed

The current financing plan for the District envisions issuance of the Series 2023A-1 Bonds in the principal amount of \$775,000 to finance an estimated \$354,276.78 in Project costs and an estimated \$820,401.74 in the costs of redemption of the Prior Bonds. The Series 2023A-1 Bonds will be current interest bonds amortized in 15 annual installments. Interest payments on the Series 2023A-1 Bonds are projected to be made every February 1 and August 1 commencing February 1, 2024, and principal payments on the Series 2023A-1 Bonds are projected to be made every August 1 commencing on August 1, 2026.

The current financing plan for the District also envisions issuance of the Series 2023A-2 Bonds in the principal amount not to exceed \$57,902,267.10 to finance an estimated \$19,921,659.23 in Project

costs and an estimated \$43,955,156.18 in the costs of redemption of the Prior Bonds. The Series 2023A-2 Bonds will be structured as draw-down bonds convertible to capital appreciation bonds amortized in 24 annual installments. The initial draw on the Series 2023A-2 Bonds shall occur on the date of issuance and additional draws up to the maximum principal amount of \$57,677,267.10 are anticipated to occur over the following 12-36 months. Conversion/accretion par amount of the Series 2023A-2 Bonds is estimated to total \$69,310,000. Interest payments on the Series 2023A-2 Bonds will be made every February 1 and August 1, and principal payments on the Series 2023A-2 Bonds will be made every August 1 commencing on August 1, 2029. Final sources and uses of funding for the Series 2023A Bonds are presented in Table 3 in the *Appendix*, while Table 4 in the *Appendix* presents the accretion of the estimated initial not-to-exceed principal amount of \$57,902,267.10 to the estimated amount of \$69,310,000.

5.0 Assessment Methodology

5.1 Overview

The issuance of the Series 2023A Bonds provides the District with a portion of the funds necessary to carry out the implementation of the Project as described in more detail in the 2023 Amended Engineer's Report. The public infrastructure improvements that comprise the Project provide special and general benefits, with special benefits accruing to the assessable properties within the District and general benefits accruing to the areas outside of the District, which are only incidental in nature.

The Series 2023A Bonds will be paid off by assessing properties that derive special benefits from that portion of the Project which is proposed to be funded with proceeds of the Series 2023A Bonds (the "Series 2023A Assessments"). All assessable properties that receive special benefits from the Project will be assessed for their fair share, as determined by this 2023 Supplemental Report, of that portion of the Project which is proposed to be funded with proceeds of the Series 2023A Bonds.

5.2 Benefit Allocation

As indicated in *Section 2.2*, the most current development plan envisions the development of a total of 1,170 residential dwelling units, 200 hotel rooms, 121,400 square feet of retail and 200,000

square feet of office uses, although land use types and unit numbers may change throughout the development period.

As indicated in *Section 3.2*, the public infrastructure improvements that comprise the Project are planned, designed, and will be permitted to function as one interrelated and integrated system of improvements benefiting all of the properties in the District and is also designed to serve and will benefit the additional parcels projected to be incorporated into the District as well as the School Board Parking Tract. Components of the Project are described in more detail in the 2023 Amended Engineer's Report and are necessary to develop all units of all land uses anticipated within the District in its present as well its expanded state.

The public infrastructure improvements comprising the Project have a logical connection to the special benefits received by property within the District (either pre or post incorporation of additional parcels and School Board Parking Tract Conversion), as without such public infrastructure improvements, the development of the property within the District would not be possible. Based upon the logical connection between the public infrastructure improvements which comprise the Project and the special benefits to the property within the District, the District can assign or allocate a portion of the District's debt through the imposition of non-ad valorem special assessments to the property receiving such special benefits. Even though these special benefits are real and ascertainable (for example added use of the property, added enjoyment of the property, decreased insurance premiums, development of the property and increased marketability and value of the property), the precise amount of the benefit cannot yet be calculated with mathematical certainty. However, the special benefit derived from the public infrastructure improvements on the particular property exceeds the cost that the property will be paying for such special benefits.

The benefit associated with construction or acquisition of that part of the Project funded with proceeds of the Series 2023A Bonds is proposed to be allocated to the different land use types proposed to be developed within the District in proportion to their intensity of use of the public infrastructure improvements comprising the Project as measured by a standard unit called the Equivalent Residential Unit ("ERU"). In following the Amended and Restated Master Report, Table 5 in the *Appendix* illustrates the different values of the ERUs that are assigned to the various land use types contemplated to be developed within the District in its present boundaries with all available units developed.

The rationale behind different ERU weights is that generally and on average, smaller and less intensely economically utilized land uses will, on a per unit/square foot basis, use and benefit from the public infrastructure improvements comprising the Project less than larger units and more intensely economically utilized land uses. For instance, generally and on average smaller units and less intensely economically utilized land uses will, on a per unit/square foot basis, produce fewer vehicular trips, less storm water runoff, and need less water/sewer capacity than larger units and more intensely economically utilized land uses. Additionally, the value of larger units and more intensely economically utilized land uses is likely to appreciate more in terms of dollars than that of the smaller units and less intensely economically utilized land uses as a result of the implementation of the Project. As the exact amount of the benefit and appreciation is not possible to be calculated at this time, the use of ERU measures serves as a reasonable approximation of the relative amount of benefit received from the Project.

As the costs of the Project in the total amount of \$75,795,132 are projected to be funded in part with proceeds of the Series 2023A-1 Bonds and Series 2023A-2 Bonds in the combined amount of \$51,595,132.00 and in part with DIA Funding Obligation/Developer Contributions the combined estimated amount of \$24,200,000, Table 6 in the *Appendix* illustrates the allocation of the Project costs to the land uses proposed to be developed within the current boundaries of the District, each of the respective assessment areas, and their funding sources.

Table 7 in the *Appendix* presents the apportionment of the Series 2023A Assessments in accordance with the ERU benefit allocation method presented in Table 5 in the *Appendix* as modified by the DIA Funding Obligation/Developer Contributions illustrated in Table 6 in the *Appendix*. Please note that Table 7 presents the apportionment of the Series 2023A Assessments separately for the (1) special assessments related to repayment of the Series 2023A-1 Bonds (the “Series 2023A-1 Assessments”) which will be levied against the assessable lands within the Series 2023A-1 Assessment Area (to be defined further herein); and separately for the (2) special assessments related to repayment of the Series 2023A-2 Bonds (the “Series 2023A-2 Assessments”), which will be levied against all assessable District Lands other than the Series 2023A-1 Assessment Area within the Series 2023A-2 Assessment Area (to be defined further herein). Table 7 additionally illustrates the apportionment of the Series 2023A-2 Assessments within the Series 2023A-2 Assessment Area based on the District’s present boundaries with all available units developed.

Please note that the Series 2023A Assessments will only be collected by the District in years and in amounts in which the REV Grant funds described in more detail in the Original Master Report are insufficient to fully pay debt service on the Series 2023A Bonds, taking into account the costs of billing and collection of the Series 2023A Assessments. The District will apply the same method described in the Original Master Report for allocating the REV Grant funds to parcels responsible for payment of the Series 2020 Bond Assessments and Series 2022 Bond Assessments to the Series 2023A Assessments. Note, if the Series 2023A Assessments are certified in multiple series, the REV Grant funds will be applied to all assessment series on a pro rata basis.

The amount of any such REV Grant Payment will be determined annually and used to (i) pay a portion of the District's annual debt service obligation on the Series 2023A Bonds as provided under the respective trust indentures for the Series 2023A Bonds and (ii) offset the billing and collection of the Series 2023A Assessments as a credit against the annual installments of the Series 2023A Assessments otherwise due and payable in such fiscal year, as described herein. The amount of each annual REV Grant Payment will be applied on a pro rata basis as a credit to each individual parcel's annual installment of the Series 2023A Assessments (or series thereof), to the extent paid by the property owner, based on the following methodology:

- Each parcel, when designated as either Transferred Property (as defined further below) or Developer Developed Property (as defined further below), will be allocated a portion of the Base Value in the same manner that the Series 2023A Assessments are allocated, as described above and set forth in Table 7 in the *Appendix*. Once allocated to either Transferred Property or Developer Developed Property, that parcel's allocated share of Base Value will not change.
- Each year, each parcel will be allocated a portion of the REV Grant based on the Formula 1 shown in the Original Master Report, but for each parcel taking into account its allocated Base Value and actual assessed value applicable in the year of the calculation. For clarity, the calculation of the parcel's REV Grant will be done for the same year that the annual installment is being calculated. If the property owner fails to make an ad valorem property tax payment in any year, the REV Grant attributable to such parcel for that year is eliminated and the property owner is obligated to make the full annual installment payment of the Series 2023A Assessments, even if such payment is collected on the next year's tax bill.

- Each parcel will then receive a pro rata credit against its annual installment of the Series 2023A Assessments in an amount equal to the lesser of (a) its share of the REV Grant, actually received or (b) its annual installment of the Series 2023A Assessments.

The surplus, if any, between a parcel's allocated portion of the REV Grant and the annual installment of the Series 2023A Assessments (the "Surplus Rev Grant"), will be used by the District on a pro rata basis to offset the annual installment of the Series 2023A Assessments on Undeveloped Property (as defined further below). If the annual installment of the Series 2023A Assessments on Undeveloped Property is zero, then the remaining Surplus Rev Grant will be used as set forth in the indenture(s) for the Series 2023A Bonds.

5.3 Assigning Assessments

As the assessable land in the District is not yet platted and/or developed, the Series 2023A Assessments will initially be allocated on an equal gross acre basis over all developable property within their respective assessment area boundaries.

The Series 2023A-1 Assessments will initially be allocated on an equal gross acre basis over Tracts 3A and 9B that cumulatively contain +/- 2.75 acres (the "Series 2023A-1 Assessment Area") while the Series 2023A-2 Assessments will initially be allocated on an equal gross acre basis over all property within District (+/- 32.21 acres) less and except the property contained within the Series 2023A-1 Assessment Area (+/- 2.75 acres), or cumulatively +/- 29.46 acres (the "Series 2023A-2 Assessment Area"). The land is currently categorized as Undeveloped Properties within the District. However, as the exact location and the exact size of the Undeveloped Properties may change as development occurs, boundaries of the District change and land currently deemed undevelopable may become developable and vice versa, the Series 2023A-1 Assessments in the principal amount of \$775,000 will initially be allocated over the land contained within the Series 2023A-1 Assessment Area at an initial rate of \$281,818.18 per gross acre and the Series 2023A-2 Assessments in the fully accreted principal amount of \$69,310,000 will initially be allocated over the land contained within the Series 2023A-2 Assessment Area at an initial rate of \$2,352,681.60 per gross acre.

The Series 2023A-2 Assessments will initially be allocated on an equal gross acre basis over all developable property within the Series 2023A-2 Assessment Area's +/- 29.46-acre boundaries,

which is initially categorized as Undeveloped Properties that at present time are estimated to contain the total +/- 17.49 developable acres. However, as the exact location and the exact size of the Undeveloped Properties may change as development occurs, boundaries of the District change and land currently deemed undevelopable may become developable and vice versa, the Series 2023A-2 Assessments in the fully accreted principal amount of \$69,310,000.00 will initially be allocated over all acres contained within the Series 2023A-2 Assessment Area at an initial rate of \$3,962,835.91 per acre. Subsequently, the Series 2023A-2 Assessments will be assigned to assessable parcels based on its property designation as either (1) Transferred Property; (2) Developer Developed Property; or (3) Undeveloped Property.

Transferred Property. Transferred Property will be assigned Series 2023A Assessments as reflected in Table 7 in the *Appendix* based on the Contracted Units at the time of sale. When the development of Transferred Property is complete, the assignment of the Series 2023A Assessments will be adjusted based on Actual Units. If the Actual Units are different from the Contracted Units, a true-up analysis will be conducted in accordance with true-up provisions of this 2023 Supplemental Report.

Developer Developed Property. Developer Developed Property will be assigned the Series 2023A Assessments once Certificates of Occupancy are issued. The amount of the Series 2023A Assessments assigned to the Developer Developed Property will be based on the number of ERUs contained within the Developer Developed Property based on the Actual Units developed as evidenced by Certificates of Occupancy.

Undeveloped Property. Property which remains as Undeveloped Property will continue to bear the remaining unallocated Series 2023A Assessments assigned to it on an equal per gross acre basis until such time that it becomes either Transferred Property or Developer Developed Property and all Series 2023A Assessments are allocated.

In the event developable lands that derive benefit from the Project are added to the District boundaries, whether by boundary amendment (e.g., the Expansion Property), replatting, or conversion of non-assessable lands to assessable, developable property (e.g., the School Board Property Tract Conversion), the Series 2023A Assessments may be allocated to such lands pursuant to the methodology described herein at the time of such lands become assessable.

5.4 Lienability Test: Special and Peculiar Benefit to the Property

As first discussed in *Section 1.3*, Special Benefits and General Benefits, the delivery of the public infrastructure improvements that comprise the Project create special benefits to property within the District. Construction and/or acquisition of such public infrastructure improvements will provide several types of systems, facilities and services for residents and landowners within the District. The details of such systems, facilities and services are set forth in the 2023 Amended Engineer's Report. The benefits from these public infrastructure improvements accrue in differing amounts and are dependent on the type of land use and number of units, for instance square footage for commercial properties, receiving the special benefits peculiar to those properties, which flow from the logical relationship of the public infrastructure improvements to said properties.

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

For the provision of the public infrastructure improvements comprising the Project, the special and peculiar benefits include:

- a. added use of the property;
- b. added enjoyment of the property;
- c. decreased insurance premiums;
- d. increased marketability and value of the property; and
- e. full development of the property within the District.

The provision of the Project makes the land within the District developable and saleable and provides special benefits to developable property in the District which are greater than the benefits of any single improvement. These special benefits are real and ascertainable, but not yet capable of being calculated and assessed in terms of numerical value; however, such benefits are more valuable than either the cost of, or the actual assessment levied for, the improvement or debt as allocated.

5.5 Lienability Test: Reasonable and Fair Apportionment of the Duty to Pay Assessments

A reasonable estimate of the proportion of special and peculiar benefits received from the public infrastructure improvement that

comprise the Project is delineated in Table 5 (expressed as ERU Factors) in the *Appendix*.

The apportionment of the Series 2023A Assessments is fair and reasonable because it was conducted on the basis of consistent application of the methodology described in *Section 5.2* across all assessable property within the District according to reasonable estimates of the special benefits derived from the acquisition and/or construction of the public infrastructure improvements that comprise the Project by different land uses.

Accordingly, no acre or parcel of property within the District will be liened for the payment of any non-ad valorem special assessment more than the determined special benefit peculiar to that property and therefore, the allocation of the Series 2023A Assessments will not be increased by more than the allocation of the Series 2023A Assessments set forth in this 2023 Supplemental Report.

5.6 True-Up Mechanism

The assessment methodology described herein is based on conceptual information obtained from the Developer prior to development of land in the District. As development occurs, it is possible that the development plan may change. The mechanism for maintaining the methodology over the changes is referred to as true-up. True-up analysis will be performed separately for each Transferred Property and separately for the Undeveloped Property.

True-up analysis will be performed separately for each Transferred Property. When a particular Transferred Property achieves Certificate(s) of Occupancy and such Certificate(s) of Occupancy encompasses the entirety of the development on such parcel, the District will compare the number of Actual Units assigned to this particular Transferred Property to the number of Contracted Units, and if the number of Actual Units is less than the number of Contracted Units, the owner of this particular Transferred Property will be required to make a True-Up Payment equal to the difference between the amount of the Series 2023A Assessments based on the number of Contracted Units and the amount of the Series 2023A Assessments based on the number of Actual Units. Any True-Up Payment will become due and payable by the owner of that particular Transferred Property at the time of the True Up determination in that tax year, along with any other assessments due.

True-up analysis will also be performed for Undeveloped Property beginning the earlier of (1) at the time 60% of the Series 2023A

Assessments are allocated based on ERUs assigned to either Transferred Property or Developer Developed Property, or (2) at the time 60% of net developable acres within the District are classified as either Transferred Property or Developer Developed Property. At the time any plat and/or site plan is submitted for review, the District will conduct its true-up analysis for Undeveloped Property to determine whether the Undeveloped Property is capable of absorbing the remaining Series 2023A Assessments not yet assigned to the Transferred Property and Developer Developed Property. If, as the result of the true-up analysis, the amount of the Series 2023A Assessments per ERU for the remaining Undeveloped Property exceeds the original amount of the Series 2023A Assessments per ERU, initially set at \$25,227.86 for the Series 2023A-1 Assessments (calculated as the Series 2023A-1 Bonds principal amount of \$775,000 divided by 30.720 ERUs) and initially set at \$37,095.17 for the Series 2023A-2 Assessments (calculated as the Series 2023A-2 Bonds fully accreted principal amount of \$69,310,000 divided by 1,868.437 ERUs) and subject to recalculation as principal on the Series 2023A Bonds is paid as the result of principal payments, then the owner of the Undeveloped Property will be required to make a True-Up Payment equal to difference in the amount of the Series 2023A Assessments per ERU as illustrated in this 2023 Supplemental Report, initially at \$25,227.86 for the Series 2023A-1 Assessments and \$37,095.17 for the Series 2023A-2 Assessments, times the number of ERUs remaining after accounting for ERUs assigned to the Transferred Property and Developer Developed Property and the amount of the Series 2023A Assessments per ERU calculated in accordance with the development plan as illustrated in this 2023 Supplemental Report times the number of ERUs reasonably planned by the Developer to be developed within the Undeveloped Property as provided by the Developer, which number may be verified by the District at the District's sole discretion.

Note, owners of Transferred Property and/or Undeveloped Property may request a deferral of any True-Up Payment. See "Deferrals of True-Up Payments" in the Original Master Report.

5.7 Assessment Roll

Based on the per gross acre assessment proposed in *Section 5.3*, the Series 2023A-1 Assessments in the amount of \$775,000 are levied over the Series 2023A-1 Assessment Area described in Exhibit "A-1" and the Series 2023A-2 Assessments in the fully accreted amount of \$69,310,000 are levied over the Series 2023A-2 Assessment Area described in Exhibit "A-2". Excluding any

capitalized interest period, debt service assessment shall be paid in fifteen (15) annual installments for the Series 2023A-1 Bonds and in twenty-four (24) annual installments for the Series 2023A-2 Bonds.

6.0 Additional Stipulations

6.1 Overview

Wrathell, Hunt and Associates, LLC was retained by the District to prepare a methodology to fairly allocate the Series 2023A Assessments related to funding by the District a portion of the costs of the public infrastructure improvements that comprise the Project. Certain financing, development and engineering data was provided by members of District Staff and/or the Developer. The allocation methodology described herein was based on information provided by those professionals. Wrathell, Hunt and Associates, LLC makes no representations regarding said information transactions beyond restatement of the factual information necessary for compilation of this 2023 Supplemental Report.

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

7.0 Appendix

Table 1

District

Community Development District

Revised Development Plan

Land Use	Unit of Measurement	Total Number of Units
Retail	Sq Ft	121,400
Apartments	Unit	930
Townhomes	Unit	40
Office	Sq Ft	200,000
Hotel	Room	200
Condo	Unit	200

Table 2

District

Community Development District

Project

CDD Project

Improvement	Cost
Public Roadways	\$5,900,000
Parking Facilities	\$982,181
Potable Water	\$1,880,000
Sanitary Sewer	\$2,860,000
Earthwork Improvements	\$770,000
Stormwater Management	\$2,910,000
Landscaping and Irrigation	\$770,000
Lighting and Underground Electric	\$2,770,000
Buried Foundation Demolition	\$691,260
Riverfront Bulkhead (CDD Portion)	\$1,960,000
Land Acquisition	\$3,551,691
CDD and CRA Work Product	\$11,400,000
Deduction for Elimination of ARTEA Utility Improvements	-\$200,000
Deduction for Estimated Sales Tax Savings	-\$200,000
Total CDD Project	\$36,045,132

Optional CDD Project

Improvement	Cost
CDD Marina Horizontal Infrastructure Contribution	\$2,000,000
City of Jacksonville CEI Contingency	\$350,000
General Contingency	\$1,000,000
Optional CDD Project Total	\$3,350,000

Total CDD Project with Optional Items

\$39,395,132

CRA Project

Improvement	Cost
Riverfront Bulkhead (CRA Portion)	\$4,850,000
Southbank Riverwalk	\$3,320,000
New Boardwalk	\$2,330,000
Overland Trail	\$770,000
City Parks	\$16,730,000
Water Taxi Stop (not included in CIP)	\$1,200,000
Kayak Launch	\$460,000
Prudential Drive Extension	\$1,480,000
Broadcast Place Extension	\$2,900,000
Rivers Edge Boulevard	\$2,810,000
Deduction for Estimated City Tree Fund Credit	-\$450,000
Total CRA Project	\$36,400,000

Total

\$75,795,132

Table 3

District

Community Development District

Series 2023A Bonds Final Sources and Uses of Funds

Sources	Series 2023A-1 Bonds		Series 2023A-2 Bonds		Total Series 2023A Bonds
Bond Proceeds					
Par Amount	\$775,000.00	\$57,902,267.10			\$58,677,267.10
Other Sources of Funds:					
Transfer of 2020 Reserve Account	\$62,956.44	\$3,373,054.84			\$3,436,011.28
Transfer of 2020 Redemption Account	\$2,185.00	\$117,067.23			\$119,252.23
Transfer of 2020 Revenue Account	\$306.03	\$16,396.25			\$16,702.28
Transfer of 2020 Construction Account	\$207.40	\$11,112.26			\$11,319.66
Transfer of 2020 Interest Account	\$42.97	\$2,302.39			\$2,345.36
Transfer of 2022 Reserve Account	\$7,830.13	\$419,519.69			\$427,349.82
Transfer of 2022 Redemption Account	\$268.63	\$14,392.38			\$14,661.01
Transfer of 2022 Construction Account	\$83,479.57	\$4,472,634.98			\$4,556,114.55
Transfer of 2022 Interest Account	\$4,888.15	\$261,895.29			\$266,783.44
Developer Contribution	\$283,271.49	\$0.00			\$283,271.49
	\$445,435.81	\$8,688,375.31			\$9,133,811.12
Total Sources	\$1,220,435.81	\$66,590,642.41			\$67,811,078.22
Uses					
Project Fund Deposits:					
Project Fund	\$354,276.78	\$19,921,659.23			\$20,275,936.01
Refunding Escrow Deposits:					
Cash Deposit	\$820,401.74	\$43,955,156.18			\$44,775,557.92
Other Fund Deposits:					
Debt Service Reserve Fund	\$38,750.00	\$2,079,300.00			\$2,118,050.00
Capitalized Interest Fund (thru 2/1/2024)	\$7,007.29	\$0.00			\$7,007.29
	\$45,757.29	\$2,079,300.00			\$2,125,057.29
Delivery Date Expenses:					
Cost of Issuance	\$0.00	\$634,527.00			\$634,527.00
Total Uses	\$1,220,435.81	\$66,590,642.41			\$67,811,078.22

Table 4

District

Community Development District

Series 2023A-2 Bonds Accretion

Date	Accreted Value
11/29/2023	\$57,902,267.10
2/1/2027	\$69,310,000.00
Fully Accreted Value	\$69,310,000.00

Table 5

District

Community Development District

Benefit Allocation

Land Use	Unit of Measurement	Total Number of Units	ERU Weight	ERU Basis	Total ERU
Retail	Sq Ft	121,400	1.167	per 1,000 Sq Ft	141.637
Apartments	Unit	930	1.000	per Unit	930.000
Townhomes	Unit	40	0.768	per Unit	30.720
Office	Sq Ft	200,000	1.167	per 1,000 Sq Ft	233.400
Hotel	Room	200	0.600	per Room	120.000
Condo	Unit	200	2.217	per Unit	443.400
Total					1,899.157

Table 6

District

Community Development District

Project Cost Allocation for Landuses Subject to Series 2023A-1 Assessments

Land Use	Unit of Measurement	Total Number of Units	Project Costs		Project Costs Funded with CRA Contribution/ Developer Contribution
			Attributable to Landuses Subject to Series 2023A-1 Assessments	Project Costs Funded with Series 2023A-1 Bonds	
Retail	Sq Ft	0	\$0.00	\$0.00	\$0.00
Apartments	Unit	0	\$0.00	\$0.00	\$0.00
Townhomes	Unit	40	\$1,226,031.33	\$681,460.29	\$544,571.04
Office	Sq Ft	0	\$0.00	\$0.00	\$0.00
Hotel	Room	0	\$0.00	\$0.00	\$0.00
Condo	Unit	0	\$0.00	\$0.00	\$0.00
Total			\$1,226,031.33	\$681,460.29	\$544,571.04

Project Cost Allocation for Landuses Subject to Series 2023A-2 Assessments

Land Use	Unit of Measurement	Total Number of Units	Project Costs		Project Costs Funded with CRA Contribution/ Developer Contribution
			Attributable to Landuses Subject to Series 2023A-2 Assessments	Project Costs Funded with Series 2023A-2 Bonds	
Retail	Sq Ft	121,400	\$5,652,730.01	\$4,390,990.17	\$1,261,739.84
Apartments	Unit	930	\$37,116,182.95	\$24,478,875.90	\$12,637,307.05
Townhomes	Unit	40	\$0.00	\$0.00	\$0.00
Office	Sq Ft	200,000	\$9,314,964.62	\$4,586,111.28	\$4,728,853.35
Hotel	Room	200	\$4,789,184.90	\$3,405,177.06	\$1,384,007.83
Condo	Unit	200	\$17,696,038.19	\$14,052,517.30	\$3,643,520.89
Total			\$74,569,100.67	\$50,913,671.71	\$23,655,428.96

Table 7

District

Community Development District

Series 2023A-1 Assessments Apportionment

Land Use	Unit of Measurement	Total Number of Units	Total Series 2023A-1		Series 2023A-1		Series 2023A-1	
			Assessments Initial Apportionment		Assessments Apportionment per Unit	Total Series 2023A-1 Assessments MADS Apportionment*	Assessments MADS Apportionment per Unit*	
Retail	Sq Ft	0	\$0.00		\$0.00	\$0.00	\$0.00	
Apartments	Unit	0	\$0.00		\$0.00	\$0.00	\$0.00	
Townhomes	Unit	40	\$775,000.00		\$19,375.00	\$76,775.00	\$1,919.38	
Office	Sq Ft	0	\$0.00		\$0.00	\$0.00	\$0.00	
Hotel	Room	0	\$0.00		\$0.00	\$0.00	\$0.00	
Condo	Unit	0	\$0.00		\$0.00	\$0.00	\$0.00	
Total			\$775,000.00			\$76,775.00		

Series 2023A-2 Assessments Apportionment

Land Use	Unit of Measurement	Total Number of Units	Total Series 2023A-2		Series 2023A-2		Series 2023A-2	
			Assessments Initial Apportionment	Assessments Fully Accreted Value Apportionment	Assessments Apportionment per Unit	Total Series 2023A-2 Assessments MADS Apportionment*	Assessments MADS Apportionment per Unit*	
Retail	Sq Ft	121,400	\$4,993,713.42	\$5,977,560.02	\$49.24	\$461,817.40	\$3.80	
Apartments	Unit	930	\$27,838,935.26	\$33,323,679.70	\$35,831.91	\$2,574,537.92	\$2,768.32	
Townhomes	Unit	0	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
Office	Sq Ft	200,000	\$5,215,617.56	\$6,243,183.06	\$31.22	\$482,339.04	\$2.41	
Hotel	Room	200	\$3,872,584.03	\$4,635,549.04	\$23,177.75	\$358,135.62	\$1,790.68	
Condo	Unit	200	\$15,981,416.84	\$19,130,028.17	\$95,650.14	\$1,477,957.52	\$7,389.79	
Total			\$57,902,267.10	\$69,310,000.00		\$5,354,787.50		

* When the annual installments of 2022 Assessments are collected by the District utilizing the Duval County Tax Collector's annual real estate tax notice (tax bill), the amounts will also include additional costs of collection estimated at 3.5% and early payment discount allowance estimated at 4%

Exhibit "A-1"

Series 2023A-1 Assessments in the amount of \$775,000 are proposed to be levied uniformly over the area described below:

Series 2023A-1 Assessment Area Legal Description

TRACT 3A AND TRACT 9B, RIVERSEDGE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE,

AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.75 ACRES, MORE OR LESS.

Exhibit "A-2"

Series 2023A-2 Assessments in the fully accreted amount of \$69,310,000 are proposed to be levied uniformly over the area described below:

Series 2023A-2 Assessment Area Legal Description

PROPOSED DEVELOPMENT PARCEL (DP):

ALL OF LOTS 7 THROUGH 10, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, AS SHOWN ON THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 46 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A PART OF KANSAS STREET, A 60 FOOT RIGHT OF WAY, CLOSED BY ORDINANCE BB-246 AND A PART OF SECTIONS 44 AND 45, THE ISAAC HENDRICKS GRANT, AND A PART OF SECTION 60, THE F. BAGLEY AND I. HENDRICKS GRANT, ALL LYING IN TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF COMMENCEMENT, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF REED AVENUE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED AND THE EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, 240.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, THE NORTHERLY PROLONGATION THEREOF, AND ALONG THE WESTERLY LINE OF SAID LOT 7, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE; A DISTANCE OF 822.36 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE NORTH 27 DEGREES 38 MINUTES 14 SECONDS EAST, DEPARTING SAID WESTERLY LINE AND ALONG THE EASTERLY LINE AND NORTHEASTERLY PROJECTION OF THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 5103, PAGE 759 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 283.34 FEET TO A POINT ON A LINE BEING THE BOUNDARY SEPARATING THE LANDS OF PRIVATE OWNERSHIP FROM THE ADJACENT STATE OWNED SOVEREIGNTY LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE EASTERLY ALONG LAST SIDE LINE THE FOLLOWING 14 COURSES: COURSE 1, THENCE NORTH 72 DEGREES 33 MINUTES 56 SECONDS EAST, 61.48 FEET; COURSE 2, THENCE SOUTH 73 DEGREES 04 MINUTES 04 SECONDS EAST, 220.55 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 3, THENCE NORTH 27 DEGREES 29 MINUTES 56 SECONDS EAST ALONG SAID EXISTING SEAWALL, 25.35 FEET; COURSE 4, THENCE SOUTH 62 DEGREES 16 MINUTES 12 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 154.29 FEET; COURSE 5, THENCE SOUTH 17 DEGREES 34 MINUTES 47 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 23.74 FEET; COURSE 6, THENCE SOUTH 39 DEGREES 24 MINUTES 04 SECONDS EAST, 32.94 FEET; COURSE 7, THENCE SOUTH 50 DEGREES 13 MINUTES 49 SECONDS EAST, 74.57 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 8, THENCE SOUTH 62 DEGREES 32 MINUTES 42 SECONDS EAST ALONG SAID EXISTING SEAWALL, 100.76 FEET; COURSE 9, THENCE NORTH 71 DEGREES 02 MINUTES 59 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 31.40 FEET; COURSE 10, THENCE SOUTH 62 DEGREES 38 MINUTES 03 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 447.96 FEET; COURSE 11, THENCE SOUTH 62 DEGREES 16 MINUTES 36 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 156.94 FEET; COURSE 12, THENCE SOUTH 78 DEGREES 43 MINUTES 28 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 60.20 FEET; COURSE 13, THENCE SOUTH 56 DEGREES 36 MINUTES 20 SECONDS EAST, 348.39 FEET; COURSE 14, THENCE SOUTH 26 DEGREES 50 MINUTES 05 SECONDS EAST, 107.15 FEET TO THE POINT OF TERMINATION OF SAID LINE DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; ; THENCE SOUTH 72 DEGREES 27 MINUTES 52 SECONDS WEST, 53.09 FEET TO A POINT ON THE WATERS OF THE ST. JOHNS RIVER; THENCE SOUTH 23 DEGREES 45 MINUTES 12 SECONDS WEST DEPARTING SAID WATERS OF THE ST. JOHNS RIVER, 356.01 FEET; THENCE SOUTH 86 DEGREES 36 MINUTES 07 SECONDS WEST, 885.56 FEET TO THE NORTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 14316, PAGE 1471 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 61 DEGREES 14 MINUTES 42 SECONDS WEST, 189.34 FEET; THENCE NORTH 85 DEGREES 43 MINUTES 46 SECONDS WEST, 481.49 FEET TO SAID EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE AND THE POINT OF BEGINNING.

CONTAINING 32.21 ACRES, MORE OR LESS.

THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FLORIDA LEGAL DESCRIPTION

Kimley»Horn

LESS AND EXCEPT THE FOLLOWING DESCRIBED LANDS (TRACT 3A AND TRACT 9B):

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING. CONTAINING 2.75 ACRES, MORE OR LESS.

RESULTING IN THE SERIES 2023A-2 ASSESSMENT AREA CONTAINING 29.46 ACRES, MORE OR LESS.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

9

RESOLUTION 2024-02

**[SUPPLEMENTAL 170.08 ASSESSMENT RESOLUTION
– 2023A BONDS]**

A RESOLUTION SETTING FORTH THE SPECIFIC TERMS OF THE DISTRICT’S 2023A BONDS; MAKING CERTAIN ADDITIONAL FINDINGS AND CONFIRMING AND/OR ADOPTING AN AMENDED AND RESTATED ENGINEER’S REPORT AND A SUPPLEMENTAL ASSESSMENT REPORT; CONFIRMING THE MAXIMUM ASSESSMENT LIEN SECURING THE 2023A BONDS AND ADDRESSING DIA FUNDING; ADDRESSING THE ALLOCATION AND COLLECTION OF THE 2023A ASSESSMENTS SECURING THE 2023A BONDS; ADDRESSING PREPAYMENTS; ADDRESSING TRUE-UP PAYMENTS; PROVIDING FOR THE SUPPLEMENTATION OF THE IMPROVEMENT LIEN BOOK; AND PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the District Community Development District (“**District**”) has previously indicated its intention to undertake, install, establish, construct or acquire certain public improvements and to finance such public improvements through the issuance of bonds secured by the imposition of special assessments on benefited property within the District; and

WHEREAS, the District’s Board of Supervisors (“**Board**”) has previously adopted Resolution 2023-04 and, after proper notice and public hearing, Resolutions 2023-11 (Resolutions 2023-04 and 2023-11 together herein referred to as “**Master Assessment Resolution**”), relating to the imposition, levy, collection and enforcement of revised debt service special assessments (“**Debt Assessments**”); and

WHEREAS, on November 14, 2023, in order to finance all or a portion of the “**Project**” (as defined in Resolution 2023-11 and as further described herein) the District entered into a *Bond Placement Agreement* with PHCC LLC d/b/a Preston Hollow Community Capital, whereby the District agreed to sell its Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”), and not-to-exceed Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, the “**2023A Bonds**”); and

WHEREAS, the District will issue the 2023A-1 Bonds pursuant to that certain Master Trust Indenture dated December 1, 2020 (“**Master Indenture**”), as supplemented by the Third Supplemental Trust Indenture dated November 1, 2023 (“**Third Supplemental Indenture**” and together with the Master Indenture, “**2023A-1 Indenture**”), and the 2023A-2 Bonds pursuant to the Master Indenture, as supplemented by the Fourth Supplemental Trust Indenture dated November 1, 2023 (“**Fourth Supplemental Indenture**” and together with the Master Indenture, “**2023A-2 Indenture**,” and collectively with the 2023A-1 Indentures, the “**2023A Indentures**”); and

WHEREAS, pursuant to and consistent with the terms of the Master Assessment Resolution, the District desires to set forth the particular terms of the sale of the 2023A Bonds and confirm the lien for the (i) portion of the Debt Assessments securing the 2023A-1 Bonds (“**2023A-1 Assessments**”) and the (ii) portion of the Debt Assessments securing the 2023A-2 Bonds (“**2023A-2 Assessments**,” and together with the 2023A-1 Assessments, the “**2023A Assessments**”), among other actions.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT AS FOLLOWS:

1. **INCORPORATION OF RECITALS.** All of the above representations, findings and determinations contained above are recognized as true and accurate and are expressly incorporated into this Resolution.

2. **AUTHORITY FOR THIS RESOLUTION.** This Resolution is adopted pursuant to the provisions of Florida law, including Chapters 170, 190, and 197, *Florida Statutes*, and the Master Assessment Resolution.

3. **ADDITIONAL FINDINGS; ADOPTION OF ENGINEER'S REPORT AND SUPPLEMENTAL ASSESSMENT REPORT.** The Board hereby finds and determines as follows:

- a. On May 20, 2019, the District's Board adopted Resolution 2019-35 levying and imposing debt service special assessments to fund a capital improvement plan.
- b. On December 14, 2020, the District's Board adopted Resolution 2021-09 (together with Resolution 2019-35, the "**Prior Assessment Resolutions**") levying and imposing revised debt service special assessments, such assessments replacing those previously levied pursuant to Resolution 2019-35, to fund a revised capital improvement plan ("**Original Capital Improvement Plan**").
- c. On December 22, 2020, the District issued not to exceed \$35,625,000 in aggregate principal amount of District Community Development District Grant Revenue and Special Assessment Bonds, Series 2020 ("**2020 Bonds**"), the proceeds of which were used to provide funds for the payment of a portion of the costs of the Original Capital Improvement Plan, and the repayment of which were secured by a portion of the special assessments levied pursuant to the Prior Assessment Resolutions ("**2020 Assessments**").
- d. On March 30, 2022, the District issued not to exceed \$8,415,000 in aggregate principal amount of District Community Development District Grant Revenue and Special Assessment Bonds, Series 2022 ("**2022 Bonds**," and together with the 2020 Bonds, "**Prior Bonds**"), the proceeds of which were used to provide funds for the payment of an additional portion of the costs of the Original Capital Improvement Plan, and the repayment of which were secured by a portion of the special assessments levied pursuant to the Prior Assessment Resolutions as supplemented by Resolution 2022-11 ("**2022 Assessments**," and together with the 2020 Assessments, "**Prior Assessments**"). The Board hereby affirms its prior findings that it is reasonable, proper, just and right to assess the portion of the costs of the Project (hereinafter defined) financed with the Prior Bonds to the specially benefitted properties within the District, as set forth in the Assessment Report (hereinafter defined).
- e. On November 28, 2022, as a result of subsequent modifications to the development plan of the District and unforeseen increases in the costs of labor and materials, the District determined to undertake revisions to the Original Capital Improvement Plan (the Original Capital Improvement Plan as revised constitutes the Project).

- f. On January 17, 2023, the District, after due notice and public hearing, adopted Resolution 2023-11 which, among other things, equalized, approved, confirmed, revised, and levied the Debt Assessments on property benefiting from the Project improvements authorized by the District, which Debt Assessments replace in full those Prior Assessments upon the refunding of the Prior Bonds. That resolution provided that as each series of bonds is issued to fund all or any portion of the District’s improvements, a supplemental resolution would be adopted to set forth the specific terms of the bonds and certify the amount of the lien of the Debt Assessments securing any portion of the bonds, including interest, costs of issuance, the number of payments due, and the application of receipt of any true-up proceeds.
- g. The *Amended and Restated District Engineer’s Report*, dated February 25, 2019, as amended December 18, 2020, as subsequently amended and restated March 21, 2022, November 28, 2022, and November 14, 2023, and attached to this Resolution as **Exhibit A** (as amended and supplemented from time to time, the “**Engineer’s Report**”), identifies and describes, among other things, the presently expected components of the Project. The Engineer’s Report sets forth the estimated costs of the Project. The District hereby confirms that the Project, including the portion of the costs of the Project financed with the Prior Bonds, serves a proper, essential, and valid public purpose. The Engineer’s Report is hereby approved, adopted, and confirmed. The District hereby ratifies its use in connection with the sale of the 2023A Bonds.
- h. The *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023, attached to this Resolution as **Exhibit B** (the “**Supplemental Assessment Report**”), applies the adopted *Amended and Restated Master Special Assessment Methodology Report*, dated November 28, 2022, and approved by Resolution 2023-11 on January 17, 2023 (the “**Master Assessment Report**,” and together with the Supplemental Assessment Report, the “**Assessment Report**”), to the Project and the actual terms of the 2023A Bonds. The Supplemental Assessment Report is hereby approved, adopted, and confirmed. The District hereby ratifies its use in connection with the sale of the 2023A Bonds.
- i. Generally, and subject to the terms of **Exhibit A** and **Exhibit B**, the Project benefits all developable property within the District. Moreover:
 - (1) In regards to the 2023A-1 Bonds: (i) the benefits from the Project funded by the 2023A-1 Bonds equal or exceed the amount of the 2023A-1 Assessments, as described in **Exhibit B**; (ii) the 2023A-1 Assessments are fairly and reasonably allocated across that certain developable property within the District further described in the Supplemental Assessment Report (“**2023A-1 Assessment Area**”); and (iii) it is reasonable, proper, just, and right to assess the portion of the costs of the Project to be financed with the 2023A-1 Bonds to the specially benefited properties within the 2023A-1 Assessment Area, all as set forth in the Master Assessment Resolution and this Resolution.
 - (2) In regards to the 2023A-2 Bonds: (i) the benefits from the Project funded by the 2023A-2 Bonds equal or exceed the amount of the 2023A-2 Assessments, as described in **Exhibit B**; (ii) the 2023A-2 Assessments are fairly and reasonably

allocated across that certain developable property within the District further described in the Supplemental Assessment Report (“**2023A-2 Assessment Area**”); and (iii) it is reasonable, proper, just, and right to assess the portion of the costs of the Project to be financed with the 2023A-2 Bonds to the specially benefited properties within the 2023A-2 Assessment Area, all as set forth in the Master Assessment Resolution and this Resolution.

4. **CONFIRMATION OF MAXIMUM ASSESSMENT LIEN SECURING THE 2023A BONDS.** As provided in the Master Assessment Resolution is intended to set forth the terms of the 2023A Bonds and the final amount of the lien of the 2023A Assessments.

- a. **Composite Exhibit C** sets forth the terms of the 2023A Bonds and the final amount of the liens of the 2023A Assessments. **Composite Exhibit C** also sets forth the initial draw of the 2023A-2 Bonds (i.e., **§[2023A-2 INITIAL DRAW]**), which will be supported by sufficient 2023A-2 Assessments (“**Effective 2023A-2 Assessments**”). **Composite Exhibit C** shows: (i) the rate(s) of interest and maturities on the 2023A Bonds, (ii) the estimated sources and uses of funds of the 2023A Bonds, and (iii) the debt service due on the 2023A Bonds. The lien of the: (i) 2023A-1 Assessments shall be the principal amount due on the 2023A-1 Bonds, together with interest and collection costs; and (ii) 2023A-2 Assessments shall be the principal amount (or Appreciated Value as defined in the 2023A-2 Indenture) due on the 2023A-2 Bonds, together with interest and collection costs.

5. **ALLOCATION AND COLLECTION OF THE 2023A ASSESSMENTS; DIA FUNDING.**

- a. The 2023A Assessments shall be allocated in accordance with **Exhibit B**. The Supplemental Assessment Report is consistent with the District’s Master Assessment Report. The Assessment Report, considered herein, reflects the actual terms of the issuance of the 2023A Bonds.
- b. Section 8 of Resolution 2023-11 sets forth the terms for collection and enforcement of the 2023A Assessments. The District hereby certifies the 2023A-1 Assessments for collection to ensure payment of debt service on the 2023A-1 Bonds as set forth in **Exhibit B** and **Composite Exhibit C**. The District hereby certifies the Effective 2023A-2 Assessments, in the initial amount of **§[2023A-2 INITIAL DRAW]** and as may be amended from time to time to address further draws on the 2023A-2 Bonds, for collection to ensure payment of debt service on the 2023A-2 Bonds as set forth in **Exhibit B** and **Composite Exhibit C**. The District Manager is directed and authorized to take all actions necessary to collect the 2023A-1 Assessments and the Effective 2023A-2 Assessments using methods available to the District authorized by Florida law and the applicable 2023A Indentures in order to provide for the timely payment of debt service (and after taking into account any capitalized interest period, if any). Among other things, the District Manager shall prepare or cause to be prepared each year an assessment roll for purposes of collecting the 2023A-1 Assessments and the Effective 2023A-2 Assessments and present the same to the Board as required by law. Upon the authorize of each additional draw on the 2023A-2 Bonds, the District's Manager shall update the District's Improvement Lien Book to include additional Effective 2023A-2 Assessments, as appropriate.

- c. **Offsets for REV Grant Revenues.** As noted in the Assessment Report and Section 8 of Resolution 2023-11, the collection of: (i) the 2023A-1 Assessments may be offset by Series 2023A-1 REV Grant (as defined in the 2023A-1 Indenture) revenues; and (ii) the 2023A-2 Assessments may be offset by Series 2023A-2 REV Grant (as defined in the 2023A-2 Indenture) revenues. The District Manager shall adjust the amount of 2023A-1 Assessments and 2023A-2 Assessments to be collected for a given fiscal year after taking into account such Series 2023A-1 REV Grant revenues and Series 2023A-2 REV Grant revenues, respectively, all in accordance with the Assessment Report. As further provided in the Assessment Report, each parcel will receive a credit against its annual installment of Debt Assessments in an amount equal to the lesser of (a) its share of the REV Grant (as defined in the Indenture) actually received or (b) its total annual installment of 2023A-1 Assessments or 2023A-2 Assessments, as applicable.
- d. **DIA Funding.** To the extent that the District finances as part of the Project and from the 2023A Bonds work product or improvements constituting a portion of the CRA Infrastructure Improvements as defined in the Redevelopment Agreement (as defined in the 2023A-2 Indenture), and then later receives funding from DIA for such work product or improvements pursuant to the Disbursement Agreement (as defined in the Indenture), the District shall deposit such monies into the Series 2023A-2 Acquisition and Construction Account related to the 2023A-2 Bonds, and such monies shall be used for the purposes permitted by the 2023A-2 Indenture for the 2023A-2 Bonds.

6. **APPLICATION OF TRUE-UP PAYMENTS.** The terms of Resolution 2023-11 addressing True-Up Payments, as defined therein, shall continue to apply in full force and effect.

7. **IMPROVEMENT LIEN BOOK.** Immediately following the adoption of this Resolution, the 2023A Assessments as reflected herein shall be recorded by the Secretary of the Board in the District's Improvement Lien Book. The 2023A Assessments shall be and shall remain a legal, valid and binding first lien against the respective benefitted property as described in **Exhibit B** until paid and such lien shall be coequal with the lien of all state, county, district, municipal or other governmental taxes and assessments and superior in dignity to all other liens, titles, and claims.

8. **CONFLICTS.** This Resolution is intended to supplement Resolution 2023-11, which remains in full force and effect and is applicable to the 2023A Bonds except as modified herein. This Resolution and Resolution 2023-11 shall be construed to the maximum extent possible to give full force and effect to the provisions of each resolution, provided however that to the extent of any conflict, this Resolution shall control. All District resolutions or parts thereof in actual conflict with this Resolution are, to the extent of such conflict, superseded and repealed.

9. **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.

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

[SIGNATURE PAGE TO FOLLOW]

APPROVED and **ADOPTED** this ____ day of _____ 2023.

ATTEST:

THE DISTRICT COMMUNITY DEVELOPMENT DISTRICT

Secretary

Chairperson

Exhibit A: *Amended and Restated District Engineer's Report*, dated February 25, 2019, as amended December 18, 2020, as subsequently amended and restated March 21, 2022, November 28, 2022, and November 14, 2023

Exhibit B: *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023

Composite Exhibit C: Maturities and Coupon of 2023A Bonds
Sources and Uses of Funds for 2023A Bonds
Annual Debt Service Payment Due on 2023A Bonds

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10A

This instrument was prepared by:

Kutak Rock LLP
107 W. College Ave
Tallahassee, Florida 32301

**DECLARATION OF CONSENT
(2023A Bonds)**

The undersigned, being a duly authorized representative of **Elements Development of Jacksonville, LLC**, a Florida limited liability company ("**Landowner**"), as the owner of those lands described in **Exhibit A** attached hereto ("**Property**") located within the boundaries of the District Community Development District (the "**District**"), intends 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 October 24, 2018, a legally created, duly organized, and validly existing community development district under the provisions of Chapter 190, *Florida Statutes*, as amended ("**Act**"). Without limiting the generality of the foregoing, the Landowner acknowledges that: (a) the petition filed with the City Council for the City of Jacksonville, Florida ("**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 required by the Act; (b) City Ordinance 2018-563-E, adopted on October 23, 2018, and effective as of October 24, 2018, 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 October 24, 2018, to and including the date of this Declaration.

2. The Landowner hereby confirms and agrees, that the debt special assessments liens ("**Assessments**") imposed pursuant to Resolution 2023-04, 2023-11, and 2024-02 duly adopted by the Board on November 28, 2022, January 17, 2023, and November 14, 2023, respectively, and any resolution supplemental thereto (collectively, "**Assessment Resolutions**"), and all proceedings undertaken by the District with respect thereto have been in accordance with applicable Florida law, that the District has taken all action necessary to levy and impose the Assessments, and the Assessments are legal, valid and binding first liens upon the Property co-equal with the lien of all state, county, district, and municipal taxes, and superior in dignity to all other liens, titles and claims, until paid.

3. The Landowner further understands and agrees that the Assessments, certain Recapture Enhanced Value Grant Revenues ("**REV Grant**"), and other pledged revenues secure the repayment of the District's **[\$775,000]** Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 ("**2023A-1 Bonds**") and not-to-exceed **[\$58,155,000]** Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-2 ("**2023A-2 Bonds**" and together with the 2023A-1 Bonds, the "**2023A Bonds**"), all as further provided in that certain *Master Trust Indenture* dated December 1, 2020, as supplemented by the *Third Supplemental Trust Indenture* dated November 1, 2023, and by the *Fourth Supplemental Trust Indenture* dated November 1, 2023 (collectively, the "**Indenture**"). Note that while REV Grant monies are expected to be a source of revenue to offset the Assessments, Landowner acknowledges that there is no guarantee that REV Grant monies will be available for that purpose and

agrees that the Assessments are valid and binding obligations, regardless of whether any such REV Grant monies become available.

4. The Landowner hereby expressly acknowledges, represents and agrees that: (i) the Assessments, the Assessment Resolutions, the REV Grant, and the terms of the financing documents related to the 2023A Bonds, or securing payment thereof, including but not limited to the *Amended and Restated Redevelopment Agreement*, dated **October 10, 2023** (“RDA”), the *Third Restated Completion Agreement (2023A Bonds)*, dated November 29, 2023, the *Fourth Restated Acquisition Agreement (2023A Bonds)*, dated November 29, 2023, the *Collateral Assignment Agreement (2023A-1 Bonds – Tracts 3A & 9B)*, November 29, 2023, the *Collateral Assignment Agreement (2023A-2 Bonds)*, November 29, 2023, the *True-Up Agreement (2023A-1 Bonds – Tracts 3A & 9B)*, November 29, 2023, the *True-Up Agreement (2023A-2 Bonds)*, November 29, 2023, and all other financing documents related to the 2023A Bonds (collectively, “**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) the Landowner has no claims or offsets whatsoever against, or defenses or counterclaims whatsoever to, payments of the Assessments and/or amounts due under the Financing Documents, and the Landowner expressly waives any such claims, offsets, defenses or counterclaims; (iii) the Landowner hereby waives any and all rights, remedies, and other actions now or hereafter contemplated to contest, challenge, or otherwise dispute or object to the Assessment Resolutions, the Assessments, the REV Grant, the 2023A Bonds, the Financing Documents, and all proceedings undertaken by the District in connection therewith; (iv) 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) to the extent Landowner fails to timely pay any special assessments, including the 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.

5. The Landowner hereby waives the right granted in Section 170.09, *Florida Statutes*, to prepay the 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 Assessments in full at any time, but with interest, under the circumstances set forth in the Assessment Resolutions of the District levying such Assessments. Further, the Landowner hereby waives, and assigns to the District, its right to payment for any Supporting Advances, as described in Section 7.2 of the RDA.

6. This Declaration shall represent a lien of record for purposes of Florida law, including but not limited to Chapter 197, *Florida Statutes*, and Sections 197.552 and 197.573, *Florida Statutes*, among others. Other information regarding the Assessments is available from the District’s Manager, c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431, (877) 276-0889.

THE DECLARATIONS, ACKNOWLEDGEMENTS AND AGREEMENTS CONTAINED HEREIN SHALL RUN WITH THE PROPERTY 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

PROPERTY , AND THEIR SUCCESSORS IN INTEREST, WHETHER OR NOT THE PROPERTY 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.

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[SIGNATURE PAGE FOR DECLARATION OF CONSENT]

To be effective as of November 29, 2023.

WITNESS

By: _____
Name: _____
Address: _____

By: _____
Name: _____
Address: _____

ELEMENTS DEVELOPMENT OF JACKSONVILLE, LLC, a Florida limited liability company

a Delaware limited liability company

By: PHCC LLC, a Delaware limited liability company, d/b/a Preston Hollow Community Capital, its Manager

By: _____
Name: John Dinan
Its: Authorized Signor and General Counsel

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2023, by John Dinan, as an authorized signatory and General Counsel of PHCC, LLC, d/b/a Preston Hollow Community Capital, the Manager of Elements Development of Jacksonville, LLC, a Florida limited liability company, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

(NOTARY SEAL)

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

EXHIBIT A: Legal Description of Property

EXHIBIT A
Legal Description of Property

PROPOSED DEVELOPMENT PARCEL (DP):

ALL OF LOTS 7 THROUGH 10, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, AS SHOWN ON THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 46 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A PART OF KANSAS STREET, A 60 FOOT RIGHT OF WAY, CLOSED BY ORDINANCE BB-246 AND A PART OF SECTIONS 44 AND 45, THE ISAAC HENDRICKS GRANT, AND A PART OF SECTION 60, THE F. BAGLEY AND I. HENDRICKS GRANT, ALL LYING IN TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF COMMENCEMENT, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF REED AVENUE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED AND THE EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, 240.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, THE NORTHERLY PROLONGATION THEREOF, AND ALONG THE WESTERLY LINE OF SAID LOT 7, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE; A DISTANCE OF 822.36 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE NORTH 27 DEGREES 38 MINUTES 14 SECONDS EAST, DEPARTING SAID WESTERLY LINE AND ALONG THE EASTERLY LINE AND NORTHEASTERLY PROJECTION OF THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 5103, PAGE 759 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 283.34 FEET TO A POINT ON A LINE BEING THE BOUNDARY SEPARATING THE LANDS OF PRIVATE OWNERSHIP FROM THE ADJACENT STATE OWNED SOVEREIGNTY LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE EASTERLY ALONG LAST SIDE LINE THE FOLLOWING 14 COURSES: COURSE 1, THENCE NORTH 72 DEGREES 33 MINUTES 56 SECONDS EAST, 61.48 FEET; COURSE 2, THENCE SOUTH 73 DEGREES 04 MINUTES 04 SECONDS EAST, 220.55 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 3, THENCE NORTH 27 DEGREES 29 MINUTES 56 SECONDS EAST ALONG SAID EXISTING SEAWALL, 25.35 FEET; COURSE 4, THENCE SOUTH 62 DEGREES 16 MINUTES 12 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 154.29 FEET; COURSE 5, THENCE SOUTH 17 DEGREES 34 MINUTES 47 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 23.74 FEET; COURSE 6, THENCE SOUTH 39 DEGREES 24 MINUTES 04 SECONDS EAST, 32.94 FEET; COURSE 7, THENCE SOUTH 50 DEGREES 13 MINUTES 49 SECONDS EAST, 74.57 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 8, THENCE SOUTH 62 DEGREES 32 MINUTES 42 SECONDS EAST ALONG SAID EXISTING SEAWALL, 100.76 FEET; COURSE 9, THENCE NORTH 71 DEGREES 02 MINUTES 59 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 31.40 FEET; COURSE 10, THENCE SOUTH 62 DEGREES 38 MINUTES 03 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 447.96 FEET; COURSE 11, THENCE SOUTH 62 DEGREES 16 MINUTES 36 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 156.94 FEET; COURSE 12, THENCE SOUTH 78 DEGREES 43 MINUTES 28 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 60.20 FEET; COURSE 13, THENCE SOUTH 56 DEGREES 36 MINUTES 20 SECONDS EAST, 348.39 FEET; COURSE 14, THENCE SOUTH 26 DEGREES 50 MINUTES 05 SECONDS EAST, 107.15 FEET TO THE POINT OF TERMINATION OF SAID LINE DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; ; THENCE SOUTH 72 DEGREES 27 MINUTES 52 SECONDS WEST, 53.09 FEET TO A POINT ON THE WATERS OF THE ST. JOHNS RIVER; THENCE SOUTH 23 DEGREES 45 MINUTES 12 SECONDS WEST DEPARTING SAID WATERS OF THE ST. JOHNS RIVER, 356.01 FEET; THENCE SOUTH 86 DEGREES 36 MINUTES 07 SECONDS WEST, 885.56 FEET TO THE NORTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 14316, PAGE 1471 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 61 DEGREES 14 MINUTES 42 SECONDS WEST, 189.34 FEET; THENCE NORTH 85 DEGREES 43 MINUTES 46 SECONDS WEST, 481.49 FEET TO SAID EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE AND THE POINT OF BEGINNING.

CONTAINING 32.21 ACRES, MORE OR LESS.

THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FLORIDA LEGAL DESCRIPTION

Kimley»Horn

Drawing name: K:\JAX_Environmental\Elements\OAD\Location Map and Legal.dwg Jul 12, 2018 2:48pm By: Felomena.Merlotto

LESS AND EXCEPT those lands conveyed in the following instruments:

- 1. SPECIAL WARRANTY DEED DATED DECEMBER 30, 2020, AND RECORDED IN THE OFFICIAL RECORDS BOOK 19523, PAGE 1444 (“CITY PROPERTY”);**

2. CORRECTIVE SPECIAL WARRANTY DEED DATED DECEMBER 5, 2022, AND RECORDED IN THE OFFICIAL RECORDS BOOK 20519, PAGE 395 (“CDD REMAINING PROPERTY DEED”).
3. CORRECTIVE SPECIAL WARRANTY DEED DATED DECEMBER 5, 2022, AND RECORDED IN THE OFFICIAL RECORDS BOOK 20519, PAGE 407 (“CDD PRUDENTIAL DRIVE EXTENSION”); AND
4. SPECIAL WARRANTY DEED DATED JANUARY 28, 2021, AND RECORDED IN THE OFFICIAL RECORDS BOOK 20032, PAGE 912 (“DCSB REPLACEMENT PARCEL”);

ALL OF THE PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA.

THE FOREGOING TOGETHER WITH those lands conveyed in the following instrument:

1. SPECIAL WARRANTY DEED DATED DECEMBER 5, 2022, AND RECORDED IN THE OFFICIAL RECORDS BOOK 20519, PAGE 415 (“TRACT EE”)

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10B

This instrument was prepared by:

Kutak Rock LLP
107 W. College Avenue
Tallahassee, Florida 32301

**COLLATERAL ASSIGNMENT AGREEMENT
(2023A-1 Bonds – Tracts 3A & 9B)**

THIS COLLATERAL ASSIGNMENT AGREEMENT (2023A-1 BONDS – TRACTS 3A & 9B) (“Agreement”) is made and entered into, by and between:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 North Pearl Street, Suite 600, Dallas, Texas 75201 (“**Developer**”).

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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 purposes, among others, of planning, financing, constructing, operating and/or maintaining certain infrastructure, including roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/lighting, and other infrastructure within or without the boundaries of the District; and

WHEREAS, the District proposes to issue its Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**”) to finance certain public infrastructure (“**Project**”), as defined in that certain *Amended and Restated District Engineer’s Report*, last amended and restated as of November 14, 2023 (as amended and restated from time to time, “**Engineer’s Report**”); and

WHEREAS, the security for the repayment of the 2023A-1 Bonds is the pledged revenues that include, among other revenues, special assessments (“**Assessments**”) levied against certain benefitted lands within the District known as Tracts 3A and 9B (“**Property**”), the legal description of which is attached hereto as **Exhibit A**; and

WHEREAS, the District is presently planned to include a certain number of planned product types and units within the Property (as used herein,, “Units”), as more specifically identified in that certain *Amended and Restated Master Special Assessment Methodology Report*, dated November 28, 2022, as supplemented by that certain *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023; and

WHEREAS, “Development Completion” will occur when the planned Units have been platted and developed and all other infrastructure work necessary to support the Units has been completed; and

WHEREAS, before the planned Units can be developed and sold to end users (i.e., before Development Completion), there is an increased likelihood that adverse changes to local or national economic conditions may result in a default in the payment of the Assessments securing the Bonds; and

WHEREAS, in the event of default in the payment of the Assessments, the District has certain remedies – namely, if the Assessments are direct billed, the remedy available to the District would be an action in foreclosure, or if the Assessments are collected pursuant to Florida’s uniform method of collection, the remedy for non-payment of the Assessments is the sale of tax-certificates (collectively, “Remedial Rights”); and

WHEREAS, in the event the District exercises its Remedial Rights, the District will require the assignment of certain Development Rights (defined below) to complete development of the project; 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 Property.

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, the Developer and the District agree as follows:

1. **COLLATERAL ASSIGNMENT**

(a) **Development Rights.** The Developer hereby collaterally assigns to the District, to the extent assignable and to the extent that they are owned or controlled by the Developer at execution of this Agreement or subsequently acquired by the Developer, all of the Developer’s development rights relating to development of the Property and/or the Project (herein, collectively, “Development Rights”) as security for the Developer’s payment and performance and discharge of its obligation to pay the Assessments levied against the Property owned by the Developer from time to time. The Development Rights shall include the items listed as follows as they pertain to development of the Property and/or the Project:

- (i) Zoning approvals, density approvals and entitlements, concurrency and capacity certificates, and development agreements;
- (ii) Engineering and construction plans and specifications for grading, roadways, site drainage, stormwater drainage, signage, water distribution, wastewater collection, and other improvements;
- (iii) Preliminary and final site plans;

- (iv) Architectural plans and specifications for public buildings and other public improvements to the developable property within the Property;
- (v) Permits, approvals, resolutions, variances, licenses, and franchises granted by governmental authorities, or any of their respective agencies, for or affecting the development within the Property and construction of improvements thereon, or off-site to the extent such off-site improvements are necessary or required for Development Completion;
- (vi) Contracts with engineers, architects, land planners, landscape architects, consultants, contractors, and suppliers for or relating to the construction of the development within the Property or the construction of improvements thereon;
- (vii) All declarant rights under any property owner’s association or other similar governing entity with respect to the Property;
- (viii) All rights under any sovereign submerged lands lease(s), and related property interests;
- (ix) All prepaid impact fees and impact fee credits; and
- (x) All future creations, changes, extensions, revisions, modifications, substitutions, and replacements of any of the foregoing.

(b) **Exclusions.** Notwithstanding the foregoing, the Development Rights shall not include any rights which relate solely to: (i) platted and developed Units conveyed to unaffiliated homebuilders or end-users, or (ii) any property which has been conveyed to the City of Jacksonville, Duval County, the District, any utility provider, any governmental or quasi-governmental entity, any applicable property owner’s association or other governing entity or association as may be required by applicable permits, approvals, plats, entitlements or regulations affecting the District, if any (items (i) and (ii) referred to herein as a “**Permitted Transfer**”).

(c) **Rights Inchoate.** The assignment and assumption of rights under this Agreement shall be inchoate and shall only become an effective and absolute assignment and assumption of the Development Rights, upon failure of the Developer to pay the Assessments levied against the Property; provided, however, that such assignment shall only be effective and absolute to the extent that: (i) this Agreement has not been terminated earlier pursuant to the term of this Agreement, (ii) a Permitted Transfer has not already occurred with respect to the Development Rights, or (iii) a platted and developed Unit is conveyed to an unaffiliated homebuilder or end-user, in which event such Unit shall be released automatically here from.

(d) **Rights Severable.** To the extent that any Development Rights apply to the Property and additional lands, the Developer shall at the request of the District cooperate and take reasonable steps to separate such rights for the District’s use.

2. **WARRANTIES BY DEVELOPER.** The Developer represents and warrants to the District that: Other than Permitted Transfers, and other than as may be set forth in that certain *Amended and*

Restated Redevelopment Agreement originally executed July 12, 2018, as subsequently amended and/or restated, among the Developer, the City of Jacksonville, and the Downtown Investment Authority, as joined by the District, and except as set forth in that certain *Mortgage, Security Agreement and Assignment of Rents and Leases*, dated as of July 12, 2018, and recorded in Official Records Book 18455, at page 244 of the Public Records of Duval County, Florida, as modified by that certain Notice of Future Advance and Extension Agreement Relating to Mortgage, Security Agreement and Assignment of Lease and Rents dated June 20, 2019, recorded in Official Records Book 18835, page 1407, and the related *Collateral Assignment of Contracts, Development Rights, Permits and Licenses*, dated as of July 12, 2018, and recorded in Official Records Book 18455, at page 274 of the Public Records of Duval County, Florida, the Developer has made no assignment of the Development Rights to any person other than District.

(b) The Developer is not prohibited under agreement with any other person or under any judgment or decree from the execution and delivery of this Agreement.

(c) No action has been brought or threatened which would in any way interfere with the right of the Developer to execute this Agreement and perform all of the Developer's obligations herein contained.

(d) Any transfer, conveyance or sale of the Property shall subject any and all affiliated entities or successors-in-interest of the Developer to the Agreement, except to the extent of a Permitted Transfer.

3. **COVENANTS.** The Developer covenants with District that during the Term (as defined herein):

(a) The Developer will use reasonable, good faith efforts to: (i) fulfill, perform, and observe each and every material condition and covenant of the Developer relating to the Development Rights and (ii) give notice to the District of any claim of default relating to the Development Rights given to or by the Developer, together with a complete copy of any such claim;

(b) The Development Rights include all of the Developer's right to modify the Development Rights, to terminate the Development Rights, and to waive or release the performance or observance of any obligation or condition of the Development Rights; provided that no such modification, termination, waiver or release affects any of the Development Rights which pertain to lands outside of the District not relating to the Project or development of the Property; and

(c) The Developer agrees not to take any action that would decrease the development entitlements to a level below the amount necessary to support the then outstanding Assessments.

4. **EVENTS OF DEFAULT.** Any breach of the Developer's warranties contained in Section 2 hereof, or breach of covenants contained in Section 3 hereof, shall, after the giving of written notice and an opportunity to cure (which cure period shall be not more than thirty (30) days), constitute an "Event of Default" under this Agreement. An Event of Default shall additionally occur upon the transfer of title to any portion of the Property owned by Developer pursuant to a judgment of foreclosure entered by a court of competent jurisdiction in favor of District (or its designee) or a deed in lieu of foreclosure to the District (or its designee), or the acquisition of title to such Property by the District (or its designee) through the sale of tax certificates.

5. **REMEDIES UPON DEFAULT.** Upon an Event of Default, the District may take any or all of the following actions, at the District’s option:

(a) Perform any and all obligations of the Developer relating to the Development Rights and exercise any and all rights of the Developer therein as fully as the Developer could;

(b) Initiate, appear in, or defend any action arising out of or affecting the Development Rights; or

(c) Further assign any and all of the Development Rights to a third-party acquiring title to the Property or any portion thereof from the District or at a District foreclosure sale.

6. **AUTHORIZATION IN EVENT OF DEFAULT.** In the Event of Default, the Developer does hereby authorize and shall direct any party to any agreement relating to the Development Rights to tender performance thereunder to the District upon written notice and request from the District. **SECURITY AGREEMENT.** This Agreement shall be a security agreement between the Developer, as the debtor, and the District, as the secured party, covering the Development Rights that constitute personal property governed by the Florida Uniform Commercial Code (“**Code**”), and the Developer grants to the District a security interest in such Development Rights. In addition to the District’s other rights hereunder, and upon an Event of Default, the District shall have the right to file any and all financing statements that may be required by the District to establish and maintain the validity and priority of the District’s security interest rights of a secured party under the Code.

8. **TERM; TERMINATION.** Absent this Agreement becoming effective and absolute, this Agreement shall automatically terminate upon the earliest to occur of the following: (i) payment of the 2023A-1 Bonds in full; (ii) Development Completion; and (iii) upon occurrence of a Permitted Transfer, but only to the extent that such Development Rights are subject to the Permitted Transfer (herein, the “**Term**”).

9. **AMENDMENT.** This Agreement may be modified in writing only by the mutual agreement of all parties hereto, and subject to Section 15.

10. **ASSIGNMENT.** This Agreement shall constitute a covenant running with title to the Property, binding upon the Developer and its successors and assigns as to the Property or portions thereof. Any transferee shall take title subject to the terms of this Agreement and with respect to the portion of the Property so transferred, provided however that this Agreement shall not apply to any portion of the Property that is the subject of a Permitted Transfer.

11. **ATTORNEYS’ FEES AND COSTS.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the 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. **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 instrument.

13. **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, at the addresses first set forth above. 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, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

14. **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.

15. **THIRD PARTY BENEFICIARIES; NO AMENDMENT WITHOUT TRUSTEE CONSENT.** Except as set forth in the following, 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 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, the Trustee, acting at the direction of the Majority Holders of the 2023A-1 Bonds, shall have the right to directly enforce the provisions of this Agreement. The Trustee shall not be deemed to have assumed any obligations under this Agreement. This Agreement may not be assigned or amended without the written consent of the Trustee, acting at the direction of the Majority Holders of the 2023A-1 Bonds.

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

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.

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

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

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

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the part(ies) below execute the *Collateral Assignment Agreement (2023A-1 Bonds – Tracts 3A & 9B)* to be effective as of November 29, 2023.

WITNESS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

By: _____
Name: _____
Address: _____

By: _____
Name: Arthur E. Lancaster
Title: Chairperson

By: _____
Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by Arthur E. Lancaster, as Chairperson of the **DISTRICT COMMUNITY DEVELOPMENT DISTRICT**, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

(NOTARY SEAL)

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

[SIGNATURE PAGE FOR COLLATERAL ASSIGNMENT AGREEMENT (2023A-1 BONDS – TRACTS 3A & 9B)]

WITNESS

ELEMENTS DEVELOPMENT OF JACKSONVILLE, LLC,
a Florida limited liability company

By: _____
Name: _____
Address: _____

By: PHCC LLC, a Delaware limited liability company,
d/b/a Preston Hollow Community Capital, its
Manager

By: _____
Name: John Dinan
Its: Authorized Signatory and General Counsel

By: _____
Name: _____
Address: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by John Dinan, as an authorized signatory and General Counsel of PHCC, LLC, d/b/a Preston Hollow Community Capital, the manager of Elements Development of Jacksonville, LLC, a Florida limited liability company, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

(NOTARY SEAL)

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as
Commissioned)

EXHIBIT A: Legal Description for Property (Tracts 3A & 9B)

EXHIBIT A:
Legal Description for the Property (Tracts 3A & 9B)

TRACT 3A AND TRACT 9B, RIVERSEDGE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.75 ACRES, MORE OR LESS.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10C

This instrument was prepared by:

Kutak Rock LLP
107 W. College Avenue
Tallahassee, Florida 32301

**COLLATERAL ASSIGNMENT AGREEMENT
(2023A-2 Bonds)**

THIS COLLATERAL ASSIGNMENT AGREEMENT (2023A-2 BONDS) (“Agreement”) is made and entered into, by and between:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 North Pearl Street, Suite 600, Dallas, Texas 75201 (“**Developer**”).

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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 purposes, among others, of planning, financing, constructing, operating and/or maintaining certain infrastructure, including roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/lighting, and other infrastructure within or without the boundaries of the District; and

WHEREAS, the District proposes to issue its Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**”) to finance certain public infrastructure (“**Project**”), as defined in that certain *Amended and Restated District Engineer’s Report*, last amended and restated as of November 14, 2023 (as amended and restated from time to time, “**Engineer’s Report**”); and

WHEREAS, the security for the repayment of the 2023A-2 Bonds is the pledged revenues that include, among other revenues, special assessments (“**Assessments**”) levied against certain benefitted lands within the District (“**Property**”), the legal description of which is attached hereto as **Exhibit A**; and

WHEREAS, the District is presently planned to include a certain number of planned product types and units within the Property (as used herein, “**Units**”), as more specifically identified in that certain *Amended and Restated Master Special Assessment Methodology Report*, dated November 28, 2022, as

supplemented by that certain *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023; and

WHEREAS, “Development Completion” will occur when the planned Units have been platted and developed and all other infrastructure work necessary to support the Units has been completed; and

WHEREAS, before the planned Units can be developed and sold to end users (i.e., before Development Completion), there is an increased likelihood that adverse changes to local or national economic conditions may result in a default in the payment of the Assessments securing the Bonds; and

WHEREAS, in the event of default in the payment of the Assessments, the District has certain remedies – namely, if the Assessments are direct billed, the remedy available to the District would be an action in foreclosure, or if the Assessments are collected pursuant to Florida’s uniform method of collection, the remedy for non-payment of the Assessments is the sale of tax-certificates (collectively, “**Remedial Rights**”); and

WHEREAS, in the event the District exercises its Remedial Rights, the District will require the assignment of certain Development Rights (defined below) to complete development of the project; 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 Property.

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, the Developer and the District agree as follows:

1. **COLLATERAL ASSIGNMENT**

(a) **Development Rights.** The Developer hereby collaterally assigns to the District, to the extent assignable and to the extent that they are owned or controlled by the Developer at execution of this Agreement or subsequently acquired by the Developer, all of the Developer’s development rights relating to development of the Property and/or Project (herein, collectively, “**Development Rights**”) as security for the Developer’s payment and performance and discharge of its obligation to pay the Assessments levied against the Property owned by the Developer from time to time. The Development Rights shall include the items listed as follows as they pertain to development of the Property and/or the Project:

- (i) Zoning approvals, density approvals and entitlements, concurrency and capacity certificates, and development agreements;
- (ii) Engineering and construction plans and specifications for grading, roadways, site drainage, stormwater drainage, signage, water distribution, wastewater collection, and other improvements;
- (iii) Preliminary and final site plans;
- (iv) Architectural plans and specifications for public buildings and other public improvements to the developable property within the Property;

- (v) Permits, approvals, resolutions, variances, licenses, and franchises granted by governmental authorities, or any of their respective agencies, for or affecting the development within the Property and construction of improvements thereon, or off-site to the extent such off-site improvements are necessary or required for Development Completion;
- (vi) Contracts with engineers, architects, land planners, landscape architects, consultants, contractors, and suppliers for or relating to the construction of the development within the Property or the construction of improvements thereon;
- (vii) All declarant rights under any property owner's association or other similar governing entity with respect to the Property;
- (viii) All rights under any sovereign submerged lands lease(s), and related property interests;
- (ix) All prepaid impact fees and impact fee credits; and
- (x) All future creations, changes, extensions, revisions, modifications, substitutions, and replacements of any of the foregoing.

(b) **Exclusions.** Notwithstanding the foregoing, the Development Rights shall not include any rights which relate solely to: (i) platted and developed Units conveyed to unaffiliated homebuilders or end-users, or (ii) any property which has been conveyed to the City of Jacksonville, Duval County, the District, any utility provider, any governmental or quasi-governmental entity, any applicable property owner's association or other governing entity or association as may be required by applicable permits, approvals, plats, entitlements or regulations affecting the District, if any (items (i) and (ii) referred to herein as a "**Permitted Transfer**").

(c) **Rights Inchoate.** The assignment and assumption of rights under this Agreement shall be inchoate and shall only become an effective and absolute assignment and assumption of the Development Rights, upon failure of the Developer to pay the Assessments levied against the Property; provided, however, that such assignment shall only be effective and absolute to the extent that: (i) this Agreement has not been terminated earlier pursuant to the term of this Agreement, (ii) a Permitted Transfer has not already occurred with respect to the Development Rights, or (iii) a platted and developed Unit is conveyed to an unaffiliated homebuilder or end-user, in which event such Unit shall be released automatically here from.

(d) **Rights Severable.** To the extent that any Development Rights apply to the Property and additional lands, the Developer shall at the request of the District cooperate and take reasonable steps to separate such rights for the District's use.

2. **WARRANTIES BY DEVELOPER.** The Developer represents and warrants to the District that: Other than Permitted Transfers, and other than as may be set forth in that certain *Amended and Restated Redevelopment Agreement* originally executed July 12, 2018, as subsequently amended and/or restated, among the Developer, the City of Jacksonville, and the Downtown Investment Authority, as joined by the District, and except as set forth in that certain *Mortgage, Security Agreement and Assignment of Rents and Leases*, dated as of July 12, 2018, and recorded in Official Records Book 18455,

at page 244 of the Public Records of Duval County, Florida, as modified by that certain Notice of Future Advance and Extension Agreement Relating to Mortgage, Security Agreement and Assignment of Lease and Rents dated June 20, 2019, recorded in Official Records Book 18835, page 1407, and the related *Collateral Assignment of Contracts, Development Rights, Permits and Licenses*, dated as of July 12, 2018, and recorded in Official Records Book 18455, at page 274 of the Public Records of Duval County, Florida, the Developer has made no assignment of the Development Rights to any person other than District.

(b) The Developer is not prohibited under agreement with any other person or under any judgment or decree from the execution and delivery of this Agreement.

(c) No action has been brought or threatened which would in any way interfere with the right of the Developer to execute this Agreement and perform all of the Developer's obligations herein contained.

(d) Any transfer, conveyance or sale of the Property shall subject any and all affiliated entities or successors-in-interest of the Developer to the Agreement, except to the extent of a Permitted Transfer.

3. **COVENANTS.** The Developer covenants with District that during the Term (as defined herein):

(a) The Developer will use reasonable, good faith efforts to: (i) fulfill, perform, and observe each and every material condition and covenant of the Developer relating to the Development Rights and (ii) give notice to the District of any claim of default relating to the Development Rights given to or by the Developer, together with a complete copy of any such claim;

(b) The Development Rights include all of the Developer's right to modify the Development Rights, to terminate the Development Rights, and to waive or release the performance or observance of any obligation or condition of the Development Rights; provided that no such modification, termination, waiver or release affects any of the Development Rights which pertain to lands outside of the District not relating to the Project or development of the Property; and

(c) The Developer agrees not to take any action that would decrease the development entitlements to a level below the amount necessary to support the then outstanding Assessments.

4. **EVENTS OF DEFAULT.** Any breach of the Developer's warranties contained in Section 2 hereof, or breach of covenants contained in Section 3 hereof, shall, after the giving of written notice and an opportunity to cure (which cure period shall be not more than thirty (30) days), constitute an "Event of Default" under this Agreement. An Event of Default shall additionally occur upon the transfer of title to any portion of the Property owned by Developer pursuant to a judgment of foreclosure entered by a court of competent jurisdiction in favor of the District (or its designee) or a deed in lieu of foreclosure to District (or its designee), or the acquisition of title to such Property by the District (or its designee) through the sale of tax certificates.

5. **REMEDIES UPON DEFAULT.** Upon an Event of Default, the District may take any or all of the following actions, at the District's option:

(a) Perform any and all obligations of the Developer relating to the Development Rights and exercise any and all rights of the Developer therein as fully as the Developer could;

(b) Initiate, appear in, or defend any action arising out of or affecting the Development Rights; or

(c) Further assign any and all of the Development Rights to a third-party acquiring title to the Property or any portion thereof from the District or at a District foreclosure sale.

6. **AUTHORIZATION IN EVENT OF DEFAULT.** In the Event of Default, the Developer does hereby authorize and shall direct any party to any agreement relating to the Development Rights to tender performance thereunder to the District upon written notice and request from the District. **SECURITY AGREEMENT.** This Agreement shall be a security agreement between the Developer, as the debtor, and the District, as the secured party, covering the Development Rights that constitute personal property governed by the Florida Uniform Commercial Code ("**Code**"), and the Developer grants to the District a security interest in such Development Rights. In addition to the District's other rights hereunder, and upon an Event of Default, the District shall have the right to file any and all financing statements that may be required by the District to establish and maintain the validity and priority of the District's security interest rights of a secured party under the Code.

8. **TERM; TERMINATION.** Absent this Agreement becoming effective and absolute, this Agreement shall automatically terminate upon the earliest to occur of the following: (i) payment of the 2023A-2 Bonds in full; (ii) Development Completion; and (iii) upon occurrence of a Permitted Transfer, but only to the extent that such Development Rights are subject to the Permitted Transfer (herein, the "**Term**").

9. **AMENDMENT.** This Agreement may be modified in writing only by the mutual agreement of all parties hereto, and subject to Section 15.

10. **ASSIGNMENT.** This Agreement shall constitute a covenant running with title to the Property, binding upon the Developer and its successors and assigns as to the Property or portions thereof. Any transferee shall take title subject to the terms of this Agreement and with respect to the portion of the Property so transferred, provided however that this Agreement shall not apply to any portion of the Property that is the subject of a Permitted Transfer.

11. **ATTORNEYS' FEES AND COSTS.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the 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. **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 instrument.

13. **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, at the addresses first set forth above. 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, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

14. **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.

15. **THIRD PARTY BENEFICIARIES; NO AMENDMENT WITHOUT TRUSTEE CONSENT.** Except as set forth in the following, 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 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, the Trustee, acting at the direction of the Majority Holders of the 2023A-2 Bonds, shall have the right to directly enforce the provisions of this Agreement. The Trustee shall not be deemed to have assumed any obligations under this Agreement. This Agreement may not be assigned or amended without the written consent of the Trustee, acting at the direction of the Majority Holders of the 2023A-2 Bonds.

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

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.

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

19. **LIMITATIONS ON GOVERNMENTAL LIABILITY.** Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28,

Florida Statutes, or other law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or by other operation of law.

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

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

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the part(ies) below execute the *Collateral Assignment Agreement (2023A-2 Bonds)* to be effective as of November 29, 2023.

WITNESS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

By: _____
Name: _____
Address: _____

By: _____
Name: Arthur E. Lancaster
Title: Chairperson

By: _____
Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by Arthur E. Lancaster, as Chairperson of the **DISTRICT COMMUNITY DEVELOPMENT DISTRICT**, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

[SIGNATURE PAGE FOR *COLLATERAL ASSIGNMENT AGREEMENT (2023A-2 Bonds)*]

WITNESS

By: _____
Name: _____
Address: _____

By: _____
Name: _____
Address: _____

ELEMENTS DEVELOPMENT OF JACKSONVILLE, LLC,
a Florida limited liability company

a Delaware limited liability company

By: PHCC LLC, a Delaware limited liability company,
d/b/a Preston Hollow Community Capital, its
Manager

By: _____
Name: John Dinan
Its: Authorized Signatory and General Counsel

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of _____, 2023, by _____, as an authorized signatory and General Counsel of PHCC, LLC, d/b/a Preston Hollow Community Capital, the manager of Elements Development of Jacksonville, LLC, a Florida limited liability company, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as
Commissioned)

EXHIBIT A: Legal Description for Property (Series 2023A-2 Assessment Area)

**EXHIBIT A:
Legal Description for the Property (Series 2023A-2 Assessment Area)**

PROPOSED DEVELOPMENT PARCEL (DP):

ALL OF LOTS 7 THROUGH 10, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, AS SHOWN ON THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 46 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A PART OF KANSAS STREET, A 60 FOOT RIGHT OF WAY, CLOSED BY ORDINANCE BB-246 AND A PART OF SECTIONS 44 AND 45, THE ISAAC HENDRICKS GRANT, AND A PART OF SECTION 60, THE F. BAGLEY AND I. HENDRICKS GRANT, ALL LYING IN TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF COMMENCEMENT, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF REED AVENUE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED AND THE EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, 240.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, THE NORTHERLY PROLONGATION THEREOF, AND ALONG THE WESTERLY LINE OF SAID LOT 7, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE; A DISTANCE OF 822.36 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE NORTH 27 DEGREES 38 MINUTES 14 SECONDS EAST, DEPARTING SAID WESTERLY LINE AND ALONG THE EASTERLY LINE AND NORTHEASTERLY PROJECTION OF THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 5103, PAGE 759 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 283.34 FEET TO A POINT ON A LINE BEING THE BOUNDARY SEPARATING THE LANDS OF PRIVATE OWNERSHIP FROM THE ADJACENT STATE OWNED SOVEREIGNTY LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE EASTERLY ALONG LAST SIDE LINE THE FOLLOWING 14 COURSES: COURSE 1, THENCE NORTH 72 DEGREES 33 MINUTES 56 SECONDS EAST, 61.48 FEET; COURSE 2, THENCE SOUTH 73 DEGREES 04 MINUTES 04 SECONDS EAST, 220.55 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 3, THENCE NORTH 27 DEGREES 29 MINUTES 56 SECONDS EAST ALONG SAID EXISTING SEAWALL, 25.35 FEET; COURSE 4, THENCE SOUTH 62 DEGREES 16 MINUTES 12 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 154.29 FEET; COURSE 5, THENCE SOUTH 17 DEGREES 34 MINUTES 47 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 23.74 FEET; COURSE 6, THENCE SOUTH 39 DEGREES 24 MINUTES 04 SECONDS EAST, 32.94 FEET; COURSE 7, THENCE SOUTH 50 DEGREES 13 MINUTES 49 SECONDS EAST, 74.57 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 8, THENCE SOUTH 62 DEGREES 32 MINUTES 42 SECONDS EAST ALONG SAID EXISTING SEAWALL, 100.76 FEET; COURSE 9, THENCE NORTH 71 DEGREES 02 MINUTES 59 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 31.40 FEET; COURSE 10, THENCE SOUTH 62 DEGREES 38 MINUTES 03 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 447.96 FEET; COURSE 11, THENCE SOUTH 62 DEGREES 16 MINUTES 36 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 156.94 FEET; COURSE 12, THENCE SOUTH 78 DEGREES 43 MINUTES 28 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 60.20 FEET; COURSE 13, THENCE SOUTH 56 DEGREES 36 MINUTES 20 SECONDS EAST, 348.39 FEET; COURSE 14, THENCE SOUTH 26 DEGREES 50 MINUTES 05 SECONDS EAST, 107.15 FEET TO THE POINT OF TERMINATION OF SAID LINE DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; ; THENCE SOUTH 72 DEGREES 27 MINUTES 52 SECONDS WEST, 53.09 FEET TO A POINT ON THE WATERS OF THE ST. JOHNS RIVER; THENCE SOUTH 23 DEGREES 45 MINUTES 12 SECONDS WEST DEPARTING SAID WATERS OF THE ST. JOHNS RIVER, 356.01 FEET; THENCE SOUTH 86 DEGREES 36 MINUTES 07 SECONDS WEST, 885.56 FEET TO THE NORTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 14316, PAGE 1471 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 61 DEGREES 14 MINUTES 42 SECONDS WEST, 189.34 FEET; THENCE NORTH 85 DEGREES 43 MINUTES 46 SECONDS WEST, 481.49 FEET TO SAID EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE AND THE POINT OF BEGINNING.

CONTAINING 32.21 ACRES, MORE OR LESS.

THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FLORIDA LEGAL DESCRIPTION



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LESS AND EXCEPT THE FOLLOWING DESCRIBED LANDS (TRACT 3A AND TRACT 9B):

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING. CONTAINING 2.75 ACRES, MORE OR LESS.

RESULTING IN THE SERIES 2023A-2 ASSESSMENT AREA CONTAINING 29.46 ACRES, MORE OR LESS.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10D

This instrument was prepared by:

Kutak Rock LLP
107 W. College Ave.
Tallahassee, Florida 32301

**NOTICE OF SPECIAL ASSESSMENTS / GOVERNMENTAL LIEN OF RECORD
(2023A BONDS)**

PLEASE TAKE NOTICE that the Board of Supervisors of the District Community Development District (“**District**”) in accordance with Chapters 170, 190, and 197, *Florida Statutes*, previously adopted Resolution Nos. 2023-04, 2023-11, and 2024-02 (together, “**Assessment Resolutions**”). The Assessment Resolutions levy and impose non-ad valorem, debt service special assessment lien(s) (“**Assessments**”), which Assessments are levied on benefitted property within the District (“**Assessment Area**”), the boundaries of which are described in **Exhibit A**, and are intended to secure the District’s repayment of debt service on the District’s (i) §[PAR A-1] Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and (ii) §[PAR A-2] Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**”). Such 2023A Bonds are intended to finance all or a portion of the District’s “**Capital Improvement Plan**” which is described in the *Amended and Restated District Engineer’s Report*, dated February 25, 2019, as amended December 18, 2020, as subsequently amended and restated March 21, 2022, November 28, 2022, and November 14, 2023 (as amended and supplemented from time to time, the “**Engineer’s Report**”) (provided however such is referred to as the “**Project**” in Assessment Resolution 2023-11). The Assessments are further described in the *Amended and Restated Master Special Assessment Methodology Report*, dated November 28, 2022 (“**Master Assessment Report**”, as supplemented by the *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023 (together, “**Assessment Report**”). The 2023A Bonds are also secured by other pledged revenues, including REV Grant revenues, which are described in more detail in the Assessment Report. A copy of the Engineer’s Report, Assessment Report and the Assessment Resolutions may be obtained from the registered agent of the District as designated to the Florida Department of Commerce in accordance with Section 189.014, *Florida Statutes*, or by contacting the District’s Manager, c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431, (877) 276-0889.

The Assessments were legally and validly determined and levied in accordance with all applicable requirements of Florida law, and 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. Please note that, as part of the Assessments, the Assessment Resolutions require that certain “**True-Up Payments**” be made in certain circumstances, and landowners should familiarize themselves with those requirements, as they constitute a requirement under the liens.

The District is a special purpose form of local government established pursuant to and governed by Chapter 190, *Florida Statutes*. This notice shall remain effective even if the District undergoes merger, boundary amendment, or name change. Further, this notice shall constitute a lien of record under Florida law, including but not limited to Chapter 197, *Florida Statutes*, and Sections 197.552 and 197.573, *Florida Statutes*, among others.

Pursuant to Section 190.048, *Florida Statutes*, you are hereby notified that:

THE DISTRICT 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 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.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Notice has been executed to be effective as of the November 29, 2023, and recorded in the Public Records of Duval County, Florida.

WITNESS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

By: _____
Name: _____
Address: _____

By: _____
Name: Arthur E. Lancaster
Title: Chairperson

By: _____
Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of _____, 2023, by Arthur E. Lancaster as Chairperson of **District Community Development District**, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

EXHIBIT A
Legal Description of District Boundaries

PROPOSED DEVELOPMENT PARCEL (DP):

ALL OF LOTS 7 THROUGH 10, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, AS SHOWN ON THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 46 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A PART OF KANSAS STREET, A 60 FOOT RIGHT OF WAY, CLOSED BY ORDINANCE BB-246 AND A PART OF SECTIONS 44 AND 45, THE ISAAC HENDRICKS GRANT, AND A PART OF SECTION 60, THE F. BAGLEY AND I. HENDRICKS GRANT, ALL LYING IN TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF COMMENCEMENT, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF REED AVENUE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED AND THE EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, 240.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, THE NORTHERLY PROLONGATION THEREOF, AND ALONG THE WESTERLY LINE OF SAID LOT 7, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE; A DISTANCE OF 822.36 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE NORTH 27 DEGREES 38 MINUTES 14 SECONDS EAST, DEPARTING SAID WESTERLY LINE AND ALONG THE EASTERLY LINE AND NORTHEASTERLY PROJECTION OF THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 5103, PAGE 759 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 283.34 FEET TO A POINT ON A LINE BEING THE BOUNDARY SEPARATING THE LANDS OF PRIVATE OWNERSHIP FROM THE ADJACENT STATE OWNED SOVEREIGNTY LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE EASTERLY ALONG LAST SIDE LINE THE FOLLOWING 14 COURSES: COURSE 1, THENCE NORTH 72 DEGREES 33 MINUTES 56 SECONDS EAST, 61.48 FEET; COURSE 2, THENCE SOUTH 73 DEGREES 04 MINUTES 04 SECONDS EAST, 220.55 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 3, THENCE NORTH 27 DEGREES 29 MINUTES 56 SECONDS EAST ALONG SAID EXISTING SEAWALL, 25.35 FEET; COURSE 4, THENCE SOUTH 62 DEGREES 16 MINUTES 12 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 154.29 FEET; COURSE 5, THENCE SOUTH 17 DEGREES 34 MINUTES 47 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 23.74 FEET; COURSE 6, THENCE SOUTH 39 DEGREES 24 MINUTES 04 SECONDS EAST, 32.94 FEET; COURSE 7, THENCE SOUTH 50 DEGREES 13 MINUTES 49 SECONDS EAST, 74.57 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 8, THENCE SOUTH 62 DEGREES 32 MINUTES 42 SECONDS EAST ALONG SAID EXISTING SEAWALL, 100.76 FEET; COURSE 9, THENCE NORTH 71 DEGREES 02 MINUTES 59 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 31.40 FEET; COURSE 10, THENCE SOUTH 62 DEGREES 38 MINUTES 03 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 447.96 FEET; COURSE 11, THENCE SOUTH 62 DEGREES 16 MINUTES 36 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 156.94 FEET; COURSE 12, THENCE SOUTH 78 DEGREES 43 MINUTES 28 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 60.20 FEET; COURSE 13, THENCE SOUTH 56 DEGREES 36 MINUTES 20 SECONDS EAST, 348.39 FEET; COURSE 14, THENCE SOUTH 26 DEGREES 50 MINUTES 05 SECONDS EAST, 107.15 FEET TO THE POINT OF TERMINATION OF SAID LINE DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; ; THENCE SOUTH 72 DEGREES 27 MINUTES 52 SECONDS WEST, 53.09 FEET TO A POINT ON THE WATERS OF THE ST. JOHNS RIVER; THENCE SOUTH 23 DEGREES 45 MINUTES 12 SECONDS WEST DEPARTING SAID WATERS OF THE ST. JOHNS RIVER, 356.01 FEET; THENCE SOUTH 86 DEGREES 36 MINUTES 07 SECONDS WEST, 885.56 FEET TO THE NORTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 14316, PAGE 1471 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 61 DEGREES 14 MINUTES 42 SECONDS WEST, 189.34 FEET; THENCE NORTH 85 DEGREES 43 MINUTES 46 SECONDS WEST, 481.49 FEET TO SAID EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE AND THE POINT OF BEGINNING.

CONTAINING 32.21 ACRES, MORE OR LESS.

THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
JACKSONVILLE, FLORIDA

LEGAL DESCRIPTION



Drawing name: K:\JAX_Environmental\Elements\CAD\Location Map and Legal.dwg Legal Description Jul 12, 2018 2:49pm by: Fulmar Mendez

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10E

**FOURTH RESTATED¹ ACQUISITION AGREEMENT
(2023A BONDS)**

THIS FOURTH RESTATED ACQUISITION AGREEMENT (2023A BONDS) (“**Fourth Restated Agreement**” or “**Agreement**”) is made and entered into by the following parties, and to be effective as of August 26, 2019:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 N. Pearl Street Suite 600, Dallas, Texas 75201 (“**Developer**,” together with the District, the “**Parties**”).

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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, roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/hardscaping/lighting, and other infrastructure within or outside the boundaries of the District; and

WHEREAS, by way of background, the City of Jacksonville (“**City**”), the Downtown Investment Authority (“**DIA**”), the Developer, and the District, entered into that certain *Redevelopment Agreement for Redevelopment of the JEA Southside Generator Parcel* (as used herein, together with its exhibits including but not limited to the *Interlocal Agreement*, *CRA Infrastructure Improvements Costs Disbursement Agreement*, and all other agreements and exhibits attached thereto and as subsequently amended and restated from time to time, “**Redevelopment Agreement**”); and

WHEREAS, pursuant to the Redevelopment Agreement, the parties intend to redevelop an approximately 32-acre parcel of land (“**Project Property**”) – i.e., the land within the District’s boundaries

¹ This Fourth Restated Agreement supersedes and restates the Prior Agreements (as herein defined). The Parties entered the Second Restatement for purposes of recognizing revisions to the Engineer’s Report (defined herein), and the Third Restatement for purposes of recognizing further revisions to the Engineer’s Report and the District’s intention to issue additional Bonds, as set forth herein. The Parties are entering this Fourth Restatement Agreement for purposes of recognizing further revisions to the Engineer’s Report and the District’s intention to issue additional Bonds, as set forth herein. That said, this Fourth Restated Agreement is intended to apply to any prior acquisitions and/or advanced funding by the Parties pursuant to the Prior Agreements, and, accordingly, this Fourth Restated Agreement shall be effective as of August 26, 2019, the date of the First Restatement.

– along the south bank of the St. Johns River into a mixed-use development, including 1,170 residential units, 200 hotel rooms, 200,000 square feet of office space, 121,400 square feet of retail space, and 125 marina slips; and

WHEREAS, the Developer is the primary developer of private lands within the District, and the development will be supported in part by public infrastructure that will be financed in part and constructed by the District; and

WHEREAS, the District presently intends to finance the planning, design, acquisition, construction, and installation of certain public infrastructure improvements, facilities, and services which together constitute the “**Project**” as detailed in the *Amended and Restated District Engineer’s Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, March 21, 2022, November 28, 2022, and November 14, 2023 (as amended and supplemented from time to time, “**Engineer’s Report**”), attached to this Agreement as **Exhibit A**; and

WHEREAS, the Project consists of two, “sub-projects,” referred to as the “**CDD Project**” and the “**CRA Project**,” which are each described in the Engineer’s Report and the Redevelopment Agreement (provided however, such sub-projects are referred to in the Redevelopment Agreement as the “CDD Infrastructure Improvements,” and the “CRA Infrastructure Improvements,” respectively);

WHEREAS, DIA is obligated to provide funding to cover all or a portion of the costs of those improvements constituting the CRA Project in an amount not to exceed \$23,000,000 (“**DIA Contribution**”) to be paid in accordance with the *CRA Infrastructure Improvements Disbursements Agreement* (as amended and restated from time to time, “**Disbursement Agreement**”) among the District, the DIA, and the Developer; and

WHEREAS, the previously District financed a portion of the Projects through the use of proceeds from the sale of its not to exceed \$35,625,000 Grant Revenue and Special Assessment Bonds, Series 2020 (“**2020 Bonds**”) and its not to exceed \$8,415,000 Grant Revenue and Special Assessment Bonds, Series 2022 (“**2022 Bonds**,” together with the 2020 Bonds, the “**Prior Bonds**”); and

WHEREAS, as a result of modifications to the development plan within the District and unforeseen increases in the costs of labor and materials, the District determined the proceeds of the Prior Bonds were not sufficient to provide funding for the Projects and it was in the best interest of the landowners of the District for the District to refund and restructure the Prior Bonds and authorize the issuance of additional bonds for the remaining portions of the Projects; and

WHEREAS, the District intends to finance the remaining portions of the Projects through the use of proceeds from the sale of its (i) Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and (ii) Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**,” together, the 2023A Bonds and Prior Bonds, “**Bonds**”); and

WHEREAS, at times the District has not had sufficient monies on hand to allow the District to contract directly for: (i) the preparation of the surveys, testing, reports, drawings, plans, permits, specifications, and related documents necessary to complete the CDD Project (“**CDD Work Product**”); (ii) the preparation of the surveys, testing, reports, drawings, plans, permits, specifications, and related documents necessary to complete the CRA Project (“**CRA Work Product**,” together with the CDD Work

Product, the “**Work Product**”); (iii) construction and/or installation of the improvements constituting the CDD Project (“**CDD Improvements**”); or (iv) construction and/or installation of the improvements constituting the CRA Project (“**CRA Improvements**” and, together with the CDD Improvements, the “**Improvements**”); and

WHEREAS, the District acknowledges the Developer’s need, at times, to commence development of the lands within the District in an expeditious and timely manner, and the Developer has or may undertake preparation of certain Work Product, as contemplated under the Redevelopment Agreement; and

WHEREAS, in order to avoid a delay in the commencement of the development of the Work Product and/or the Improvements, the Developer has or may advance, fund, commence, and/or complete certain components of the Work Product and/or Improvements; and

WHEREAS, the District and Developer previously entered into the *Acquisition Agreement (and Advanced Funding Agreement)* effective March 25, 2019, *First Amended and Restated Acquisition Agreement (and Advanced Funding Agreement)*, effective August 26, 2019 (“**First Restatement**”), the *Restated Acquisition Agreement (2020 Bonds)*, effective August 26, 2019 (“**Second Restatement**”), the *Third Restated Acquisition Agreement (2020 & 2022 Bonds)*, effective August 26, 2019 (“**Third Restatement**,” and together with the First Restatement and Second Restatement, the “**Prior Agreements**”), to provide for the District’s acquisition of Work Product, Improvements, and any related real property interests (“**Real Property**”), as well as for the Developer to provide the District with advanced funding to undertake the planning, design, construction, and installation of Improvements and provide for the reimbursement of such advanced funding; and

WHEREAS, the District additionally accepted a designation of responsibility under that certain *Access and Land Swap Option Agreement* (“**Land Swap Agreement**”), pursuant to which the District is responsible for construction of various improvements (“**Land Swap Improvements**”) and other obligations of the Developer; and

WHEREAS, the Land Swap Agreement is part of the Redevelopment Agreement, and the Land Swap Improvements are included within the Project and described in the Engineer’s Report.

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

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

2. ADVANCED FUNDING. If Bond proceeds are unavailable or prior to receipt of DIA Contribution, the Developer agrees to make available to the District such monies as are necessary to enable the District to proceed with, and expedite, the design, engineering, and construction of the CDD Project and the CRA Project, respectively. The Developer will make such funds available on a monthly basis, within fifteen (15) days of a written request by the District. The funds (“**Advanced Funds**”) shall be placed in the District’s depository as determined by the District, and shall be repaid to the Developer, subject to the terms of this Fourth Restated Agreement. The District shall individually account for costs incurred and Advanced Funds expended in connection with the CDD Project and CRA Project, respectively.

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

- a. **Request for Conveyance and Supporting Documentation** – When Work Product or Improvements are ready for conveyance by the Developer to the District, the Developer shall notify the District in writing, describing the nature of the Work Product and/or Improvement and estimated cost. Additionally, Developer agrees to provide, at or prior to the Acquisition Date, the following: (i) documentation of actual costs paid, (ii) instruments of conveyance such as bills of sale or such other instruments as may be reasonably requested by the District, and (iii) any other releases, warranties, indemnifications or documentation as may be reasonably requested by the District and/or required under the Redevelopment Agreement.
- b. **Costs** – Subject to any applicable legal requirements (e.g., but not limited to, those laws governing the use of proceeds from tax exempt bonds), the availability of proceeds from the Bonds and/or DIA Contribution, as applicable, and the requirements of this Fourth Restated Agreement and the Redevelopment Agreement, the District shall pay the lesser of (i) the actual cost of creation/construction of the Work Product or Improvements, and (ii) the fair market value of the Work Product or Improvements. For Work Product and/or Improvements for which the Developer is seeking payment, the Developer shall provide copies of any and all invoices, bills, receipts, or other evidence of costs incurred by the Developer for any Work Product and/or Improvements. The Developer further agrees to provide any documentation of costs incurred which may be required to satisfy any requirements of the Redevelopment Agreement, including but not limited to the Disbursement Agreement, and Developer hereby acknowledges that any such documentation shall be considered public record pursuant to Chapter 119, *Florida Statutes*. The District Engineer shall review all evidence of cost and shall certify to the District’s Board of Supervisors (“**Board**”) whether the cost being paid is the lesser of (i) the actual cost of creation/construction of the Work Product or Improvements, and (ii) the fair market value of the Work Product or Improvements. The District Engineer’s opinion as to cost shall be set forth in an Engineer’s Certificate which shall accompany the requisition for the funds from the District’s Trustee for the Bonds (“**Trustee**”).
- c. **Conveyances on “As Is” Basis.** Unless otherwise agreed, all conveyances of Work Product and/or Improvements shall be on an “as is” basis. That said, the Developer agrees to assign, transfer and convey to the District any and all rights against any and all firms or entities which may have caused any latent or patent defects, including, but not limited to, any and all contract rights, guarantees, warranties and other forms of indemnification, or other rights and/or interests required under the Redevelopment Agreement; provided, however, nothing herein shall be deemed to

assign, transfer or convey Developer's right to pursue claims against such firms or entities to the extent that a claim is made against Developer or its officers, directors, agents, members or manager(s) for any such latent or patent defects.

- d. ***Right to Rely on Work Product and Releases*** – The Developer agrees to release to the District all right, title, and interest which the Developer may have in and to any Work Product conveyed hereunder, as well as all common law, statutory, and other reserved rights, including all copyrights in the Work Product and extensions and renewals thereof under United States law and throughout the world, and all publication rights and all subsidiary rights and other rights in and to the Work Product in all forms, mediums, and media, now known or hereinafter devised. To the extent determined necessary by the District, the Developer shall reasonably obtain all releases from any professional providing services in connection with the Work Product to enable the District to use and rely upon the Work Product. The District agrees to allow the Developer access to and use of the Work Product without the payment of any fee by the Developer; provided, however, that the Developer shall be solely responsible for its use thereof. 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.

- e. ***Transfers to Third Party Governments; Payment for Transferred Property*** – If any item of Work Product or Improvement is to be acquired by the District and then conveyed to a third-party governmental body, then the Developer agrees to cooperate and provide such certifications, documents, bonds, warranties, and/or forms of security as may be required by that governmental body, if any. Further, the District and the Developer agree that it can be difficult to timely effect the turnover of Improvements from the Developer to the District and then to a third-party governmental entity, and, accordingly, the District and the Developer recognize and agree that the parties shall make reasonable efforts to transfer such Improvements and any related Work Product to the District pursuant to the terms of this Fourth Restated Agreement and the Redevelopment Agreement. Regardless, and subject to the terms of this Fourth Restated Agreement and the Redevelopment Agreement, the District has the obligation to acquire all such Work Product and Improvements described in the Engineer's Report that is intended to be turned over to a third party governmental entity, and, in the event that the Developer transfers any such Work Product and Improvements to a third party governmental entity prior to the District's acquisition of the Work Product and Improvements, the District shall be obligated to pay for such Work Product and Improvements, subject to the terms of this Fourth Restated Agreement and the Redevelopment Agreement, and subject to ensuring that such acquisition and payment would not affect the tax-exempt status of the District's Bonds.

- f. ***Permits*** – The Developer agrees to cooperate fully in the transfer of any permits to the District or a governmental entity with maintenance obligations for any Improvements conveyed pursuant to this Fourth Restated Agreement.

- g. ***Engineer's Certification*** – The District shall accept any completed Work Product and/or Improvements where the District Engineer (or other consulting engineer

reasonably acceptable to the District), in his/her professional opinion, is able to certify that, in addition to any other requirements of law: (i) the Work Product and/or Improvements are part of the Project; (ii) the price for such Work Product and/or Improvements did not exceed the lesser of the cost of the Work Product and/or Improvements or the 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.

4. CONVEYANCE OF REAL PROPERTY. Subject to the terms of the Redevelopment Agreement, the Developer agrees that it will convey to the District at or prior to the Acquisition Date, by a special warranty deed or other instrument reasonably acceptable to the District together with a metes and bounds or other description, the Real Property upon which any Improvements are constructed or which are necessary for the operation and maintenance of, and access to, the Improvements.

- a. **Cost.** The parties agree that all Real Property shall be provided to the District at no cost, unless (i) the costs for the Real Property are expressly included as part of the CDD Project, as described in the Engineer's Report, and (ii) the purchase price for the Real Property is less than or equal to the lesser of (1) the Developer's cost basis in the Real Property, or (2) the appraised value of the Real Property, based on an appraisal obtained by the District for this purpose. The parties agree that the purchase price shall not include amounts attributable to the value of Improvements on the Real Property and other improvements serving the Real Property that have been, or will be, funded or otherwise paid for by the District.
- b. **Fee Title and Other Interests** – The District may determine in its reasonable discretion that fee title for Real Property is not necessary and in such cases shall accept such other interest in the lands upon which the Improvements are constructed as the District deems acceptable in its reasonable discretion.
- c. **Developer Reservation** – Any conveyance of Real Property hereunder by special warranty deed or other instrument shall be subject to a reservation by Developer of its right and privilege to use the area conveyed to 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.
- d. **Fees, Taxes, Title Insurance** – The Developer shall pay the cost for recording fees and documentary stamps required, if any, for the conveyance of the 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 land to the District. At the time of

conveyance, the Developer shall provide, at its expense, an owner's title insurance policy or other evidence of title in a form reasonably satisfactory to the District.

- e. **Boundary Adjustments** – Developer and the District agree that reasonable future boundary adjustments may be made as deemed necessary by both parties in order to accurately describe lands conveyed to the District and lands which remain in Developer's ownership. The parties agree that any land transfers made to accommodate such adjustments shall be accomplished by either: (i) the Developer donating such lands at no cost to the District; or (ii) a "trued-up" purchase price based on the original cost method used under Section 4.a. herein and the final determined aggregate acreage of the adjusted Real Property. 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, but explicitly excluding attorney's fees. Developer agrees that if a court or other governmental entity determines that a re-platting of the lands within the District is necessary due to an error or omission during the original platting of said lands by Developer, Developer shall pay all costs and expenses associated with such actions.

5. TAXES, ASSESSMENTS, AND COSTS.

- a. **Taxes and Assessments on Property Being Acquired.** The District is an exempt governmental unit acquiring property pursuant to this Agreement for use exclusively for public purposes. Accordingly, in accordance with Florida law, the Developer agrees to place in escrow with the County tax collector, or another escrow agent approved by the District and Developer (to the extent permitted by law), an amount equal to the current ad valorem taxes and non-ad valorem assessments (with the exception of those ad valorem taxes and non-ad valorem assessments levied by the District) prorated to the date of transfer of title, based upon the expected assessment and millage rates giving effect to the greatest discount available for early payment.
 - i. If and only to the extent the property acquired by the District is subject to ad valorem taxes or non-ad valorem assessments, the 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.
 - ii. Nothing in this Agreement shall prevent the District from asserting any rights to challenge any taxes or assessments imposed, if any, on any property of the District.
- b. **Notice.** The parties agree to provide notice to the other within thirty (30) calendar days of receipt of any notice of potential or actual taxes, assessments, or costs, as a result of any transaction pursuant to this Agreement, or notice of any other taxes, assessments, or costs imposed on the property acquired by the District as described in subsection a. above. The Developer covenants to make any payments due hereunder in a timely manner in accord with Florida law. In the event that the Developer fails to make timely payment of any such taxes, assessments, or costs, the Developer acknowledges the 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.

6. PAYMENT FROM BOND PROCEEDS – CDD PROJECT. The District intends to issue Bonds that may be used to finance portions of the CDD Work Product and/or CDD Improvements acquired hereunder, as well as reimburse Advanced Funds. In the event that the District issues the Bonds and has Bond proceeds available to pay for any portion of the CDD Project acquired by the District, and/or to reimburse Advanced Funds relating to the CDD Project, and subject to the terms of the applicable documents relating to the Bonds, then the District shall promptly make payment for reimbursement of any such Advanced Funds or for acquired CDD Work Product, CDD Improvements or Real Property pursuant to the terms of this Agreement; provided, however, that such obligation shall only exist with respect to Work Product, Improvements or Real Property that is included within the Engineer’s Report,² and provided, however, that no such obligation shall exist where (i) the Developer is in default under the Redevelopment Agreement or on the payment of any debt service assessments due on any Project Property owned by the Developer, or (ii) in the event the District’s bond counsel determines that any such Advanced Funds or acquisitions are not properly compensable for any reason, including, but not limited to federal tax restrictions imposed on tax-exempt financing. Interest shall not accrue on any amounts owed for any Advanced Funds or prior acquisitions. In the event the District does not or cannot issue sufficient Bonds within five (5) years from the execution date of this Fourth Restated Agreement to pay for all acquisitions hereunder, and, thus does not make payment to the Developer for any unfunded acquisitions, then the parties agree that the District shall have no payment or reimbursement obligation whatsoever for those unfunded acquisitions. The Developer acknowledges that the District may convey some or all of the CDD Project Work Product, CDD Improvements or Real Property described in the Engineer’s Report to a general purpose unit of local government (e.g., the City) and consents to the District’s conveyance of such CDD Work Product and/or CDD Improvements prior to any payment being made by the District. Despite anything to the contrary in this Agreement, the District shall have no obligation to issue Bonds in excess of the par amount of **§[COMBINED PAR OF 2023A BONDS]**. Any Bonds issued above such amount shall be issued in the District’s sole discretion.

7. PAYMENT FROM DIA CONTRIBUTION – CRA PROJECT. In addition to the CDD Project, and pursuant to the Redevelopment Agreement, the District is also obligated to acquire and/or construct

² As a point of clarification, the Engineer’s Report includes the CDD Project (as strictly defined under the Redevelopment Agreement) as well as the CRA Project (again, as strictly defined under the Redevelopment Agreement). For purposes of this Agreement, the District may use Bond proceeds to fund the CRA Project pursuant to Section 6 of this Agreement. However, any such CRA Project items funded from Bond proceeds are not then also eligible for DIA Contribution under Section 7. Instead, any DIA Contribution that the District obtains from DIA for such items previously funded by the Bonds would be deposited into the applicable acquisition and construction account for the Bonds and used for other eligible purposes of that account.

the CRA Project and DIA is obligated to provide DIA Contribution to the District in an amount not to exceed \$23,000,000 for the costs of the CRA Project. The District intends to use DIA Contribution to finance portions of the CRA Work Product and/or CRA Improvements acquired hereunder, as well as reimburse Advanced Funds relating to the CRA Project. To the extent the Developer sells and/or conveys CRA Work Product, CRA Improvements and/or Real Property that constitute part of the CRA Project and the District has DIA Contribution available to pay for any portion of the CRA Project acquired by the District, and/or to reimburse Advanced Funds for the CRA Project, then the District shall promptly make payment for the reimbursement of any such Advanced Funds or for acquired CRA Work Product, CRA Improvements, or Real Property subject to the terms of this Fourth Restated Agreement and the terms of the applicable documents relating to the DIA Contribution, including but not limited to the Disbursement Agreement; provided, however, that no such obligation shall exist where (i) the Developer is in default under the Redevelopment Agreement or on the payment of any Bond debt service assessments due on any Project Property owned by the Developer, or (ii) in the event that the City or the DIA determines that any portions of the CRA Project to be acquired are otherwise not in conformance with or properly compensable under the Redevelopment Agreement, provided however that such non-conformance is not due to the negligent or intentionally wrongful acts or omissions of the District. Interest shall not accrue on any amounts owed for any Advanced Funds or prior acquisitions. The Developer acknowledges that the District may convey some or all of the CRA Work Product, CRA Improvements or Real Property constituting the CRA Project to a general purpose unit of local government (e.g., the City) and consents to the District's conveyance of such CRA Work Product and/or CRA Improvements prior to any payment being made by the District.

8. CONTRIBUTIONS TO "BUY DOWN" ASSESSMENT LEVELS. [Reserved].

9. SUPPORTING ADVANCES WAIVER. The District and Developer recognize and agree that, pursuant to Section 7.2 of the Redevelopment Agreement, the Developer has the right to certain "**Supporting Advances**," as defined therein. The Developer hereby waives, and assigns to the District, its right to payment for any Supporting Advances, for the purpose of allowing the District to deposit and use such monies as further provided in the *Master Trust Indenture* dated December 1, 2020, as supplemented by the *Third Supplemental Trust Indenture* dated November 1, 2023, and as further supplemented by the *Fourth Supplemental Trust Indenture* dated November 1, 2023, each by and between the District and the Trustee for the 2023A Bonds.

10. IMPACT FEE CREDITS. [Reserved.]

11. LAND SWAP AGREEMENT. As a point of clarification, and as defined herein, the "Redevelopment Agreement" as used herein refers to the agreement itself and all of its various exhibits attached thereto, including but not limited to the Land Swap Agreement and related District designation. Accordingly, and for purposes of this Fourth Restated Agreement, the Developer and District agree that the Land Swap Improvements are part of the Project and subject to the terms and provisions of this Fourth Restated Agreement.

12. INDEMNIFICATION. To the fullest extent permitted by law, and in addition to any other obligations of Developer under this Fourth Restated Agreement or otherwise, the Developer shall indemnify, hold harmless, and defend the District and its Supervisors, staff, managers, attorneys, engineers, consultants, agents, contractors and subcontractors (together, "**Indemnitees**") from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in part or in whole, by (i) the negligent or intentionally wrongful act or omission of the Developer, or any employee, agent, subcontractor, or any individual or entity directly or indirectly

employed or used by the Developer, and (ii) any breach of any warranty, representation, covenant, or agreement made by Developer in this Fourth Restated Agreement or the Redevelopment Agreement. In the event that any indemnification, defense or hold harmless provision of this Fourth Restated Agreement 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. Obligations under this section shall include, but are not limited to, the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

13. DEFAULT. A default by either party under this Fourth Restated 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. Any default under the applicable trust indenture for the Bonds or the Redevelopment Agreement caused by the Developer shall be a default hereunder, and the District shall have no obligation to issue the Bonds or fund the Project with the proceeds of the Bonds in the event of such a default. Further, any default under the Redevelopment Agreement, Interlocal Agreement, Disbursement Agreement, or any other agreement(s) governing the DIA Contribution caused by the Developer shall constitute a default hereunder, and the District shall have no obligation to fund the CRA Project with the proceeds of the DIA Contribution in the event of such default.

14. ATTORNEYS' FEES AND COSTS. In the event that either party is required to enforce this Fourth Restated 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.

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

16. AUTHORIZATION. The execution of this Fourth Restated 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 instrument.

17. NOTICES. All notices, requests, consents and other communications under this Fourth Restated Agreement ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, at the addresses first set forth above. Except as otherwise provided in this Fourth Restated 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 Fourth Restated 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, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

18. ARM'S LENGTH TRANSACTION. This Fourth Restated 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 Fourth Restated 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.

19. THIRD PARTY BENEFICIARIES. This Fourth Restated 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 Fourth Restated Agreement. Nothing in this Fourth Restated 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 Fourth Restated Agreement or any of the provisions or conditions of this Fourth Restated 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.

20. ASSIGNMENT. Neither the District nor the Developer may assign this Fourth Restated Agreement or any monies to become due hereunder without the prior written approval of the other.

21. 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 Fourth Restated Agreement shall be in Duval County, Florida.

22. 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.

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

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

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

26. COUNTERPARTS. This Fourth Restated 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.

[SIGNATURES ON FOLLOWING PAGE]

WHEREFORE, the Parties below execute this *Fourth Restated Acquisition Agreement (2023A Bonds)* on November 29, 2023, but to be effective August 26, 2019.

**DISTRICT COMMUNITY DEVELOPMENT
DISTRICT**

By: Arthur E. Lancaster
Its: Chairperson

**ELEMENTS DEVELOPMENT OF JACKSONVILLE,
LLC**, a Florida limited liability company

By: PHCC LLC, a Delaware limited liability
company, d/b/a Preston Hollow Community
Capital, its Manager

Name: John Dinan
Its: Authorized Signatory and General Counsel

Exhibit A: *Amended and Restated District Engineer's Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, March 21, 2022, November 28, 2022, and November 29, 2023

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10F

**THIRD RESTATED¹ COMPLETION AGREEMENT
(2023A BONDS)**

THIS THIRD RESTATED COMPLETION AGREEMENT (2023A BONDS) (“**Third Restated Agreement**”) is made and entered into, by and between:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 N. Pearl Street Suite 600, Dallas, Texas 75201 (“**Developer**,” together with the District, the “**Parties**”).

RECITALS

WHEREAS, the District was established by ordinance enacted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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 purposes, among others, of planning, financing, constructing, operating and/or maintaining certain infrastructure, roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/hardscaping/lighting, and other infrastructure within or outside the boundaries of the District; and

WHEREAS, by way of background, the City of Jacksonville (“**City**”), the Downtown Investment Authority (“**DIA**”), the Developer, and the District, entered into that certain *Redevelopment Agreement for Redevelopment of the JEA Southside Generator Parcel* (as used herein, together with its exhibits including but not limited to the *Interlocal Agreement*, *CRA Infrastructure Improvements Costs Disbursement Agreement*, and all other agreements and exhibits attached thereto and as subsequently amended and restated from time to time, “**Redevelopment Agreement**”); and

WHEREAS, pursuant to the Redevelopment Agreement, the parties intend to redevelop an

¹ This Third Restated Agreement supersedes and restates the Prior Agreements, which consist of the following agreements between the Parties: *Second Restated Completion Agreement (2020 & 2022 Bonds)*, dated March 30, 2022 (“2022 Completion Agreement”); *Restated Completion Agreement (2020 Bonds)* dated December 22, 2020 (“2020 Completion Agreement”); and the *First Amended and Restated Completion Agreement*, dated September 23, 2019 (collectively, “Prior Agreements”). The Parties entered the 2020 Completion Agreement for purposes of recognizing revisions to the Engineer’s Report and, after a change in ownership, affirming the Developer’s obligation to complete the Projects, as revised, and as set forth herein, and the 2022 Completion Agreement for purposes of recognizing further revisions to the Engineer’s Report and the District’s intention to issue additional Bonds. The Parties are entering into this Third Restated Agreement for purposes of recognizing further revisions to the Engineer’s Report and the District’s intention to issue additional Bonds, as set forth herein.

approximately 32-acre parcel of land – i.e., the land within the District’s boundaries – along the south bank of the St. Johns River into a mixed-use development, including up to 1,170 residential units, 200 hotel rooms, 200,000 square feet of office space, 121,400 square feet of retail space, and 125 marina slips; and

WHEREAS, the Developer is the primary developer of private lands within the District, and the development will be supported in part by public infrastructure that will be financed in part and constructed by the District; and

WHEREAS, the Redevelopment Agreement contemplates that the District will plan, design, acquire, construct and install two projects, referred to therein as the “CRA Infrastructure Improvements,” and the “CDD Infrastructure Improvements;” and

WHEREAS, pursuant to and subject to the terms of the Redevelopment Agreement, the District has and desires to continue undertake to acquire and/or construct such projects as part of the District’s capital improvement plan, as such may be updated and/or revised from time to time (together and as may be amended and/or revised, “**Projects**”); and

WHEREAS, the Projects are in the estimated amount of **[\$75,795,132]** and are described in the *Amended and Restated District Engineer’s Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, March 21, 2022, November 28, 2022, and November 14, 2023 (as amended and supplemented from time to time, “**Engineer’s Report**”), which Engineer’s Report is attached to this Third Restated Agreement as **Exhibit A**; and

WHEREAS, the City, through DIA, will provide funds to the District for the planning, design, acquisition, construction and installation of the CRA Infrastructure Improvements in the maximum amount of Twenty-Three Million and 00/100 Dollars (\$23,000,000.00) (“**DIA Contribution**”); and

WHEREAS, the District financed a portion of the Projects through the use of proceeds from the sale of its not to exceed \$35,625,000 Grant Revenue and Special Assessment Bonds, Series 2020 (“**2020 Bonds**”) and its not to exceed \$8,415,000 Grant Revenue and Special Assessment Bonds, Series 2022 (“**2022 Bonds**,” together with the 2020 Bonds, the “**Prior Bonds**”); and

WHEREAS, as a result of modifications to the development plan within the District and unforeseen increases in the costs of labor and materials, the District determined the proceeds of the Prior Bonds were not sufficient to provide funding for the Projects and it was in the best interest of the landowners of the District for the District to refund and restructure the Prior Bonds and authorize the issuance of additional bonds for the remaining portions of the Projects; and

WHEREAS, in furtherance of the above, the District intends to finance the remaining portions of the Projects through the use of proceeds from the sale of its (i) Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and (ii) Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**,” together, the 2023A Bonds and Prior Bonds, “**Bonds**”); and

WHEREAS, in order to ensure that the Projects are completed, and, subject to the terms and conditions of this Third Restated Agreement, the Developer will make provision for any additional funds

above and beyond the 2023A Bond proceeds and DIA Contribution that may be necessary in the future to complete the Projects and to fully satisfy the requirements of the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement provides that: (i) the District completes the Projects, (ii) the District pays any “Cost Overruns,” (iii) the District indemnifies the City and DIA under certain circumstances; (iv) the District guarantees the Developer’s obligations under the Redevelopment Agreement; and (v) the District otherwise effects and/or is responsible for various tasks and obligations for which the District may not have sufficient funds on hand from the issuance of the Bonds or DIA Contribution (together, but not including any obligations relating to the operation and maintenance of the Projects, “**Unfunded Obligations**”); and

WHEREAS, the District previously accepted a designation of responsibility under that certain *Access and Land Swap Option Agreement* (“**Land Swap Agreement**”), pursuant to which the District is responsible for construction of various improvements (“**Land Swap Improvements**”); and

WHEREAS, the Land Swap Improvements are included within the Projects, and, accordingly, and as a point of clarification, the Developer’s obligation hereunder to complete the Projects includes the obligation to complete the Land Swap Improvements;

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

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

2. **COMPLETION OF PROJECTS.** The Developer and District agree and acknowledge that the District’s Bonds and the DIA Contribution may provide only a portion of the funds necessary to complete the Projects. Further, the parties agree that the District’s maximum obligation to issue bonds under this Agreement shall not exceed **\$(TOTAL PAR OF 2023A BONDS)**, which is the aggregate par amount of the 2023A Bonds. Therefore, 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 improvements in the Projects which, after application of proceeds of the Bonds and the DIA Contribution, remain unfunded including, but not limited to, all administrative, legal, warranty, engineering, permitting or other related work product and soft costs (together, “**Remaining Improvements**”) whether pursuant to existing contracts, including change orders thereto, or future contracts. The District and Developer hereby acknowledge and agree that the District’s execution of this Third Restated Agreement constitutes the manner and means by which the District has elected to provide any and all portions of the Remaining Improvements not funded by the Bonds and DIA Contribution.

a. **Subject to Existing Contract** - When all or any portion of the Remaining Improvements are the subject of an existing District contract procured pursuant to the Redevelopment Agreement, the Developer shall provide funds or cause funds to be provided directly to the District in an amount sufficient to complete the Remaining Improvements pursuant to such contract, including change orders thereto, entered into consistent with the Redevelopment Agreement. In the event that the District intends to enter into any contract and/or change order where the costs of the Remaining Improvements as

proposed would be in excess of the cost estimates described in the Redevelopment Agreement, as updated by the Engineer's Report, then the District shall notify the Developer, and, prior to entering into any such contract and/or change order, the Developer and the District shall promptly negotiate in good faith to determine whether to implement a feasible, lower-cost alternative – if any exists – to complete the Remaining Improvements, provided however that any such alternative shall be consistent with the District's obligations under the Redevelopment Agreement and any obligations relating to the Bonds.

- b. **Not Subject to Existing Contract** – When any portion of the Remaining Improvements is not the subject of an existing District contract, and to the extent permitted by the Redevelopment Agreement, the Developer may choose to complete, cause to be completed, or 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 Remaining Improvements.

3. OTHER CONDITIONS AND ACKNOWLEDGMENTS

- a. **Material Changes to Projects** – The District and the Developer agree and acknowledge that the exact location, size, configuration and composition of the Projects may change from that described in the Engineer's Report, depending upon final design of the development, permitting or other regulatory requirements over time, or other factors. Material changes to the Projects shall be made by a written amendment to the Engineer's Report, which shall include an estimate of the cost of the changes, and shall require the consent of the Developer and the District. Such consent is not necessary and the Developer must meet the completion obligations, or cause them to be met, when the scope, configuration, size and/or composition of the Projects is materially changed in response to a requirement imposed by a regulatory agency, at no fault of the District.
- b. **Conveyances** – To the extent applicable, the District and Developer agree and acknowledge that any and all portions of the Remaining Improvements 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 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 (or among) the District, the Developer and/or the appropriate unit of local government. Further, all such conveyances shall be done in a manner consistent with the *Fourth Restated Acquisition Agreement (2023A Bonds)* between the Parties and effective August 26, 2019, as amended and/or restated from time to time (together, "**Acquisition Agreement**"), and, without intending to limit the same, shall include all necessary real property interests for the District to own, operate and maintain the Remaining Improvements. Further, and in addition to any requirements under the Acquisition Agreement, such conveyances (i) shall include all rights required under the Redevelopment Agreement relating to the Remaining Improvements; (ii) shall also include all right, title, interest, and benefit of the Developer, if any, in, to and under any and all contracts, guaranties, affidavits, warranties, bonds, insurance rights, indemnification, defense and hold harmless rights, enforcement rights, claims, lien waivers, and all other rights of any kind, with respect to the creation of the

Remaining Improvements; and (iii) may be freely conveyed by the District to the City and DIA in accordance with the Redevelopment Agreement, to the extent applicable.

4. **AGREEMENT TO FULFILL DEVELOPER OBLIGATIONS UNDER REDEVELOPMENT AGREEMENT; UNFUNDED OBLIGATIONS.** The Developer hereby agrees that the Developer shall fulfill all of the Developer's responsibilities under the Redevelopment Agreement, and shall promptly and timely fund any Unfunded Obligations, to the extent such Unfunded Obligations are not caused by the negligent or intentionally wrongful actions or inactions of the District, and upon request from the District. As a point of clarification, and as defined herein, the "**Redevelopment Agreement**" as used herein refers to the agreement itself and all of its various agreements and exhibits attached thereto, including but not limited to the Land Swap Agreement and related District designation. Accordingly, the Developer and District agree that the Unfunded Obligations shall additionally include among other things the various tasks and obligations under the Land Swap Agreement for which the District as designee may not have sufficient funds on hand from the issuance of the Bonds or the DIA Contribution.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, and in addition to any other obligations of Developer under this Third Restated Agreement or otherwise, the Developer shall indemnify, hold harmless, and defend the District and its Supervisors, staff, managers, attorneys, engineers, consultants, agents, contractors and subcontractors (together, "**Indemnitees**") from all claims, liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused, in part or in whole, by (i) the negligent or intentionally wrongful act or omission of the Developer, or any employee, agent, subcontractor, or any individual or entity directly or indirectly employed or used by the Developer, and (ii) any breach of any warranty, representation, covenant, or agreement made by Developer in this Third Restated Agreement or the Redevelopment Agreement. In the event that any indemnification, defense or hold harmless provision of this Third Restated Agreement 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. Obligations under this section shall include, but are not limited to, the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

6. **DEFAULT.** A default by either party under this Third Restated 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. Nothing contained herein shall be construed or otherwise be interpreted to waive or restrict the District's right to levy special assessments upon the property within the District in the event Developer fails to satisfy its obligations hereunder. Any default under the applicable trust indenture for the Bonds or the Redevelopment Agreement caused by the Developer shall be a default hereunder, and the District shall have no obligation to issue the Bonds or fund any portion of the Projects with the proceeds of the Bonds in the event of such a default.

7. **ATTORNEYS' FEES AND COSTS.** In the event that either party is required to enforce this Third Restated 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.

8. **AUTHORIZATION.** The execution of this Third Restated 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 instrument.

9. **NOTICES.** All notices, requests, consents and other communications under this Third Restated Agreement (“**Notices**”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the Parties, at the addresses first set forth above. Except as otherwise provided in this Third Restated 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 Third Restated 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, respectively. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

10. **ARM’S LENGTH TRANSACTION.** This Third Restated 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 Third Restated Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Third Restated 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.

11. **THIRD PARTY BENEFICIARIES.** Except as set forth below, this Third Restated 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 Third Restated Agreement. Nothing in this Third Restated Agreement expressed or implied is intended or shall be construed to confer upon any person other than the District and the Developer any right, remedy, or claim under or by reason of this Third Restated Agreement or any of the provisions or conditions of this Third Restated Agreement; and all of the provisions, representations, covenants, and conditions contained in this Third Restated 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, but subject to any contrary requirements of the Redevelopment Agreement, the Trustee, acting at the direction of the Majority Holders of the 2023A Bonds, shall have the right to directly enforce the provisions of this Third Restated Agreement. The Trustee shall not be deemed to have assumed any obligations under this Third Restated Agreement. This Third Restated Agreement may not be assigned or amended without the consent of the Trustee, acting at the direction of the Majority Holders of the 2023A Bonds.

12. **ASSIGNMENT.** Neither the District nor the Developer may assign this Third Restated Agreement or any monies to become due hereunder without the prior written approval of the other, and subject to Section 11.

13. **AMENDMENTS.** Amendments to and waivers of the provisions contained in this Third Restated Agreement may be made only by an instrument in writing which is executed by both the District and the Developer, and subject to Section 11.

14. **APPLICABLE LAW AND VENUE.** This Third Restated 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 Third Restated Agreement shall be in Duval County, Florida.

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

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

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

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

19. **COUNTERPARTS.** This Third Restated 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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the Parties below execute the Third Restated Completion Agreement to be effective as of November 29, 2023.

**DISTRICT COMMUNITY DEVELOPMENT
DISTRICT**

By: Arthur E. Lancaster
Its: Chairperson

**ELEMENTS DEVELOPMENT OF JACKSONVILLE,
LLC**, a Florida limited liability company

By: PHCC LLC, a Delaware limited liability
company, d/b/a Preston Hollow Community
Capital, its Manager

Name: John Dinan
Its: Authorized Signatory and General Counsel

Exhibit A: *Amended and Restated District Engineer's Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, March 21, 2022, November 28, 2022, and November 14, 2023

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10G

This instrument was prepared by:

Kutak Rock LLP
107 West College
Tallahassee, Florida 32301

**TRUE-UP AGREEMENT
(2023A-1 Bonds - Tracts 3A & 9B)**

THIS TRUE-UP AGREEMENT (2023A-1 BONDS – TRACTS 3A & 9B) (“Agreement”) is made and entered into, by and between:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 N. Pearl Street Suite 600, Dallas, Texas 75201 (“**Landowner**”).

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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, roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/lighting, and other infrastructure within or without the boundaries of the District; and

WHEREAS, the Landowner is currently the primary owner and developer of those certain lands within the District known as Tracts 3A and 9B as described in **Exhibit A** attached hereto (“**Property**”), which Property is referred to as the Series 2023A-1 Assessment Area under the Third Supplemental Indenture (hereinafter defined); and

WHEREAS, for the benefit of the Property, the District previously adopted a capital improvement plan (“**Original CIP**”) as described in that certain *Amended and Restated District Engineer’s Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, and March 21, 2022, and financed a portion of the Original CIP through the issuance of its not to exceed \$35,625,000 Grant Revenue and Special Assessment Bonds, Series 2020 (“**Series 2020 Bonds**”), and its not to exceed \$8,415,000 Grant Revenue and Special Assessment Bonds, Series 2022 (“**Series 2022 Bonds**,” and together with the Series 2020 Bonds, the “**Prior Bonds**”); and

WHEREAS, as a result of subsequent modifications to the development plan within the District and unforeseen increases in the costs of labor and materials, the District determined (i) to undertake revisions to the Original CIP (as revised, "**CIP**"); (ii) that the proceeds of the Prior Bonds were not sufficient to provide funding for the CIP; and (iii) it was in the best interest of the landowners of the District for the District to refund the Prior Bonds and authorize the issuance of additional bonds; and

WHEREAS, in furtherance thereof, for the benefit of the Property, the District presently intends to refund the Prior Bonds and finance the planning, design, acquisition, construction, and installation of the remaining portions of the CIP; and

WHEREAS, the CIP, as revised, is defined in that certain *Amended and Restated District Engineer's Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, and March 21, 2022, November 28, 2022, and November 14, 2023 (as amended and supplemented from time to time, "**Engineer's Report**"); and

WHEREAS, the District intends to finance the remaining portion of the CIP through the use of proceeds from the anticipated sale of its (i) Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 ("**2023A-1 Bonds**") and (ii) Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 ("**2023A-2 Bonds**," and together with the 2023A-1 Bonds, "**2023A Bonds**"); and

WHEREAS, pursuant to Resolution Nos. 2023-04, 2023-11, and 2024-02 (collectively, the "**Assessment Resolutions**"), the District has taken certain steps necessary to impose debt service special assessment lien(s) ("**2023A-1 Assessments**") on the benefitted Property pursuant to Chapters 170, 190 and 197, *Florida Statutes*, to secure repayment of the 2023A-1 Bonds; and

WHEREAS, as part of the Assessment Resolutions, the District adopted the *Amended and Restated Master Special Assessment Methodology Report, dated November 28, 2022* ("**Master Assessment Report**"), as supplemented by the *2023 Supplemental Special Assessment Methodology Report*, dated November 14, 2023 (together, "**Assessment Report**"), which are on file with the District and expressly incorporated herein by this reference; and

WHEREAS, Landowner agrees that the Property benefits from the timely design, construction, or acquisition of the CIP; and

WHEREAS, Landowner agrees that the 2023A-1 Assessments, which were imposed on the Property, have been validly imposed and constitute valid, legal, and binding liens upon the lands within the District; and

WHEREAS, the Assessment Resolutions together with the Assessment Report provide that as the lands within the District are developed, the allocation of the amounts assessed to and constituting a lien upon the lands within the District would be calculated based upon certain density assumptions relating to the number of each type of unit to be constructed on the developable acres within the District, which assumptions were provided by Landowner; and

WHEREAS, Landowner intends to plat and develop its lands within the District based on then-existing market conditions, and the actual densities developed may be at some density less than the densities assumed in the Assessment Report; and

WHEREAS, as more fully described by the Assessment Resolutions, the Assessment Report anticipates a “true-up” mechanism by which the Landowner shall make certain payments to the District in order to satisfy, in whole or in part, the assessments allocated and the liens imposed pursuant to the Assessment Resolutions, with the amount of such payments being determined generally by a calculation of the principal amount of assessments to be assigned under the Assessment Report as compared to the amount able to be assigned as reconfigured.

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

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

2. **VALIDITY OF ASSESSMENTS.** Landowner agrees that the Assessment Resolutions have been duly adopted by the District. Landowner further agrees that the 2023A-1 Assessments imposed as liens by the District are legal, valid, and binding liens on 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. Landowner waives any defect in notice or publication or in the proceedings to levy, impose, and collect the 2023A-1 Assessments on the lands within the District, and further waives and relinquishes any rights it may have to challenge, object to or otherwise fail to pay such 2023A-1 Assessments. Landowner further agrees that to the extent Landowner fails to timely pay all 2023A-1 Assessments collected by mailed notice of the District, said unpaid 2023A-1 Assessments (including True-Up Payments) may be placed on the tax roll by the District for collection by the County Tax Collector pursuant to Section 197.3632, *Florida Statutes*, in any subsequent year.

3. **WAIVER OF CERTAIN RIGHTS.** Landowner waives any rights it may have under Section 170.09, *Florida Statutes*, to prepay the 2023A-1 Assessments without interest within thirty (30) days of completion of the improvements. Further, the Landowner hereby waives, and assigns to the District, its right to payment for any Supporting Advances, as described in Section 7.2 of the *Amended and Restated Redevelopment Agreement* effective July 12, 2018, among the Developer, the District, the City of Jacksonville, and the Downtown Investment Authority, for the purpose of allowing the District to deposit and use such monies as further provided in the *Master Trust Indenture* dated December 1, 2020 (“**Master Indenture**”), as supplemented by the *Third Supplemental Trust Indenture* dated November 1, 2023 (“**Third Supplemental Indenture**”), and as further supplemented by the *Fourth Supplemental Trust Indenture* dated November 1, 2023 (“**Fourth Supplemental Indenture**”), each by and between the District and U.S. Bank Trust Company, National Association, as Trustee (or successor trustee to U.S. Bank National Association under the Master Indenture).

4. **SPECIAL ASSESSMENT REALLOCATION; TRUE-UP PAYMENTS.** The Assessment Report, which as noted above has been incorporated herein, includes certain provisions requiring a True-Up Payment. Landowner agrees to comply with the terms of the Assessment Report relating to True-Up

Payments, and to make any True-Up Payments due thereunder, upon 10 days written notice from the District.

5. **ENFORCEMENT.** This Agreement is intended to be an additional method of enforcement of Landowner's obligation to pay the 2023A-1 Assessments and to abide by the requirements of the reallocation of 2023A-1 Assessments, including the making of the True-Up Payment, as set forth in the Assessment Resolutions and Assessment Report. A default by either party under this Agreement shall entitle any other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief, and specific performance. Prior to commencing any action for a default hereunder, the party seeking to commence such action shall first provide notice to the defaulting party of the default and an opportunity to cure such default within 30 days.

6. **ASSIGNMENT.** This Agreement shall constitute a covenant running with title to the Property, binding upon Landowner and its successors and assigns as to the Property or portions thereof, and any transferee of any portion of the Property as set forth in this Section. Landowner shall not transfer any portion of the Property to any third party, without first satisfying any True-Up Payment that results from any true-up determinations made by the District. Regardless of whether the conditions of this subsection are met, any transferee shall take title subject to the terms of this Agreement and with respect to the portion of the Property so transferred. As a point of clarification, Developer Developed Property, as defined in the Assessment Report, is not subject to True-Up Payments and is released from this Agreement; provided however that this provision shall not be construed to permit a specific parcel of Property from avoiding a prior outstanding True-Up Payment simply by virtue of that parcel becoming Developer Developed Property (and any such prior outstanding True-Up Payment owed may be confirmed from an estoppel letter issued by the District through its District Manager).

7. **ATTORNEYS' FEES AND COSTS.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the 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.

8. **AMENDMENTS.** Subject to Section 12, 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 Landowner.

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

10. **NOTICE.** All notices, requests, consents, and other communications hereunder ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied or hand delivered to the parties, at the addresses first set forth above. Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address or telecopy number 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, address or telecopy number 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.

11. **ARM'S LENGTH TRANSACTION.** This Agreement has been negotiated fully between the District and the Landowner 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 Landowner.

12. **THIRD PARTY BENEFICIARIES.** Except as set forth below, this Agreement is solely for the benefit of the District and the Landowner and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Landowner any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Landowner and their respective representatives, successors, and assigns.

Notwithstanding the foregoing, the Trustee, acting at the direction of the Majority Holders (as defined in the Third Supplemental Indenture) of the 2023A-1 Bonds, shall have the right to directly enforce the provisions of this Agreement. The Trustee shall not be deemed to have assumed any obligations under this Agreement. This Agreement may not be assigned (except as set forth in Section 6) or amended without the consent of the Trustee, acting at the direction of the Majority Holders of the 2023A-1 Bonds.

13. **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 Duval County, Florida.

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

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 law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or by other operation of law.

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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the part(ies) below execute the *True-Up Agreement (2023A-1 Bonds – Tracts 3A & 9B)* to be effective as of November 29, 2023.

WITNESS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

By: _____
Name: _____
Address: _____

By: _____
Name: Arthur E. Lancaster
Title: Chairperson

By: _____
Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by Arthur E. Lancaster, Chairperson of **DISTRICT COMMUNITY DEVELOPMENT DISTRICT**, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

(NOTARY SEAL)

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as
Commissioned)

[SIGNATURE PAGE FOR TRUE-UP AGREEMENT (2023A-1 BONDS – TRACTS 3A & 9B)]

WITNESS

By: _____
Name: _____
Address: _____

By: _____
Name: _____
Address: _____

ELEMENTS DEVELOPMENT OF JACKSONVILLE, LLC, a Florida limited liability company

By: PHCC LLC, a Delaware limited liability company, d/b/a Preston Hollow Community Capital, its Manager

By: _____
Name: John Dinan
Its: General Counsel & Authorized Signatory

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by John Dinan, as General Counsel and an authorized signatory of PHCC, LLC, d/b/a Preston Hollow Community Capital, the Manager of Elements Development of Jacksonville, LLC, a Florida limited liability company, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

EXHIBIT A: Legal Description of the Property

EXHIBIT A

Legal Description of Property
(Series 2023A-1 Assessment Area – Tracts 3A & 9B)

TRACT 3A AND TRACT 9B, RIVERSEDGE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING.

CONTAINING 2.75 ACRES, MORE OR LESS.

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

10H

This instrument was prepared by:

Kutak Rock LLP
107 West College
Tallahassee, Florida 32301

**TRUE-UP AGREEMENT
(2023A-2 Bonds)**

THIS TRUE-UP AGREEMENT (2023A-2 BONDS) (“Agreement”) is made and entered into, by and between:

District Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Jacksonville, Duval County, Florida, and whose mailing address is c/o Wrathell, Hunt & Associates, LLC, 2300 Glades Road, Suite 410W, Boca Raton, Florida 33431 (“**District**”); and

Elements Development of Jacksonville, LLC, a Florida limited liability company, and the developer of lands within the boundary of the District, whose mailing address is 2121 N. Pearl Street Suite 600, Dallas, Texas 75201 (“**Landowner**”).

RECITALS

WHEREAS, the District was established by ordinance adopted by the City Council for the City of Jacksonville, Duval County, Florida, pursuant to the Uniform Community Development District Act of 1980, Chapter 190, *Florida Statutes*, as amended (“**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, roadways, stormwater management, utilities (water & sewer), offsite improvements, landscaping/lighting, and other infrastructure within or without the boundaries of the District; and

WHEREAS, the Landowner is currently the primary owner and developer of certain lands within the District as described in **Exhibit A** attached hereto (“**Property**”), which Property is referred to as the Series 2023A-2 Assessment Area under the Fourth Supplemental Indenture (hereinafter defined); and

WHEREAS, for the benefit of the Property, the District previously adopted a capital improvement plan (“**Original CIP**”) as described in that certain *Amended and Restated District Engineer’s Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, and March 21, 2022, and financed a portion of the Original CIP through the issuance of its not to exceed \$35,625,000 Grant Revenue and Special Assessment Bonds, Series 2020 (“**Series 2020 Bonds**”), and its not to exceed \$8,415,000 Grant Revenue and Special Assessment Bonds, Series 2022 (“**Series 2022 Bonds**,” and together with the Series 2020 Bonds, the “**Prior Bonds**”); and

WHEREAS, as a result of subsequent modifications to the development plan within the District and unforeseen increases in the costs of labor and materials, the District determined (i) to undertake revisions to the Original CIP (as revised, the “**CIP**”); (ii) that the proceeds of the Prior Bonds were not sufficient to provide funding for the CIP; and (iii) it was in the best interest of the landowners of the District for the District to refund the Prior Bonds and authorize the issuance of additional bonds; and

WHEREAS, in furtherance thereof, for the benefit of the Property, the District presently intends to refund the Prior Bonds and finance the planning, design, acquisition, construction, and installation of the remaining portions of the CIP; and

WHEREAS, the CIP, as revised, is defined in that certain *Amended and Restated District Engineer’s Report*, originally dated February 25, 2019, as amended and/or restated on December 18, 2020, and March 21, 2022, November 28, 2022, and November 14, 2023 (as amended and supplemented from time to time, the “**Engineer’s Report**”); and

WHEREAS, the District intends to finance the remaining portion of the CIP through the use of proceeds from the anticipated sale of its (i) Grant Revenue and Special Assessment Refunding and Improvement Bonds, Series 2023A-1 (“**2023A-1 Bonds**”) and (ii) Grant Revenue and Special Assessment Refunding and Improvement Convertible Capital Appreciation Bonds, Series 2023A-2 (“**2023A-2 Bonds**,” and together with the 2023A-1 Bonds, “**2023A Bonds**”); and

WHEREAS, pursuant to Resolution Nos. 2023-04, 2023-11, and 2024-02 (collectively, the “**Assessment Resolutions**”), the District has taken certain steps necessary to impose debt service special assessment lien(s) (“**2023A-2 Assessments**”) on the benefitted Property pursuant to Chapters 170, 190 and 197, *Florida Statutes*, to secure repayment of the 2023A-2 Bonds; and

WHEREAS, as part of the Assessment Resolutions, the District adopted the *Amended and Restated Master Special Assessment Methodology Report, dated November 28, 2022* (“**Master Assessment Report**”), as supplemented by the *2023 Supplemental Special Assessment Methodology Report, dated November 14, 2023* (together, the “**Assessment Report**”), which are on file with the District and expressly incorporated herein by this reference; and

WHEREAS, Landowner agrees that the Property benefits from the timely design, construction, or acquisition of the CIP; and

WHEREAS, Landowner agrees that the 2023A-2 Assessments, which were imposed on the Property, have been validly imposed and constitute valid, legal, and binding liens upon the lands within the District; and

WHEREAS, the Assessment Resolutions together with the Assessment Report provide that as the lands within the District are developed, the allocation of the amounts assessed to and constituting a lien upon the lands within the District would be calculated based upon certain density assumptions relating to the number of each type of unit to be constructed on the developable acres within the District, which assumptions were provided by Landowner; and

WHEREAS, Landowner intends to plat and develop its lands within the District based on then-existing market conditions, and the actual densities developed may be at some density less than the densities assumed in the Assessment Report; and

WHEREAS, as more fully described by the Assessment Resolutions, the Assessment Report anticipates a “true-up” mechanism by which the Landowner shall make certain payments to the District in order to satisfy, in whole or in part, the assessments allocated and the liens imposed pursuant to the Assessment Resolutions, with the amount of such payments being determined generally by a calculation of the principal amount of assessments to be assigned under the Assessment Report as compared to the amount able to be assigned as reconfigured.

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

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

2. **VALIDITY OF ASSESSMENTS.** Landowner agrees that the Assessment Resolutions have been duly adopted by the District. Landowner further agrees that the 2023A-2 Assessments imposed as liens by the District are legal, valid, and binding liens on 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. Landowner waives any defect in notice or publication or in the proceedings to levy, impose, and collect the 2023A-2 Assessments on the lands within the District, and further waives and relinquishes any rights it may have to challenge, object to or otherwise fail to pay such 2023A-2 Assessments. Landowner further agrees that to the extent Landowner fails to timely pay all 2023A-2 Assessments collected by mailed notice of the District, said unpaid 2023A-2 Assessments (including True-Up Payments) may be placed on the tax roll by the District for collection by the County Tax Collector pursuant to Section 197.3632, *Florida Statutes*, in any subsequent year.

3. **WAIVER OF CERTAIN RIGHTS.** Landowner waives any rights it may have under Section 170.09, *Florida Statutes*, to prepay the 2023A-2 Assessments without interest within thirty (30) days of completion of the improvements. Further, the Landowner hereby waives, and assigns to the District, its right to payment for any Supporting Advances, as described in Section 7.2 of the *Amended and Restated Redevelopment Agreement* effective July 12, 2018, among the Developer, the District, the City of Jacksonville, and the Downtown Investment Authority, for the purpose of allowing the District to deposit and use such monies as further provided in the *Master Trust Indenture* dated December 1, 2020 (“**Master Indenture**”), as supplemented by the *Third Supplemental Trust Indenture* dated November 1, 2023 (“**Third Supplemental Indenture**”), and as further supplemented by the *Fourth Supplemental Trust Indenture* dated November 1, 2023 (“**Fourth Supplemental Indenture**”), each by and between the District and U.S. Bank Trust Company, National Association, as Trustee (or successor trustee to U.S. Bank National Association under the Master Indenture).

4. **SPECIAL ASSESSMENT REALLOCATION; TRUE-UP PAYMENTS.** The Assessment Report, which as noted above has been incorporated herein, includes certain provisions requiring a True-Up Payment. Landowner agrees to comply with the terms of the Assessment Report relating to True-Up

Payments, and to make any True-Up Payments due thereunder, upon 10 days written notice from the District.

5. **ENFORCEMENT.** This Agreement is intended to be an additional method of enforcement of Landowner's obligation to pay the 2023A-2 Assessments and to abide by the requirements of the reallocation of 2023A-2 Assessments, including the making of the True-Up Payment, as set forth in the Assessment Resolutions and Assessment Report. A default by either party under this Agreement shall entitle any other party to all remedies available at law or in equity, which shall include, but not be limited to, the right of damages, injunctive relief, and specific performance. Prior to commencing any action for a default hereunder, the party seeking to commence such action shall first provide notice to the defaulting party of the default and an opportunity to cure such default within 30 days.

6. **ASSIGNMENT.** This Agreement shall constitute a covenant running with title to the Property, binding upon Landowner and its successors and assigns as to the Property or portions thereof, and any transferee of any portion of the Property as set forth in this Section. Landowner shall not transfer any portion of the Property to any third party, without first satisfying any True-Up Payment that results from any true-up determinations made by the District. Regardless of whether the conditions of this subsection are met, any transferee shall take title subject to the terms of this Agreement and with respect to the portion of the Property so transferred. As a point of clarification, Developer Developed Property, as defined in the Assessment Report, is not subject to True-Up Payments and is released from this Agreement; provided however that this provision shall not be construed to permit a specific parcel of Property from avoiding a prior outstanding True-Up Payment simply by virtue of that parcel becoming Developer Developed Property (and any such prior outstanding True-Up Payment owed may be confirmed from an estoppel letter issued by the District through its District Manager).

7. **ATTORNEYS' FEES AND COSTS.** In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the 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.

8. **AMENDMENTS.** Subject to Section 12, 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 Landowner.

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

10. **NOTICE.** All notices, requests, consents, and other communications hereunder ("**Notices**") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or telecopied or hand delivered to the parties, at the addresses first set forth above. Except as otherwise provided herein, any Notice shall be deemed received only upon actual delivery at the address or telecopy number 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, address or telecopy number 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.

11. **ARM'S LENGTH TRANSACTION.** This Agreement has been negotiated fully between the District and the Landowner 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 Landowner.

12. **THIRD PARTY BENEFICIARIES.** Except as set forth below, this Agreement is solely for the benefit of the District and the Landowner and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Landowner any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Landowner and their respective representatives, successors, and assigns.

Notwithstanding the foregoing, the Trustee, acting at the direction of the Majority Holders (as defined in the Fourth Supplemental Indenture) of the 2023A-2 Bonds, shall have the right to directly enforce the provisions of this Agreement. The Trustee shall not be deemed to have assumed any obligations under this Agreement. This Agreement may not be assigned (except as set forth in Section 6) or amended without the consent of the Trustee, acting at the direction of the Majority Holders of the 2023A-2 Bonds.

13. **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 Duval County, Florida.

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

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 law, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred by sovereign immunity or by other operation of law.

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.

[THIS SPACE INTENTIONALLY LEFT BLANK]

WHEREFORE, the part(ies) below execute the *True-Up Agreement (2023A-2 Bonds)* to be effective as of November 29, 2023.

WITNESS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

By: _____
Name: _____
Address: _____

By: _____
Name: Arthur E. Lancaster
Title: Chairperson

By: _____
Name: _____
Address: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this _____ day of November, 2023, by Arthur E. Lancaster, Chairperson of **DISTRICT COMMUNITY DEVELOPMENT DISTRICT**, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

(NOTARY SEAL)

NOTARY PUBLIC, STATE OF FLORIDA

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as
Commissioned)

[SIGNATURE PAGE FOR TRUE-UP AGREEMENT (2023A-2 BONDS)]

WITNESS

By: _____
Name: _____
Address: _____

By: _____
Name: _____
Address: _____

ELEMENTS DEVELOPMENT OF JACKSONVILLE, LLC, a Florida limited liability company

a Delaware limited liability company

By: PHCC LLC, a Delaware limited liability company, d/b/a Preston Hollow Community Capital, its Manager

By: _____
Name: John Dinan
Its: General Counsel & Authorized Signatory

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this ____ day of November, 2023, by John Dinan, as General Counsel and an authorized signatory of PHCC, LLC, d/b/a Preston Hollow Community Capital, the Manager of Elements Development of Jacksonville, LLC, a Florida limited liability company, who appeared before me this day in person, and who is either personally known to me, or produced _____ as identification.

NOTARY PUBLIC, STATE OF FLORIDA

(NOTARY SEAL)

Name: _____
(Name of Notary Public, Printed, Stamped or Typed as Commissioned)

EXHIBIT A: Legal Description of the Property

EXHIBIT A
Legal Description of Property
(Series 2023A-2 Assessment Area)

PROPOSED DEVELOPMENT PARCEL (DP):

ALL OF LOTS 7 THROUGH 10, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE, AS SHOWN ON THE PLAT THEREOF AS RECORDED IN PLAT BOOK 1, PAGE 46 OF THE FORMER PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A PART OF KANSAS STREET, A 60 FOOT RIGHT OF WAY, CLOSED BY ORDINANCE BB-246 AND A PART OF SECTIONS 44 AND 45, THE ISAAC HENDRICKS GRANT, AND A PART OF SECTION 60, THE F. BAGLEY AND I. HENDRICKS GRANT, ALL LYING IN TOWNSHIP 2 SOUTH, RANGE 26 EAST, DUVAL COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR A POINT OF COMMENCEMENT, COMMENCE AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT OF WAY LINE OF REED AVENUE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED AND THE EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE, A 60 FOOT RIGHT OF WAY AS PRESENTLY ESTABLISHED; THENCE NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, 240.42 FEET TO THE POINT OF BEGINNING; THENCE FROM SAID POINT OF BEGINNING, NORTH 02 DEGREES 27 MINUTES 30 SECONDS EAST, CONTINUING ALONG SAID EASTERLY RIGHT OF WAY LINE, THE NORTHERLY PROLONGATION THEREOF, AND ALONG THE WESTERLY LINE OF SAID LOT 7, WATER LOTS SECOND SERIES, REEDS FOURTH SUBDIVISION OF SOUTH JACKSONVILLE; A DISTANCE OF 822.36 FEET TO THE NORTHWESTERLY CORNER OF SAID LOT 7; THENCE NORTH 27 DEGREES 38 MINUTES 14 SECONDS EAST, DEPARTING SAID WESTERLY LINE AND ALONG THE EASTERLY LINE AND NORTHEASTERLY PROJECTION OF THE EASTERLY LINE OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 5103, PAGE 759 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA, A DISTANCE OF 283.34 FEET TO A POINT ON A LINE BEING THE BOUNDARY SEPARATING THE LANDS OF PRIVATE OWNERSHIP FROM THE ADJACENT STATE OWNED SOVEREIGNTY LANDS AS DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; THENCE EASTERLY ALONG LAST SIDE LINE THE FOLLOWING 14 COURSES: COURSE 1, THENCE NORTH 72 DEGREES 33 MINUTES 56 SECONDS EAST, 61.48 FEET; COURSE 2, THENCE SOUTH 73 DEGREES 04 MINUTES 04 SECONDS EAST, 220.55 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 3, THENCE NORTH 27 DEGREES 29 MINUTES 56 SECONDS EAST ALONG SAID EXISTING SEAWALL, 25.35 FEET; COURSE 4, THENCE SOUTH 62 DEGREES 16 MINUTES 12 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 154.29 FEET; COURSE 5, THENCE SOUTH 17 DEGREES 34 MINUTES 47 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 23.74 FEET; COURSE 6, THENCE SOUTH 39 DEGREES 24 MINUTES 04 SECONDS EAST, 32.94 FEET; COURSE 7, THENCE SOUTH 50 DEGREES 13 MINUTES 49 SECONDS EAST, 74.57 FEET TO A POINT ON THE FACE OF AN EXISTING SEAWALL; COURSE 8, THENCE SOUTH 62 DEGREES 32 MINUTES 42 SECONDS EAST ALONG SAID EXISTING SEAWALL, 100.76 FEET; COURSE 9, THENCE NORTH 71 DEGREES 02 MINUTES 59 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 31.40 FEET; COURSE 10, THENCE SOUTH 62 DEGREES 38 MINUTES 03 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 447.96 FEET; COURSE 11, THENCE SOUTH 62 DEGREES 16 MINUTES 36 SECONDS EAST CONTINUING ALONG SAID EXISTING SEAWALL, 156.94 FEET; COURSE 12, THENCE SOUTH 78 DEGREES 43 MINUTES 28 SECONDS EAST DEPARTING SAID EXISTING SEAWALL, 60.20 FEET; COURSE 13, THENCE SOUTH 56 DEGREES 36 MINUTES 20 SECONDS EAST, 348.39 FEET; COURSE 14, THENCE SOUTH 26 DEGREES 50 MINUTES 05 SECONDS EAST, 107.15 FEET TO THE POINT OF TERMINATION OF SAID LINE DESCRIBED IN OFFICIAL RECORDS BOOK 9008, PAGE 1216 AND OFFICIAL RECORDS BOOK 12686, PAGE 910 OF THE CURRENT PUBLIC RECORDS OF DUVAL COUNTY, FLORIDA; ; THENCE SOUTH 72 DEGREES 27 MINUTES 52 SECONDS WEST, 53.09 FEET TO A POINT ON THE WATERS OF THE ST. JOHNS RIVER; THENCE SOUTH 23 DEGREES 45 MINUTES 12 SECONDS WEST DEPARTING SAID WATERS OF THE ST. JOHNS RIVER, 356.01 FEET; THENCE SOUTH 86 DEGREES 36 MINUTES 07 SECONDS WEST, 885.56 FEET TO THE NORTHWEST CORNER OF THOSE LANDS DESCRIBED IN OFFICIAL RECORDS BOOK 14316, PAGE 1471 OF THE CURRENT PUBLIC RECORDS OF SAID COUNTY; THENCE NORTH 61 DEGREES 14 MINUTES 42 SECONDS WEST, 189.34 FEET; THENCE NORTH 85 DEGREES 43 MINUTES 46 SECONDS WEST, 481.49 FEET TO SAID EASTERLY RIGHT OF WAY LINE OF BROADCAST PLACE AND THE POINT OF BEGINNING.

CONTAINING 32.21 ACRES, MORE OR LESS.

THE DISTRICT - COMMUNITY DEVELOPMENT DISTRICT
 JACKSONVILLE, FLORIDA

LEGAL DESCRIPTION



Drawing name: K:\JAX_Environmental\Elements\CAD\Location Map and Legal.dwg Jul 12, 2018 2:49pm by: Paloma Mendez

LESS AND EXCEPT THE FOLLOWING DESCRIBED LANDS (TRACT 3A AND TRACT 9B):

BEGINNING AT THE MOST NORTHERLY CORNER OF SAID TRACT 9B, SAID CORNER LYING ON THE SOUTHERLY LINE OF TRACT "G" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE S66°14'48"E, ALONG SAID SOUTHERLY LINE, A DISTANCE OF 95.02 FEET TO THE SOUTHEASTERLY LINE OF SAID TRACT 9B; THENCE S23°45'12"W, ALONG SAID SOUTHEASTERLY LINE, A DISTANCE OF 280.55 FEET TO THE SOUTHERLY LINE OF SAID TRACT 9B; THENCE S86°36'07"W, ALONG THE SOUTHERLY LINE OF SAID TRACT 3A AND TRACT 9B, A DISTANCE OF 637.93 FEET TO THE SOUTHEAST CORNER OF TRACT "H" AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE N03°23'53"W, ALONG THE EAST LINE OF SAID TRACT "H", A DISTANCE OF 50.00 FEET TO THE NORTHEAST CORNER OF SAID TRACT "H"; THENCE S86°36'07"W, ALONG THE NORTH LINE OF SAID TRACT "H", A DISTANCE OF 155.80 FEET TO AN ANGLE POINT IN SAID NORTH LINE; THENCE N69°41'16"W, CONTINUING ALONG SAID NORTH LINE, A DISTANCE OF 47.03 FEET TO A POINT ON THE SOUTHEASTERLY RIGHT OF WAY LINE OF HEALTH WALK WAY (A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): N22°27'19"E, 3.76 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE WESTERLY AND HAVING A RADIUS OF 55.00 FEET; COURSE TWO (2): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 31.54 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 31.11 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; COURSE THREE (3): NORTHERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 11.47 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N06°01'31"E, 11.31 FEET TO A POINT OF TANGENCY; COURSE FOUR (4): N22°27'19"E, 94.90 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A RADIUS OF 25.00 FEET; COURSE FIVE (5): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 38.14 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N66°09'50"E, 34.55 FEET TO A POINT OF REVERSE CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 1484.00 FEET, LAST SAID POINT OF REVERSE CURVATURE LYING ON THE SOUTHERLY RIGHT OF WAY LINE OF PRUDENTIAL DRIVE (TRACT "BB", A VARIABLE WIDTH PRIVATE RIGHT OF WAY) AS SHOWN ON SAID PLAT OF RIVERSEDGE; THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT OF WAY LINE, THE FOLLOWING FIVE (5) COURSES: COURSE ONE (1): EASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 499.69 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF S79°46'26"E, 497.33 FEET TO A POINT OF NON-TANGENCY; COURSE TWO (2): N06°49'58"E, 18.43 FEET; COURSE THREE (3): S87°12'10"E, A DISTANCE OF 140.05 FEET TO A POINT OF CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 99.50 FEET; COURSE FOUR (4): NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, AN ARC DISTANCE OF 119.91 FEET, LAST SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF N58°16'26"E, 112.78 FEET TO A POINT OF TANGENCY; COURSE FIVE (5): N23°45'02"E, 159.56 FEET TO THE POINT OF BEGINNING. CONTAINING 2.75 ACRES, MORE OR LESS.

RESULTING IN THE SERIES 2023A-2 ASSESSMENT AREA CONTAINING 29.46 ACRES, MORE OR LESS.

THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT

UNAUDITED
FINANCIAL
STATEMENTS

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
FINANCIAL STATEMENTS
UNAUDITED
SEPTEMBER 30, 2023**

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2023**

	General Fund	Debt Service Fund Series 2020	Debt Service Fund Series 2022	Debt Service Fund Series 2022 BAN	Debt Service Fund Series 2022 Marina	Debt Service Fund Series 2023	Capital Projects Fund Series 2020	Capital Projects Fund Series 2022	Capital Projects Fund Series 2022 BAN	Total Governmental Funds
ASSETS										
Cash	\$ 41,890	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 41,890
Investments										
Revenue	-	16,546	-	-	-	-	-	-	-	16,546
Redemption	-	118,273	14,541	-	-	-	-	-	-	132,814
Reserve	-	3,407,791	423,840	-	-	-	-	-	-	3,831,631
Construction	-	-	-	-	-	-	11,227	4,955,222	158,484	5,124,933
Interest	-	2,345	264,592	-	-	-	-	-	-	266,937
Accounts receivable	29,245	1,797,864	-	-	-	-	-	-	-	1,827,109
Due from Landowner	50,000	-	-	-	-	-	-	-	-	50,000
Due from other	500	-	-	-	-	-	-	-	-	500
Prepaid expense	6,328	-	-	-	-	-	-	-	-	6,328
Total assets	<u>\$ 127,963</u>	<u>\$5,342,819</u>	<u>\$ 702,973</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 11,227</u>	<u>\$4,955,222</u>	<u>\$ 158,484</u>	<u>\$11,298,688</u>
LIABILITIES AND FUND BALANCES										
Liabilities:										
Accounts payable	\$ 38,216	\$ 19,313	\$ -	\$ -	\$ -	\$ -	\$ 7,500	\$ -	\$ -	\$ 65,029
AP Construction	-	-	-	-	-	-	3,334	-	-	3,334
Contracts payable	-	-	-	-	-	-	-	391,067	-	391,067
Retainage payable	-	-	-	-	-	-	564,233	85,391	-	649,624
Due to Landowner	-	-	-	-	21,303	22,583	-	-	-	43,886
Landowner advance	92,074	-	-	-	-	-	-	-	-	92,074
Total liabilities	<u>130,290</u>	<u>19,313</u>	<u>-</u>	<u>-</u>	<u>21,303</u>	<u>22,583</u>	<u>575,067</u>	<u>476,458</u>	<u>-</u>	<u>1,245,014</u>
DEFERRED INFLOWS OF RESOURCES										
Deferred receipts	29,245	1,797,864	-	-	-	-	-	-	-	1,827,109
Total deferred inflows of resources	<u>29,245</u>	<u>1,797,864</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>1,827,109</u>
Fund balances:										
Restricted for:										
Debt service	-	3,525,642	702,973	-	(21,303)	(22,583)	-	-	-	4,184,729
Capital projects	-	-	-	-	-	-	(563,840)	4,478,764	158,484	4,073,408
Unassigned	(31,572)	-	-	-	-	-	-	-	-	(31,572)
Total fund balances	<u>(31,572)</u>	<u>3,525,642</u>	<u>702,973</u>	<u>-</u>	<u>(21,303)</u>	<u>(22,583)</u>	<u>(563,840)</u>	<u>4,478,764</u>	<u>158,484</u>	<u>8,226,565</u>
Total liabilities, deferred inflows of resources and fund balances	<u>\$ 127,963</u>	<u>\$5,342,819</u>	<u>\$ 702,973</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 11,227</u>	<u>\$4,955,222</u>	<u>\$ 158,484</u>	<u>\$11,298,688</u>

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
GENERAL FUND
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	Current Month	Year to Date	Budget	% of Budget
REVENUES				
Developer contribution	\$ 22,600	\$ 124,258	\$ 280,690	44%
Interest and miscellaneous	23	392	-	N/A
Total revenues	<u>22,623</u>	<u>124,650</u>	<u>280,690</u>	44%
EXPENDITURES				
Professional & administrative				
Management	8,000	48,000	48,000	100%
CRA/city grant administration	833	5,000	5,000	100%
DSF accounting - series 2020	2,083	12,500	12,500	100%
DSF accounting - series 2022	1,042	6,250	6,250	100%
Legal	4,016	18,190	50,000	36%
Engineering	12,440	20,184	36,000	56%
Audit	4,150	4,150	7,500	55%
Arbitrage rebate calculation	-	-	1,500	0%
Dissemination agent - series 2020	583	3,500	3,500	100%
Dissemination agent - series 2022	292	1,750	1,750	100%
Trustee	-	12,920	19,000	68%
Telephone	-	-	200	0%
Postage	22	258	500	52%
Printing & binding	-	-	500	0%
Legal advertising	4,071	7,204	1,500	480%
Annual special district fee	-	175	175	100%
Insurance	-	5,988	6,000	100%
Contingencies(Other Contractual)	275	825	1,000	83%
Meeting room rental	100	750	900	83%
Website hosting & maintenance	-	705	705	100%
Website ADA compliance	-	-	210	0%
Property taxes	-	620	-	N/A
Total professional & administrative	<u>37,907</u>	<u>148,969</u>	<u>210,690</u>	71%
Field operations				
Monitoring & reporting	-	-	40,000	0%
Field operations contingency	-	-	24,600	0%
Aquatic weed control	-	-	5,400	0%
Total field operations	<u>-</u>	<u>-</u>	<u>70,000</u>	0%
Total expenditures	<u>37,907</u>	<u>148,969</u>	<u>280,690</u>	53%
Excess/(deficiency) of revenues over/(under) expenditures	(15,284)	(24,319)	-	
Fund balances - beginning	(16,288)	(7,253)	-	
Fund balances - ending	<u>\$ (31,572)</u>	<u>\$ (31,572)</u>	<u>\$ -</u>	

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2020
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	Current Month	Year To Date	Budget	% of Budget
REVENUES				
Assessment levy: off-roll	\$ -	\$ -	\$ 1,797,864	0%
Interest	14,771	146,495	-	N/A
Total revenues	<u>14,771</u>	<u>146,495</u>	<u>1,797,864</u>	8%
EXPENDITURES				
Debt service				
Interest	-	890,625	1,781,250	50%
Total debt service	<u>-</u>	<u>890,625</u>	<u>1,781,250</u>	50%
Excess/(deficiency) of revenues over/(under) expenditures	14,771	(744,130)	16,614	
Fund balances - beginning	3,510,871	4,269,772	4,254,636	
Fund balances - ending	<u>\$ 3,525,642</u>	<u>\$ 3,525,642</u>	<u>\$ 4,271,250</u>	

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2022
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	<u>Current Month</u>	<u>Year To Date</u>	<u>Budget</u>	<u>% of Budget</u>
REVENUES				
Interest	\$ 2,929	\$ 37,639	-	N/A
Total revenues	<u>2,929</u>	<u>37,639</u>	<u>-</u>	N/A
EXPENDITURES				
Debt service				
Interest	-	462,824	462,826	100%
Total debt service	<u>-</u>	<u>462,824</u>	<u>462,826</u>	100%
Excess/(deficiency) of revenues over/(under) expenditures	2,929	(425,185)	(462,826)	
Fund balances - beginning	700,044	1,128,158	1,114,564	
Fund balances - ending	<u>\$ 702,973</u>	<u>\$ 702,973</u>	<u>\$ 651,738</u>	

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2022 BAN
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	<u>Current Month</u>	<u>Year To Date</u>
REVENUES		
Bond Proceeds	\$ -	\$ -
Total revenues	<u>-</u>	<u>-</u>
EXPENDITURES		
Debt service		
Cost of issuance	-	131,674
Total debt service	<u>-</u>	<u>131,674</u>
Excess/(deficiency) of revenues over/(under) expenditures	-	(131,674)
OTHER FINANCING SOURCES/(USES)		
Bond proceeds	-	131,674
Total other financing sources	<u>-</u>	<u>131,674</u>
Net change in fund balances	-	-
Fund balances - beginning	-	-
Fund balances - ending	<u>\$ -</u>	<u>\$ -</u>

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2022 MARINA
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	<u>Current Month</u>	<u>Year To Date</u>
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
 EXPENDITURES		
Debt service		
Cost of issuance	<u>-</u>	<u>21,303</u>
Total debt service	<u>-</u>	<u>21,303</u>
Excess/(deficiency) of revenues over/(under) expenditures	-	(21,303)
 Fund balances - beginning	<u>(21,303)</u>	<u>-</u>
Fund balances - ending	<u><u>\$ (21,303)</u></u>	<u><u>\$ (21,303)</u></u>

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
DEBT SERVICE FUND SERIES 2023
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	Current Month	Year To Date
	<u> </u>	<u> </u>
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
 EXPENDITURES		
Debt service		
Cost of issuance	<u>-</u>	<u>22,583</u>
Total debt service	<u>-</u>	<u>22,583</u>
Excess/(deficiency) of revenues over/(under) expenditures	-	(22,583)
 Fund balances - beginning	<u>(22,583)</u>	<u>-</u>
Fund balances - ending	<u>\$ (22,583)</u>	<u>\$ (22,583)</u>

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
CAPITAL PROJECTS FUND SERIES 2020
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	Current Month	Year To Date
REVENUES		
City of Jacksonville funding	\$ -	\$ 23,721
Interest	573	173,651
Uncoded revenue	-	2,195
Total revenues	573	199,567
EXPENDITURES		
Constructions Costs	(1,132,016)	8,134,488
Total expenditures	(1,132,016)	8,134,488
Excess/(deficiency) of revenues over/(under) expenditures	1,132,589	(7,934,921)
Fund balances - beginning	(1,696,429)	7,371,081
Fund balances - ending	\$ (563,840)	\$ (563,840)

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
CAPITAL PROJECTS FUND SERIES 2022
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	<u>Current Month</u>	<u>Year To Date</u>
REVENUES		
Interest	<u>28,703</u>	<u>273,206</u>
Total revenues	<u>28,703</u>	<u>273,206</u>
EXPENDITURES		
Construction Costs	<u>1,327,199</u>	<u>2,716,047</u>
Total expenditures	<u>1,327,199</u>	<u>2,716,047</u>
Excess/(deficiency) of revenues over/(under) expenditures	(1,298,496)	(2,442,841)
Fund balances - beginning	<u>5,777,260</u>	<u>6,921,605</u>
Fund balances - ending	<u>\$ 4,478,764</u>	<u>\$ 4,478,764</u>

**THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT
STATEMENT OF REVENUES, EXPENDITURES,
AND CHANGES IN FUND BALANCES
CAPITAL PROJECTS FUND SERIES 2022 BAN
FOR THE PERIOD ENDED SEPTEMBER 30, 2023**

	Current Month	Year To Date
REVENUES	<u>\$ -</u>	<u>\$ -</u>
Total revenues	<u>-</u>	<u>-</u>
 EXPENDITURES		
Capital outlay/ Construction Costs	<u>41,886</u>	<u>3,327,577</u>
Total expenditures	<u>41,886</u>	<u>3,327,577</u>
 Excess/(deficiency) of revenues over/(under) expenditures	 (41,886)	 (3,327,577)
 OTHER FINANCING SOURCES/(USES)		
Bond proceeds	<u>-</u>	<u>3,578,326</u>
Total other financing sources/(uses)	<u>-</u>	<u>3,578,326</u>
 Net change in fund balances	 (41,886)	 250,749
Fund balances - beginning	<u>200,370</u>	<u>(92,265)</u>
Fund balances - ending	<u>\$ 158,484</u>	<u>\$ 158,484</u>

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

MINUTES

DRAFT
MINUTES OF MEETING
THE DISTRICT
COMMUNITY DEVELOPMENT DISTRICT

The Board of Supervisors of The District Community Development District held a Regular Meeting on October 16, 2023, at 1:30 p.m., at 602 Shetter Avenue, Jacksonville Beach, Florida 32250.

Present at the meeting were:

Art Lancaster	Chair
John Dodson	Vice Chair
Jay Dodson	Assistant Secretary

Also present were:

Craig Wrathell	District Manager
Sarah Sandy	District Counsel
Bill Schilling	District Engineer
Mike Mullis	District Engineer

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Wrathell called the meeting to order at 1:35 p.m.

Supervisors Lancaster, John Dodson and Jay Dodson were present. Supervisor Patton was not present. One seat remains vacant.

SECOND ORDER OF BUSINESS

Public Comments: Agenda Item (limited to 3 minutes per individual)

There were no public comments.

THIRD ORDER OF BUSINESS

Consideration of Proposal to RFP for Phase 3B - CRA Project (Parks, Riverwalk and Streetscape Improvements)

Ms. Sandy presented her October 16, 2023 Memorandum related to the Third, Fourth and Fifth Orders of Business, and noted the following:

➤ The CDD advertised Requests for Proposals (RFP) for Phase 3B construction services for the CRA Projects and for the CDD Projects.

- 42 ➤ One Proposal was received in response to each RFP, both from UCC Group, Inc. (UCC).
- 43 ➤ UCC has worked with J.B. Coxwell Contracting, Inc., and considered as a potential
- 44 subcontractor; UCC is familiar with the site.
- 45 ➤ The Board’s options include rejecting the proposals and readvertising the RFPs or
- 46 directly negotiating a contract.
- 47 ➤ The UCC RFP responses for the CRA and CDD were reviewed thoroughly and deemed
- 48 non-responsive for numerous reasons, including the bid amounts far exceeding budget and not
- 49 completing the Bid Tabulation Sheet as required, as explained in the Memorandum.

50 Discussion ensued regarding the responses to the CRA and the CDD RFPs, insurance

51 requirements for contractors, current contracts and reimbursements and the scope of work.

52 It was noted that the CDD received approximately \$4.5 to \$4.6 million in

53 reimbursements for the sea wall for the bulkhead; that has been drawn down from the \$23

54 million so far. Approximately \$18 million remains in the CRA Escrow.

55 Discussion ensued regarding the bids and the scope of work.

56

57 **On MOTION by Mr. Lancaster and seconded by Mr. Jay Dodson, with all in**

58 **favor, rejecting UCC Group, Inc.’s September 29, 2023, proposal for Phase 3B**

59 **(CRA) for failing to submit a responsive proposal for the reasons provided by**

60 **District Counsel and identified in more detail in Counsel’s Memorandum dated**

61 **October 16, 2023, was approved.**

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64 **FOURTH ORDER OF BUSINESS**

65 **Consideration of Proposal to RFP for Phase**

66 **3B - CDD Project (Streetscape**

67 **Improvements**

68

69 **On MOTION by Mr. Jay Dodson and seconded by Mr. John Dodson, with all in**

70 **favor, rejecting UCC Group, Inc.’s September 29, 2023, proposal for Phase 3B**

71 **(CDD) for failing to submit a responsive proposal for the reasons provided by**

72 **District Counsel and identified in more detail in Counsel’s Memorandum dated**

73 **October 16, 2023, was approved.**

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76 Ms. Sandy stated, since no responsive bids were received, the CDD can either pursue

77 public procurement or direct Staff to negotiate directly with UCC or with other contractors.

78 Discussion ensued regarding negotiating with UCC and others.

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On MOTION by Mr. John Dodson and seconded by Mr. Jay Dodson, with all in favor, authorizing and directing District Staff and the Chair to engage in direct contract negotiations to procure construction services for the Phase 3B (CDD) Project for the following independent reasons: (1) The District received no responsive proposals in response to the RFP; (2) Under District Rule of Procedure 3.5(6)(B) the funding source of the project will be diminished or lost because the delays associated with competitive bidding these services again exceeds the time within which the funding source must be spent, was approved.

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FIFTH ORDER OF BUSINESS

Discussion Regarding Construction Services for the Phase 3B CRA Project (Parks, Riverwalk and Streetscape Improvements) and Phase 3B CDD Project (Streetscape Improvements)

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On MOTION by Mr. John Dodson and seconded by Mr. Jay Dodson, with all in favor, authorizing and directing District Staff and the Chair to engage in direct contract negotiations to procure construction services for the Phase 3B (CRA) Project for the following independent reasons: (1) The District received no responsive proposals in response to the RFP; (2) Under District Rule of Procedure 3.5(6)(B) the funding source of the project will be diminished or lost because the delays associated with competitive bidding these services again exceeds the time within which the funding source must be spent, was approved.

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SIXTH ORDER OF BUSINESS

Ratification of The District – CRA Infrastructure Budget dated June 27, 2023

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Mr. Schilling presented the budget developed in conjunction with the City. Upon City approval and adoption of the budget, the City will be in a position to reimburse the CDD for expenses beyond the bulkhead, related to roadways, roundabouts, etc. The budget presented was approved by City staff and the Downtown Investment Authority (DIA).

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On MOTION by Mr. Jay Dodson and seconded by Mr. John Dodson, with all in favor, The District – CRA Infrastructure Budget dated June 27, 2023, was ratified.

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SEVENTH ORDER OF BUSINESS

Consideration of Placement Agreement with VCTC Tax Credit Broker

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Ms. Sandy discussed the pending sale of VCTC tax credits and requested authorization to proceed with Fallbrook and Clocktower as the CDD’s VCTC Tax Credit Broker.

On MOTION by Mr. Jay Dodson and seconded by Mr. John Dodson, with all in favor, authorizing District Counsel to proceed with Fallbrook and Clocktower as the CDD’s VCTC Tax Credit Broker, was approved.

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EIGHTH ORDER OF BUSINESS

Discussion/Consideration: November Meeting Date (prior to Thanksgiving)

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Discussion ensued regarding the need for a November meeting date.

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On MOTION by Mr. John Dodson and seconded by Mr. Lancaster, with all in favor, scheduling a Special Meeting on November 14, 2023 at 1:00 p.m., at 602 Shetter Avenue, Jacksonville Beach, Florida 32250, was approved.

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NINTH ORDER OF BUSINESS

Acceptance of Unaudited Financial Statements as of August 31, 2023

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On MOTION by Mr. Lancaster and seconded by Mr. John Dodson, with all in favor, the Unaudited Financial Statements as of August 31, 2023, were accepted.

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TENTH ORDER OF BUSINESS

Approval of August 1, 2023 Public Hearing and Regular Meeting Minutes

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On MOTION by Mr. Lancaster and seconded by Mr. John Dodson, with all in favor, the August 1, 2023 Public Hearing and Regular Meeting Minutes, as presented, were approved.

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ELEVENTH ORDER OF BUSINESS

Staff Reports

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A. District Counsel: Kutak Rock LLP

There was no report.

B. District Engineer: Kimley-Horn and Associates, Inc.

166 Mr. Schilling reported the following:

167 ➤ Riverwalk: The RFP was completed. Proposals were received and J.B. Coxwell was the
168 lowest bidder and the bid was under budget. It is hoped that a Change Order will be presented
169 at the next meeting.

170 ➤ Roads: The first lift of asphalt is scheduled for the first two weeks of November.

171 ➤ Staff and J.B. Coxwell are focused on completing conditions for the Toll Brothers closing,
172 currently scheduled for the end of November 2023.

173 Discussion ensued regarding roadways.

174 Mr. Schilling stated due to demolition by the CDD and the apartment project, Broadcast
175 will be closed during construction and it will not reopen until construction is complete. The CDD
176 is responsible for Broadcast from the roundabout to the southern property line; the apartment
177 complex is responsible from the CDD’s property line to Read Avenue.

178 Discussion ensued about funds placed in escrow, utility and project costs, the need for a
179 performance bond and completion dates.

180 **C. District Manager: Wrathell, Hunt and Associates, LLC**

- 181 • **NEXT MEETING DATE: November __, 2023 at 1:30 PM**

- 182 ○ **QUORUM CHECK**

183 The next meeting will be held on November 14, 2023 at 1:00 p.m.

184

TWELFTH ORDER OF BUSINESS	Board Members’ Comments/Requests
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187 There were no Board Members’ comments or requests.

188

THIRTEENTH ORDER OF BUSINESS	Public Comments: Non-Agenda Items (limited to 3 minutes per individual)
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192 There were no public comments.

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FOURTEENTH ORDER OF BUSINESS	Adjournment
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197 **On MOTION by Mr. Jay Dodson and seconded by Mr. John Dodson, with all in**
198 **favor, the meeting adjourned at 2:08 p.m.**

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Secretary/Assistant Secretary

Chair/Vice Chair

THE DISTRICT

COMMUNITY DEVELOPMENT DISTRICT

STAFF REPORTS

DISTRICT COMMUNITY DEVELOPMENT DISTRICT

BOARD OF SUPERVISORS FISCAL YEAR 2023/2024 MEETING SCHEDULE

LOCATION

602 Shetter Avenue, Jacksonville Beach, Florida 32250

DATE	POTENTIAL DISCUSSION/FOCUS	TIME
October 16, 2023	Regular Meeting	1:30 PM
November 14, 2023	Special Meeting	1:00 PM
December 18, 2023	Regular Meeting	1:30 PM
January 15, 2024*	Regular Meeting	1:30 PM
February 19, 2024	Regular Meeting	1:30 PM
March 18, 2024	Regular Meeting	1:30 PM
April 15, 2024	Regular Meeting	1:30 PM
May 20, 2024	Regular Meeting	1:30 PM
June 17, 2024	Regular Meeting	1:30 PM
July 15, 2024	Regular Meeting	1:30 PM
August 19, 2024	Regular Meeting	1:30 PM
September 16, 2024	Regular Meeting	1:30 PM

***Exception(s)/Note(s)**

January 15, 2024 is Martin Luther King holiday.