

Towne Park Community Development District

12051 Corporate Boulevard, Orlando, FL 32817; 407.723.5900

www.towneparkcdd.com

The following is the proposed agenda for the Board of Supervisors' Meeting for the Towne Park Community Development District, scheduled to be held **Wednesday, July 16, 2020 at 11:00 a.m. via conference call due to the Executive Order 20-150 extending COVID-19 Executive Order 20-69**. Attached to this Agenda is a copy of the Executive Order 20-150. The attendance of three Board Members is required to constitute a quorum.

To attend the meeting, please use the below conference call information:

Phone: **1-844-621-3956**

Access Code: **790 393 986 #**

PROPOSED BOARD OF SUPERVISORS' MEETING AGENDA

Administrative Matters

- Roll Call to Confirm Quorum
- Public Comment Period [for any members of the public desiring to speak on any proposition before the Board]
- 1. **Consideration of Minutes of the June 11, 2020 Board of Supervisors Meeting**
- 2. **Consideration of Resolution 2020-19, Setting an Annual Meeting Schedule for Fiscal Year 2020/2021** *(provided under separate cover)*

Business Matters

- 3. **Public Hearing on the Adoption of the District's Fiscal Year 2020-2021 Budget**
 - Public Comments and Testimony
 - Board Comments
 - A. **Consideration of Resolution 2020-20, Adopting a Fiscal Year 2020-2021 Budget and Appropriating Funds**
- 4. **Public Hearing on the Imposition of Special Assessments to Fund the District's Fiscal Year 2020-2021 Budget**
 - Public Comments and Testimony
 - Board Comments
 - **Consideration of Resolution 2019-20, Adopting an Assessment Roll for Fiscal Year 2020-2021 and Certifying Special Assessments for Collection**
- 5. **Consideration of Authorization to Issue RFP for Construction Services for Project Improvements (Phase 3D, also known as Riverstone Phases 5 & 6) and Approval of Evaluation Criteria**
- 6. **Consideration of Assignment of Amenity Contract**
- 7. **Ratification of Temporary Amendment to Agreement between the District and Fuqua Janitorial Services**



8. **Consideration of Proposal(s) for Riverstone Ponds Maintenance** *(provided under separate cover)*
9. **Review of the District's Amenity Policies** *(provided under separate cover)*
10. **Consideration of the Fiscal Year 2019 Audited Financial Statement** *(provided under separate cover)*
11. **Ratification of approved escrow fund releases No. 6** *(provided under separate cover)*
12. **Ratification of Pay Applications** *(provided under separate cover)*
 - Phase 3A #
 - Riverstone Phase 2 #
 - Riverstone Phase 3 & 4 #
13. **Ratification of Payment Authorization No. 151 - 157**
14. **Consideration of Monthly Financials**

Other Business

Staff Reports

District Counsel

District Engineer

District Manager

Supervisor Requests and Audience Comments

Adjournment



STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 20-150

(Emergency Management – COVID-19 – Local Government Public Meetings)

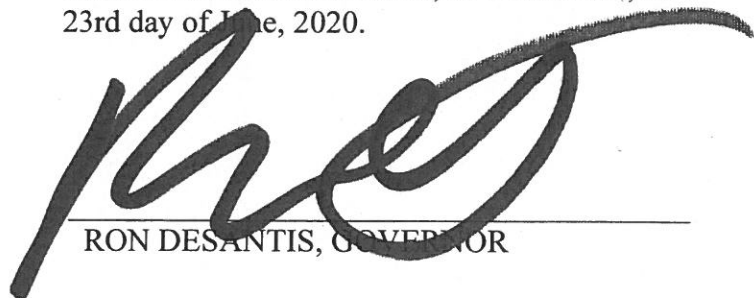
WHEREAS, Executive Order 20-69, as extended by Executive Order 20-112, Executive Order 20-123 and Executive Order 20-139, expires on June 30, 2020, unless extended.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. I hereby extend Executive Order 20-69, as extended by Executive Orders 20-121, 20-123 and 20-139, until 12:01 a.m. on August 1, 2020.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 23rd day of June, 2020.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

2020 JUN 23 PM 5:54

FILED

**Towne Park
Community Development District**

Minutes

MINUTES OF MEETING

TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT BOARD OF SUPERVISORS' MEETING

Thursday, June 11, 2020 at 11:02 a.m.

Via conference call due to the COVID-19 pursuant to Executive Order 20-69, as extended and supplemented.

Board Members in attendance via conference call:

Joel Adams	Chairman	(via phone)
Brian Walsh	Vice Chairman	(via phone)
Jeffery Shenefield	Assistant Secretary	(via phone)
Rennie Heath	Assistant Secretary	(via phone)

Also in attendance via conference call were:

Jane Gaarlandt	PFM	(via phone)
Christina Hanna	PFM	(via phone)
Amy Champagne	PFM	(via phone)
Michelle Rigoni	Hopping Green & Sams, P.A.	(via phone)
Heather E. Wertz	Absolute Engineering	(via phone)
Milton Andrade		(via phone)
Various Members of the Public present via phone		

FIRST ORDER OF BUSINESS

Call to Order and Roll Call

The meeting was called to order at approximately 11:02 a.m. The Board Members and staff in attendance are as outlined above.

SECOND ORDER OF BUSINESS

Public Comment Period

Mr. Bretton from Towne Park Estates II asked if this was the right time to ask about the Clubhouse fees and the path connecting Yates road to the subdivision. Ms. Gaarlandt stated it is on the agenda and there will be some discussion later on and his question may be answered during those discussions from the Board and he can bring it up at the end of the meeting if they were not answered. Mr. Brenton asked about the waiving of the Clubhouse fee for Towne Park Estates II since they are paying the yearly fee, they feel they should not have to pay a \$150.00 rental fee on top of what they are paying now. His other question was about the path connecting Yates Road to the subdivision. There is a sign blocking it because the guardrails have not been installed yet. He asked for a timeline on that installation.

There were no other public comments on the agenda items.

THIRD ORDER OF BUSINESS

Resignation of Scott Shapiro

District Management received Mr. Shapiro's resignation. She requested a motion from the Board to approve Mr. Shapiro's resignation.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board accepted Scott Shapiro's Resignation.

FOURTH ORDER OF BUSINESS

Consideration of appointment to Seat 3 to fill vacancy

Ms. Jane noted the vacancy of Seat 3 and asked if the Board had any nominations at this time. This seat is not up until 2022.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board appointed Milton Andrade to Seat 3.

Mr. Andrade is on the line. District Management will send out information to Mr. Andrade to include Form 1. She reminded him not to reply all to emails due to the Sunshine Law regulations. Ms. Gaarlandt asked if the oath of office can be done over phone. Ms. Rigoni stated the oath of office should be executed by a notary or someone who is qualified to administer the oath so Mr. Andrade can observe today as public and not participate in Board votes today, but should make sure to send the oath to Ms. Gaarlandt prior to the next meeting. Ms. Gaarlandt will send Mr. Andrade the oath of office and asked him to get it executed with a notary.

FIFTH ORDER OF BUSINESS

Consideration of the Minutes of the May 14, 2020 Board of Supervisors' Meeting

The Board reviewed the minutes of the May 14, 2020 Board of Supervisors' Meeting.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board approved the Minutes of the May 14, 2020 Board of Supervisors' Meeting.

SIXTH ORDER OF BUSINESS

Consideration of Proposal(s) for Riverstone Ponds Maintenance

Ms. Gaarlandt stated this item is a carryover from the previous meeting and the District is not ready for this and it will be tabled until the next meeting because the District has not completed the conveyance.

Ms. Rigoni responded the District can maintain whatever infrastructure the District builds but the question is if the ponds are ready for the operations phase. She asked Ms. Wertz for an update on the transfer of the permit. Ms. Wertz stated the Riverstone Phase 2 has been approved. She is not sure about Riverstone Phase 1, Towne Park Estates 2A and Towne Park Estates 2B, but she can check and send District staff an email and then report back. Towne Park Estates Phase 2 had to be recorded first and then River Stone Phase 1 could then be approved.

Mr. Heath joined the meeting in progress via speakerphone.

Ms. Wertz asked Ms. Gaarlandt if she is looking for Riverstone Phase 2 ponds to be maintained at this time. Ms. Gaarlandt asked the Board if they are ready to be maintained at this time. The Board replied yes and they have been added to the scope too. Ms. Wertz will follow up on Riverstone Phase 1 and Phase 2 and try to get those completed. The City already inspected everything.

SEVENTH ORDER OF BUSINESS

Review of District's Amenity Policies

Ms. Gaarlandt noted these have been brought back before the Board. There have been various requests from residents in regard to the rental fees. There have also been questions in regard to fishing in the ponds.

The Board addressed the request to waive the rental fees. Mr. Adams said he wasn't aware they are being collected. He asked if the District is collecting a cleaning deposit as well as charging a rental fee. Ms. Gaarlandt stated currently yes. Mr. Bretton stated he does not think the community has an issue with paying a cleaning deposit and if they clean it, they get it back but if they don't clean it, they lose it. But paying \$40,400.00 per year for pool and Clubhouse and to also have to pay a \$150.00 rental fee they feel it is high and requested the rental fee should be waived.

Mr. Adams discussed what happened a year ago at the Budget meeting. He is not in favor at charging that and requested the District waive the rental fee. He thought it was a deposit for cleaning if the place was not properly cleaned.

Ms. Gaarlandt stated the cleaning deposit is \$150.00 and the rental fee is \$100.00. Ms. Rigoni stated this was brought up at the last meeting. Mr. Van Wyk had recommended that the District waive the rental fee for the time being so the District does not have to go through a rule hearing to

formally amend the policies. Ms. Rigoni asked if there are any issues with cleaning and monitoring to make sure people are out of the room rented on time. Mr. Adams stated he has not been made aware of any issues. His staff administers the requests on behalf of the CDD. There is a deposit held for proper return of use. Mr. Adams is in favor of waiving the fee or removing it from the policy whichever is recommended. Ms. Rigoni recommended waiving the rental fee for the time being until further notice and requested a motion to waive the rental fee.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board approved waiving the \$100.00 rental fee until further notice.

Ms. Rigoni noted for the record the District is only waiving the \$100.00 rental fee and not the \$150.00 deposit. Renters will get that back if everything is clean and they are out on time.

Ms. Gaarlandt stated another request from residents is that fishing in the ponds is not addressed in the current policies. She asked if the Board wants to decide on that at this time. Ms. Rigoni noted there is a form policy that they recommend to Districts that have many ponds where residents frequently ask if they can fish in those ponds. Ms. Rigoni asked Ms. Wertz to explain why the ponds are there and why it is not best suited for fishing for consumption. Ms. Rigoni stated the Board can allow fishing for fun to be permitted. It can be adopted by policy and she can bring it back at the next Board Meeting if they wish.

Ms. Wertz explained the ponds are there to provide treatment and reduction of oil and greases from cars that makes its way through the storm sewer system and into the ponds. It is not a good idea to be fishing in there. Mr. Adams suggested putting signs up indicating there is to be no fishing in ponds. Mr. Bretton stated one of the biggest selling points for people to buy houses around the lakes around the area is the ability to fish. The main problem is that people who don't live in the District come to fish and park in the grass and leave their garbage. Mr. Adams stated District staff can put up signs that common areas and ponds are for use by residents and guests only. Mr. Bretton suggested new signs at the playground area because they are worn out. Mr. Adams suggested residents report trespassing to the local authorities. Ms. Rigoni stated the community is a public facility but if anyone is coming on to residents' lots and trespassing through private property that is not allowed. The District has no fishing policy in place. She suggested implementing a policy for sport fishing only because it is not intended for consumption.

Mr. Adams suggested tabling the fishing policy and asked Staff to work with the Board Members about drafting a policy. Ms. Gaarlandt will bring that back to the next meeting.

Mr. Heath asked Ms. Rigoni asked if the District can charge a non-resident user fee for the use of the ponds. Ms. Rigoni hadn't heard of an arrangement like that but will look into it and get back to the Board in conjunction with the proposed policy.

Mr. Heath asked if there is liability to the District if someone consumes a fish and gets sick or downs In the pond while attempting to fish. Ms. Rigoni stated that having an official policy would explain the purpose of the ponds in addition to why the District is only allowing sport fishing would help educate the public. It wouldn't prevent someone from suing the District but it would help to educate the public.

A resident of Towne Park Estates stated she looked at the boundary of the District and it seems that one of the ponds being questioned is not part of the CDD and asked if that is accurate. A discussion took place. Ms. Rigoni confirmed that the pond by Pipkin road is outside District boundaries and is not a District issue. Mr. Adams said there is no agreement between Towne Park 1 and Towne Park CDD.

Ms. Gaarlandt reminded the public there is a public comment period at the end of the meeting for any additional comments from the public. She asked everyone to mute themselves if they are not currently speaking because of the static and feedback on the line because it will interfere with the recording of the meeting.

EIGHTH ORDER OF BUSINESS

Discussion of Re-Opening of District Amenities

Ms. Rigoni reviewed the new Executive Order is pretty broad and more relaxed than prior order. It puts the onus on the general public to self-police for social distancing. However, as a governmental entity the District should consider what would be the best practices in re-opening the Amenity safely. The capacity maximum for indoor facilities is up to 50 percent of the building capacity is allowed as long as it allows for 6 feet of social distancing. It is recommended the District continue to follow CDC protocols for cleaning and disinfecting and disallowing groups of more than 50 people. She recommended the District to open with an attendant to monitor social distancing and ensure proper cleaning is taking place. While staff's interpretation of the Executive Order does not necessarily prohibit opening without an attendant, it is their recommendation that there is somebody there.

District Management looked into having a monitor and the current Janitorial company is available to provide that service. It is an additional cost for the District. If the pool is open at its normal hours it would cost about \$6,500.00- \$7,000.00 per month to have a full time monitor on staff. If the District opens the pool with reduced hours it would lower that amount. District Management talked with the insurance carrier as well. The District would also have the Janitorial Services 7 days per week instead of the current 3 times per week and it would increase the cost to the District as well. It is the responsibility of the public to self-monitor for social distancing and wiping down furniture and handrails after use. It is up to the Board if they think it is a cost the District can handle at this time.

Mr. Adams suggested no onsite staff but have the Janitorial staff do daily cleaning and putting up signs that the public must self-police for social distancing and have a waiver signed in order for residents to utilize the pool. Mr. Adams stated the District has carded access which is controlled,

which can be tied to waiver collection. Whoever wants to use the pool can sign the waiver and their card is activated.

ON MOTION by Mr. Adams, seconded by Mr. Heath, with all in favor, the Board approved moving forward with a policy to reopen the pool only for regular hours with signs up everywhere with waiver implemented for card access and cleaning daily, approving the Fuqua proposal for cleaning services.

A discussion took place about the process for the waiver. Ms. Gaarlandt wants to ensure the District has signs up everywhere, obtains signed waivers and Janitorial staff coming in daily before the District opens the pool. District Management will make the waiver available to staff on site and on the District website and have residents fill it out and email it. District management will put the updates on the website when the pool will open.

Ms. Rigoni asked if Ms. Gaarlandt has a proposal for the daily Janitorial cleaning in accordance with CDC guidelines. She suggested delegating authority to the Chair sign off on the final agreement to expedite the process. Ms. Gaarlandt asked Ms. Hanna received a proposal. MS. Hanna stated the proposal was all inclusive for the deep cleaning for 7 days as well as having someone on site. She just sent the Janitorial Company an email asking for a separate price for the 7-day deep cleaning only. Ms. Gaarlandt asked MS. Hanna to calculate an approximate rate based on the hourly price in case she does not get a response before the end of the meeting.

Mr. Bretton stated he will let the community know District staff is striving to re-open the pool this weekend and all the items that need to be in line before that is accomplished.

Ms. Gonzalez asked if the residents are going to be paying a fee for the cleaning of the pool in order for it to be opened. Mr. Adams stated it is part of the Janitorial service and the facility would have to be cleaned on a daily basis to comply the CDC guidelines and it part of the existing O&M Budget. It is within the Janitorial Budget that was already established for the Clubhouse.

NINTH ORDER OF BUSINESS

Ratification of approved escrow fund releases Nos. 4 & 5

The Board reviewed the ratification of approved escrow fund release Nos. 4 & 5.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board ratified of approved escrow fund releases 4 & 5.

TENTH ORDER OF BUSINESS

Staff Reports

District Counsel – No Report

District Engineer – Nor Report

District Manager – Ms. Gaarlandt stated she District Management was contacted by resident requesting clarification of an area across from 3607 Peregrine Way. There was some crepe myrtle installed in some areas and according to the maps it is not on District property. There seems to be irrigation in the area but it has not worked for some time. Residents asked who is responsible for the maintenance of that area. Mr. Adams requested staff to send him a location on where it is and he might be able to get it answered in between Board meetings. Mr. Andrade asked to be included. If it is in common area tracts, he installed that can he can take a look at that. Ms. Gaarlandt asked Ms. Hanna to forward a map to Mr. Andrade and the other Board Members.

Ms. Gaarlandt stated there is some washout along the site walk on the west end of Wild Ibis Road. Mr. Andrade asked for a marked-up site plan and he will look into it. District staff will get that to him.

Ms. Gaarlandt reminded the Board the Form 1 Financial Statements are due by July 1, 2020. District staff will send a reminder email to the Board with the digital version of the form.

Ms. Hanna is still trying to calculate the amount for daily janitorial cleaning. The hourly rate would not be the same as what the District is charged to come out for each visit. Ms. Hanna called the Janitorial Company and re- sent the email and is currently waiting for a response. Ms. Gaarlandt requested a motion from the Board to authorize the Chair to work with District staff on approving the additional cleaning for Janitorial Services for a not to exceed amount of \$2,000.00.

ON MOTION by Mr. Walsh, seconded by Mr. Heath, with all in favor, the Board authorized Mr. Adams to sign off on the final proposal for Janitorial Services for a Not-to-Exceed amount of \$2,000.00.

ELEVENTH ORDER OF BUSINESS**Supervisor Requests and Audience
Comments**

Mr. Andrade explained the sidewalk is currently closed until the retaining walls are built for fall protection. It is currently in permitting and the District should get the permits this week and get the retaining wall and the aluminum fencing for fall protection installed this month. By early July the sidewalk should be opened up and the retaining walls built back there.

There were no other Supervisor requests so, Ms. Gaarlandt opened the floor for audience comments.

Mr. Mase stated there was a crosswalk at White Egret Lane and Peregrine Way. When the road was resurfaced by the City they did not come back and restripe the crosswalk which the Developer was required to install. Mr. Adams will make a formal request to the City to restripe the crosswalk.

Mr. Jardon stated the residents who moved in after the pool was closed were told they would be sent key cards automatically and asked if they need to go through a different process with the waivers to get the key card at the same time. Mr. Adams stated the District is administering key cards through HCM and suggested they contact Denise or Bethany at HCM and get the cards issued. Mr. Jardon stated he was told they did not issue cards while the pool was closed and were compiling a list and would start to issue cards when the pool reopened. Mr. Adams will request HCM to issue the cards and bring them out to residents.

Mr. Cramer stated the sidewalk that end at the end of the wall from Winding Dirt Lane going west toward McDulla Road abruptly ends and there is another piece of sidewalk that comes from McDulla Road. He asked who is responsible for connecting the sidewalks. Mr. Adams stated it could be the City or the Developer of Riverstone in that phase. Mr. Adams can review that with Ms. Wertz and the Development Entity and get an answer. Mr. Andrade will make a note and look into that.

Ms. Gonzalez asked about building speed bumps on the roads in the District. Mr. Adams stated they are City owned and maintained roads. She would have to petition the City for speed bumps. He is not sure if the District is allowed to petition on that. The City has a process for that because the roads are dedicated to the City of Lakeland. Ms. Gaarlandt stated the District does not have jurisdiction over the roads. It needs to be petitioned by the residents and not the District.

There were no other public comments.

TWELFTH ORDER OF BUSINESS**Adjournment**

There were no other questions or comments. Ms. Gaarlandt requested a motion to adjourn.

ON MOTION by Mr. Adams, seconded by Mr. Walsh, with all in favor, the Board adjourned the June 11, 2020 Board of Supervisor's Meeting for the Towne Park Community Development District.

Secretary / Assistant Secretary

Chairman / Vice Chairman

**Towne Park
Community Development District**

Resolution 2020-19

(provided under separate cover)

**Towne Park
Community Development District**

District's Fiscal Year 2020-2021 Budget

**Towne Park
Community Development District**

Resolution 2020-20

RESOLUTION 2020-20

THE ANNUAL APPROPRIATION RESOLUTION OF THE TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT ("DISTRICT") RELATING TO THE ANNUAL APPROPRIATIONS AND ADOPTING THE BUDGET(S) FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2020, AND ENDING SEPTEMBER 30, 2021; AUTHORIZING BUDGET AMENDMENTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the District Manager has, prior to the fifteenth (15th) day in June, 2020, submitted to the Board of Supervisors ("**Board**") of the Towne Park Community Development District ("**District**") proposed budget(s) ("**Proposed Budget**") for the fiscal year beginning October 1, 2020 and ending September 30, 2021 ("**Fiscal Year 2020/2021**") along with an explanatory and complete financial plan for each fund of the District, pursuant to the provisions of Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, at least sixty (60) days prior to the adoption of the Proposed Budget, the District filed a copy of the Proposed Budget with the local governing authorities having jurisdiction over the area included in the District pursuant to the provisions of Section 190.008(2)(b), *Florida Statutes*; and

WHEREAS, the Board set a public hearing thereon and caused notice of such public hearing to be given by publication pursuant to Section 190.008(2)(a), *Florida Statutes*; and

WHEREAS, the District Manager posted the Proposed Budget on the District's website at least two days before the public hearing; and

WHEREAS, Section 190.008(2)(a), *Florida Statutes*, requires that, prior to October 1st of each year, the Board, by passage of the Annual Appropriation Resolution, shall adopt a budget for the ensuing fiscal year and appropriate such sums of money as the Board deems necessary to defray all expenditures of the District during the ensuing fiscal year; and

WHEREAS, the District Manager has prepared a Proposed Budget, whereby the budget shall project the cash receipts and disbursements anticipated during a given time period, including reserves for contingencies for emergency or other unanticipated expenditures during the fiscal year.

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

SECTION 1. BUDGET

- a. The Board has reviewed the Proposed Budget, a copy of which is on file with the office of the District Manager and at the District's Local Records Office, and hereby approves certain amendments thereto, as shown in Section 2 below.
- b. The Proposed Budget, attached hereto as **Exhibit "A,"** as amended by the Board, is hereby adopted in accordance with the provisions of Section 190.008(2)(a), *Florida Statutes* ("**Adopted Budget**"), and incorporated herein by reference; provided, however, that the comparative figures contained in the Adopted Budget may be subsequently revised as deemed necessary by the District Manager to reflect actual revenues and expenditures.
- c. The Adopted Budget, as amended, shall be maintained in the office of the District Manager and at the District's Local Records Office and identified as "The Budget for the Towne Park Community Development District for the Fiscal Year Ending September 30, 2021."
- d. The Adopted Budget shall be posted by the District Manager on the District's official website within thirty (30) days after adoption, and shall remain on the website for at least 2 years.

SECTION 2. APPROPRIATIONS

There is hereby appropriated out of the revenues of the District, for Fiscal Year 2020/2021, the sum of \$2,569,446.92 to be raised by the levy of assessments and/or otherwise, which sum is deemed by the Board to be necessary to defray all expenditures of the District during said budget year, to be divided and appropriated in the following fashion:

TOTAL GENERAL FUND	<u>\$460,900.00</u>
DEBT SERVICE FUND (SERIES 2016)	<u>\$173,625.00</u>
DEBT SERVICE FUND (SERIES 2018 2B)	<u>\$247,156.25</u>
DEBT SERVICE FUND (SERIES 2018 3A)	<u>\$797,778.14</u>
DEBT SERVICE FUND (SERIES 2019 3B)	<u>\$454,790.64</u>
DEBT SERVICE FUND (SERIES 2019 3C)	<u>\$435,196.89</u>
TOTAL ALL FUNDS	<u>\$2,569,446.92</u>

SECTION 3. BUDGET AMENDMENTS

Pursuant to Section 189.016, *Florida Statutes*, the District at any time within Fiscal Year 2020/2021 or within 60 days following the end of the Fiscal Year 2020/2021 may amend its Adopted Budget for that fiscal year as follows:

- a. The Board may authorize an increase or decrease in line item appropriations within a fund by motion recorded in the minutes if the total appropriations of the fund do not increase.
- b. The District Manager or Treasurer may authorize an increase or decrease in line item appropriations within a fund if the total appropriations of the fund do not increase and if the aggregate change in the original appropriation item does not exceed \$10,000 or 10% of the original appropriation.
- c. By resolution, the Board may increase any appropriation item and/or fund to reflect receipt of any additional unbudgeted monies and make the corresponding change to appropriations or the unappropriated balance.
- d. Any other budget amendments shall be adopted by resolution and consistent with Florida law.

The District Manager or Treasurer must establish administrative procedures to ensure that any budget amendments are in compliance with this Section 3 and Section 189.016, *Florida Statutes*, among other applicable laws. Among other procedures, the District Manager or Treasurer must ensure that any amendments to budget under subparagraphs c. and d. above are posted on the District's website within 5 days after adoption and remain on the website for at least 2 years.

SECTION 4. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED THIS 16TH DAY OF JULY, 2020.

ATTEST:

**TOWNE PARK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chairperson, Board of Supervisors

**Towne Park
Community Development District**

**Special Assessments to Fund the District's Fiscal
Year 2020-2021 Budget**

**Towne Park
Community Development District**

Resolution 2020-21

RESOLUTION 2020-21

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT MAKING A DETERMINATION OF BENEFIT AND IMPOSING SPECIAL ASSESSMENTS FOR FISCAL YEAR 2020/2021; PROVIDING FOR THE COLLECTION AND ENFORCEMENT OF SPECIAL ASSESSMENTS, INCLUDING BUT NOT LIMITED TO PENALTIES AND INTEREST THEREON; CERTIFYING AN ASSESSMENT ROLL; PROVIDING FOR AMENDMENTS TO THE ASSESSMENT ROLL; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Towne Park 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 is located in Polk County, Florida ("**County**"); and

WHEREAS, the District has constructed or acquired various infrastructure improvements and provides certain services in accordance with the District's adopted capital improvement plan and Chapter 190, *Florida Statutes*; and

WHEREAS, the Board of Supervisors ("**Board**") of the District hereby determines to undertake various operations and maintenance and other activities described in the District's budget ("**Adopted Budget**") for the fiscal year beginning October 1, 2020 and ending September 30, 2021 ("**Fiscal Year 2020/2021**"), attached hereto as **Exhibit "A;"** and

WHEREAS, the District must obtain sufficient funds to provide for the operation and maintenance of the services and facilities provided by the District as described in the Adopted Budget; and

WHEREAS, the provision of such services, facilities, and operations is a benefit to lands within the District; and

WHEREAS, Chapter 190, *Florida Statutes*, provides that the District may impose special assessments on benefitted lands within the District; and

WHEREAS, it is in the best interests of the District to proceed with the imposition of the special assessments for operations and maintenance in the amount set forth in the Adopted Budget; and

WHEREAS, the District has previously levied an assessment for debt service, which the District desires to collect for Fiscal Year 2020/2021; and

WHEREAS, Chapter 197, *Florida Statutes*, provides a mechanism pursuant to which such special assessments may be placed on the tax roll and collected by the local tax collector ("**Uniform Method**"), and the District has previously authorized the use of the Uniform Method by, among other things, entering into agreements with the Property Appraiser and Tax Collector of the County for that purpose; and

WHEREAS, it is in the best interests of the District to adopt the assessment roll ("**Assessment Roll**") attached to this Resolution as **Exhibit "B,"** and to certify the portion of the Assessment Roll related to certain developed property ("**Tax Roll Property**") to the County Tax Collector pursuant to the Uniform Method and to directly collect the portion of the Assessment Roll relating to the remaining property ("**Direct Collect Property**"), all as set forth in **Exhibit "B,"** and

WHEREAS, it is in the best interests of the District to permit the District Manager to amend the Assessment Roll adopted herein, including that portion certified to the County Tax Collector by this Resolution, as the Property Appraiser updates the property roll for the County, for such time as authorized by Florida law.

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

SECTION 1. BENEFIT & ALLOCATION FINDINGS. The provision of the services, facilities, and operations as described in **Exhibit "A"** confers a special and peculiar benefit to the lands within the District, which benefit exceeds or equals the cost of the assessments. The allocation of the assessments to the specially benefitted lands is shown in **Exhibits "A" and "B,"** and is hereby found to be fair and reasonable.

SECTION 2. ASSESSMENT IMPOSITION. Pursuant to Chapters 170, 190 and 197, *Florida Statutes*, and using the procedures authorized by Florida law for the levy and collection of special assessments, a special assessment for operation and maintenance is hereby imposed and levied on benefitted lands within the District and in accordance with **Exhibits "A" and "B."** The lien of the special assessments for operations and maintenance imposed and levied by this Resolution shall be effective upon passage of this Resolution. Moreover, pursuant to Section 197.3632(4), *Florida Statutes*, the lien amount shall serve as the "maximum rate" authorized by law for operation and maintenance assessments.

SECTION 3. COLLECTION AND ENFORCEMENT; PENALTIES; INTEREST.

A. **Tax Roll Assessments.** The operations and maintenance special assessments and previously levied debt service special assessments imposed on the Tax Roll Property shall be collected at the same time and in the same manner as County taxes in accordance with the Uniform Method, as set forth in **Exhibits "A" and "B."**

- B. **Direct Bill Assessments.** The operations and maintenance special assessments and previously levied debt service special assessments imposed on the Direct Collect Property shall be collected directly by the District in accordance with Florida law, as set forth in **Exhibits "A" and "B."** Assessments directly collected by the District are due in full on December 1, 2020; provided, however, that, to the extent permitted by law, the assessments due may be paid in several partial, deferred payments and according to the following schedule: 50% due no later than December 1, 2020, 25% due no later than February 1, 2021 and 25% due no later than May 1, 2021. In the event that an assessment payment is not made in accordance with the schedule stated above, the whole assessment – including any remaining partial, deferred payments for Fiscal Year 2020/2021, shall immediately become due and payable; shall accrue interest, penalties in the amount of one percent (1%) per month, and all costs of collection and enforcement; and shall either be enforced pursuant to a foreclosure action, or, at the District's sole discretion, collected pursuant to the Uniform Method on a future tax bill, which amount may include penalties, interest, and costs of collection and enforcement. Any prejudgment interest on delinquent assessments shall accrue at the rate of any bonds secured by the assessments, or at the statutory prejudgment interest rate, as applicable. In the event an assessment subject to direct collection by the District shall be delinquent, the District Manager and District Counsel, without further authorization by the Board, may initiate foreclosure proceedings pursuant to Chapter 170, *Florida Statutes*, or other applicable law to collect and enforce the whole assessment, as set forth herein.
- C. **Future Collection Methods.** The decision to collect special assessments by any particular method – e.g., on the tax roll or by direct bill – does not mean that such method will be used to collect special assessments in future years, and the District reserves the right in its sole discretion to select collection methods in any given year, regardless of past practices.

SECTION 4. ASSESSMENT ROLL. The Assessment Roll, attached to this Resolution as **Exhibit "B,"** is hereby certified for collection. That portion of the Assessment Roll which includes the Tax Roll Property is hereby certified to the County Tax Collector and shall be collected by the County Tax Collector in the same manner and time as County taxes. The proceeds therefrom shall be paid to the District.

SECTION 5. ASSESSMENT ROLL AMENDMENT. The District Manager shall keep apprised of all updates made to the County property roll by the Property Appraiser after the date of this Resolution, and shall amend the Assessment Roll in accordance with any such updates, for such time as authorized by Florida law, to the County property roll. After any amendment of the Assessment Roll, the District Manager shall file the updates in the District records.

SECTION 6. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Resolution shall not affect the validity or enforceability of the remaining portions of this Resolution, or any part thereof.

SECTION 7. EFFECTIVE DATE. This Resolution shall take effect upon the passage and adoption of this Resolution by the Board.

PASSED AND ADOPTED this 16th day of July, 2020.

ATTEST:

**TOWNE PARK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary / Assistant Secretary

Chairperson, Board of Supervisors

Exhibit A: Budget

Exhibit B: Assessment Roll (Uniform Method)
Assessment Roll (Direct Collect)

Towne Park CDD
FY 2021 Proposed O&M Budget

	Year To Date				
	Actual Through 06/30/2020	Anticipated Jun. - Sep.	Anticipated Total FY 2020	FY 2020 Adopted Budget	FY 2021 Proposed Budget
<u>Revenues</u>					
Assessments	\$ 429,861.70	\$ 1,088.30	\$ 430,950.00	\$ 430,950.00	\$ 460,900.00
Other Income & Other Financing Sources	538.29	-	538.29	-	-
Net Revenues	\$ 430,399.99	\$ 1,088.30	\$ 431,488.29	\$ 430,950.00	\$ 460,900.00
<u>General & Administrative Expenses</u>					
Supervisor Fees	\$ 4,600.00	\$ 3,200.00	\$ 7,800.00	\$ 4,000.00	\$ 9,600.00
D&O Insurance	2,415.00	-	2,415.00	2,600.00	2,600.00
Trustee Services	8,808.58	-	8,808.58	11,000.00	11,000.00
Management	18,749.97	6,250.03	25,000.00	25,000.00	35,000.00
Field Management	139.58	69.79	209.37	1,200.00	1,200.00
Engineering	587.50	293.75	881.25	10,000.00	10,000.00
Dissemination Agent	5,500.00	-	5,500.00	5,500.00	5,500.00
District Counsel	31,965.57	11,987.09	43,952.66	20,000.00	20,000.00
Assessment Administration	12,500.00	-	12,500.00	12,500.00	20,000.00
Reamortization Schedules	-	500.00	500.00	500.00	625.00
Audit	6,000.00	500.00	6,500.00	10,000.00	8,000.00
Travel and Per Diem	36.61	-	36.61	-	-
Telephone	-	200.00	200.00	200.00	200.00
Postage & Shipping	409.69	204.85	614.54	150.00	150.00
Copies	50.40	25.20	75.60	1,000.00	1,000.00
Legal Advertising	3,098.09	1,549.05	4,647.14	3,000.00	3,000.00
Miscellaneous, Contingency	318.18	14,383.36	14,701.54	15,000.00	15,000.00
Web Site Maintenance	1,200.00	1,200.00	2,400.00	2,400.00	2,700.00
Dues, Licenses, and Fees	175.00	-	175.00	250.00	175.00
Water	-	8,000.00	8,000.00	8,000.00	8,000.00
Pond Maintenance	10,296.00	5,148.00	15,444.00	25,000.00	25,000.00
General Liability Insurance	3,020.00	-	3,020.00	3,250.00	3,250.00
Property & Casualty Insurance	11,616.00	-	11,616.00	20,000.00	20,000.00
Landscaping Maintenance & Material	88,044.05	91,955.95	180,000.00	180,000.00	180,000.00
Hurricane Cleanup	-	5,000.00	5,000.00	5,000.00	5,000.00
Total General & Administrative Expenses	\$ 209,530.22	\$ 150,467.06	\$ 359,997.28	\$ 365,550.00	\$ 387,000.00
<u>Pool & Clubhouse #1</u>					
Maintenance Staff	\$ -	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Electric	7,370.64	2,629.36	10,000.00	10,000.00	10,000.00
Water	1,067.19	3,932.81	5,000.00	5,000.00	5,000.00
Pool Maintenance & Repairs	13,650.00	6,825.00	20,475.00	12,000.00	12,000.00
Janitorial Expenses	6,633.00	3,316.50	9,949.50	6,000.00	12,000.00
Pest Control	2,475.00	1,237.50	3,712.50	500.00	3,300.00
Internet/Phone	874.82	437.41	1,312.23	1,000.00	1,000.00
Facility Repair & Maintenance	780.00	1,720.00	2,500.00	2,500.00	2,500.00
Facility Management	-	2,400.00	2,400.00	2,400.00	2,400.00
	\$ 32,850.65	\$ 23,498.58	\$ 56,349.23	\$ 40,400.00	\$ 49,200.00

Towne Park CDD
FY 2021 Proposed O&M Budget

Year To Date

	Actual Through 06/30/2020	Anticipated Jun. - Sep.	Anticipated Total FY 2020	FY 2020 Adopted Budget	FY 2021 Proposed Budget
<u>Pool & Clubhouse #2</u>					
Maintenance Staff	\$ -	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00	\$ 1,800.00
Electric	-	5,800.00	5,800.00	5,800.00	5,800.00
Water	-	2,900.00	2,900.00	2,900.00	2,900.00
Pool Maintenance & Repairs	-	7,000.00	7,000.00	7,000.00	7,000.00
Janitorial Expenses	-	3,500.00	3,500.00	3,500.00	3,500.00
Pest Control	-	300.00	300.00	300.00	300.00
Internet/Phone	-	500.00	500.00	500.00	500.00
Facility Repair & Maintenance	-	1,400.00	1,400.00	1,400.00	1,400.00
Facility Management	-	1,800.00	1,800.00	1,800.00	1,800.00
Total Pool & Clubhouse Expenses	\$ -	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00
 Total Expenses	 \$ 242,380.87	 \$ 198,965.64	 \$ 441,346.51	 \$ 430,950.00	 \$ 461,200.00
 Income (Loss) from Operations	 \$ 188,019.12	 \$ (197,877.34)	 \$ (9,858.22)	 \$ -	 \$ (300.00)
 <u>Other Income (Expense)</u>					
Interest Income	\$ 155.95	\$ 218.33	\$ 374.28	\$ -	\$ 300.00
Total Other Income (Expense)	\$ 155.95	\$ 218.33	\$ 374.28	\$ -	\$ 300.00
Net Income (Loss)	\$ 188,175.07	\$ (197,659.01)	\$ (9,483.94)	\$ -	\$ -

Towne Park CDD
Proposed FY 2021
Debt Service Budgets

	Proposed Series 2016 FY 2021 Budget	Proposed Series 2018 (Area 2B) FY 2021 Budget	Proposed Series 2018 (Area 3A) FY 2021 Budget	Proposed Series 2019 (Area 3B) FY 2021 Budget	Proposed Series 2019 (Area 3C) FY 2021 Budget
REVENUES:					
Special Assessments	\$ 173,625.00	\$ 247,156.25	\$ 797,778.14	\$ 454,790.64	\$ 435,196.89
TOTAL REVENUES	<u>\$ 173,625.00</u>	<u>\$ 247,156.25</u>	<u>\$ 797,778.14</u>	<u>\$ 454,790.64</u>	<u>\$ 435,196.89</u>
EXPENDITURES:					
Interest 11/01/2020	\$ 41,625.00	\$ 69,318.75	\$ 223,459.38	\$ 120,484.38	\$ 115,609.38
Principal 11/01/2020	25,000.00	-	-	-	-
Interest 05/01/2021	41,000.00	69,318.75	223,459.38	120,484.38	115,609.38
Principal 05/01/2021	-	40,000.00	130,000.00	95,000.00	90,000.00
TOTAL EXPENDITURES	<u>\$ 107,625.00</u>	<u>\$ 178,637.50</u>	<u>\$ 576,918.76</u>	<u>\$ 335,968.76</u>	<u>\$ 321,218.76</u>
EXCESS REVENUES	<u>\$ 66,000.00</u>	<u>\$ 68,518.75</u>	<u>\$ 220,859.38</u>	<u>\$ 118,821.88</u>	<u>\$ 113,978.13</u>
Interest 11/01/2021	\$ 41,000.00	\$ 68,518.75	\$ 220,859.38	\$ 118,821.88	\$ 113,978.13
Principal 11/01/2021	25,000.00	-	-	-	-

**Towne Park
Community Development District**

**Construction Services for Project Improvements
and Approval**

**TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT
REQUEST FOR PROPOSALS**

**CONSTRUCTION SERVICES FOR PROJECT IMPROVEMENTS
(PHASE 3D, ALSO KNOWN AS RIVERSTONE PHASES 5 & 6)
POLK COUNTY, FLORIDA**

Notice is hereby given that the Towne Park Community Development District ("District") will receive proposals for the following District project:

Project construction site work for Phase 3D (a/k/a Riverstone Phases 5 & 6), including offsite improvements, stormwater management, utilities, roadway, entry features, and parks and amenities.

The Project Manual will be available beginning Monday, July 20, 2020 at 8:00 AM EST at the offices of the Towne Park Community Development District's Engineer, Absolute Engineering, Inc., 1000 N. Ashley Drive, Suite 925, Tampa, Florida 33602 or by calling (813) 221-1516 or emailing heatherw@absoluteng.com. Each Project Manual will include, but not be limited to, the Request for Proposals, proposal and contract documents, and construction plans and specifications.

The District reserves the right to reject any and all proposals, make modifications to the work, award the contract in whole or in part with or without cause, provide for the delivery of the project in phases, and waive minor or technical irregularities in any Proposal, as it deems appropriate, if it determines in its discretion that it is in the District's best interests to do so. Each proposal shall be accompanied by a proposal guarantee in the form of a proposal bond or certified cashier's check in an amount not less than five percent (5%) of the total bid to be retained in the event the successful proposer fails to execute a contract with the District and file the requisite Performance and Payment Bonds and insurance within fourteen (14) calendar days after the receipt of the Notice of Award.

Any person who wishes to protest the Project Manual, or any component thereof, shall file with the District a written notice of protest within seventy-two (72) calendar hours (excluding Saturdays, Sundays, and state holidays) after the Project Manual is made available, and shall file a formal written protest with the District within seven (7) calendar days (including Saturdays, Sundays, and state holidays) after the date of timely filing the initial notice of protest. Filing will be perfected and deemed to have occurred upon receipt by the District Engineer directed to Heather Wertz at heatherw@absoluteng.com. Failure to timely file a notice of protest or failure to timely file a formal written protest shall constitute a waiver of any right to object to or protest the contents of the District's Project Manual. The formal written protest shall state with particularity the facts and law upon which the protest is based.

Ranking of proposals will be made on the basis of qualifications according to the evaluation criteria contained within the Project Manual; however, please note that proposals received from firms failing to meet the following minimum qualifications/requirements will not be considered or evaluated: (1) Proposer will have constructed three (3) improvements similar in quality and scope with a minimum of \$1,000,000 in total volume construction cost within the last five (5) years; (2) Proposer will have minimum bonding capacity of \$1,000,000 from a surety company acceptable to the District; (3) Proposer is authorized to do business in Florida; and (4) Proposer is registered with Polk County and is a licensed contractor in the State of Florida.

Any and all questions relative to this project shall be directed in email only to heatherw@absoluteng.com no later than 3:00 PM EST, on Friday, August 14, 2020.

Firms desiring to provide services for this project must submit one (1) original and (1) electronic copy in PDF included with the submittal package of the required proposal no later than 3:00 PM EST, Friday, August 21, 2020, at the offices of Absolute Engineering, Inc., 1000 N. Ashley Drive, Suite 925, Tampa, Florida 33602. Proposals shall be submitted in a sealed opaque package, shall bear the name of the proposer on the outside of the package and shall identify the name of the project. Proposals will be opened at a public meeting to be held at 3:00 PM EST, Friday, August 21, 2020, at the offices of Absolute Engineering, Inc., 1000 N. Ashley Drive, Suite 925, Tampa, Florida 33602. No official action will be taken at the meeting. Proposals received after the time and date stipulated above will be returned un-opened to the proposer. Any proposal not completed as specified or missing the required proposal documents as provided in the Project Manual may be disqualified.

Towne Park Community Development District
District Manager

Run Date: July 20, 2020

TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT
EVALUATION CRITERIA

CONSTRUCTION SERVICES FOR PHASE 3D (A/K/A RIVERSTONE PHASES 5 & 6)
MASTER INFRASTRUCTURE IMPROVEMENTS
POLK COUNTY, FLORIDA

PERSONNEL **(5 POINTS)**

E.g., geographic location of firm's headquarters; adequacy and capabilities of key personnel, including the project manager and field supervisor; present ability to manage this project; evaluation of existing work load; proposed staffing levels, etc.

EXPERIENCE **(15 POINTS)**

E.g., past record and experience of the respondent in self performing similar projects; past performance for this District and other community development district's in other contracts; character, integrity, reputation of respondent, etc.;

UNDERSTANDING SCOPE OF WORK **(20 POINTS)**

Demonstration of the Proposer's understanding of the project requirements.

FINANCIAL CAPABILITY **(10 POINTS)**

Extent to which the proposal demonstrates the adequacy of the Proposer's financial resources and stability as a business entity, necessary to complete the services required.

SCHEDULE **(25 POINTS)**

Demonstration of Proposer's understanding (through presentation in the proposal of a milestone schedule) of how to meet the required substantial and final completion dates. Consideration will be given to proposers that indicate an ability to credibly complete the project in advance of the required substantial and final completion dates without a premium cost for accelerated work.

PRICE **(25 POINTS)**

Points available for price will be allocated as follows:

15 Points will be awarded to the Proposer submitting the lowest cost proposal for completing the work. All other Proposers will receive a percentage of this amount based upon the difference between the Proposer's bid and the low proposer.

10 Points are allocated for the reasonableness of unit prices and balance of proposer.

TOTAL POINTS **(100 POINTS)**

**Towne Park
Community Development District**

Assignment of Amenity Contract

ASSIGNMENT OF CONTRACTOR AGREEMENT
RIVERSTONE AMENITY CENTER CONSTRUCTION

Assignor: Riverstone, LLC (“**Assignor**”)
Owner/Assignee: Towne Park Community Development District (“**Assignee**” or “**District**”)
Contractor: Henkelman Construction, Inc. (“**Contractor**”)
Contract: Agreement between Owner and Contractor for Riverstone Amenity Center Construction, dated June 19, 2020 (“**Contractor Agreement**” or “**Project**”)

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor, does hereby transfer, assign and convey unto Assignee, all of the rights, interests, benefits and privileges of Assignor under the Contractor Agreement, by and between Assignor and Contractor, for the above-referenced Project. Further, Assignee does hereby assume all obligations of Assignor under the Contract arising or accruing after the date hereof. Contractor hereby consents to the assignment of the Contract and all of Contractor’s rights, interests, benefits, privileges, and obligations to Assignee.

Executed in multiple counterparts to be effective the ____ day of _____, 2020.

HENKELMAN CONSTRUCTION, INC.

**TOWNE PARK COMMUNITY
DEVELOPMENT DISTRICT**

By: _____
Printed Name: _____
Title: _____

By: _____
Name: Joel D. Adams
Title: Chairperson

RIVERSTONE, LLC, a Florida limited liability company

By: AtlanticBlue Capital, LLC (fka Atlantic Property Company, LLC)
Its: Manager

By: _____
Printed Name: John D. Alexander
Title: Manager

EXHIBITS:

- Developer’s Affidavit and Agreement Regarding Assignment of Contractor Agreement
- Contractor’s Acknowledgment and Acceptance of Assignment and Release
- Addendum to Contractor Agreement with Exhibits:
 - Scrutinized Companies Statement
 - Public Entity Crimes Statement
 - Trench Safety Compliance Act Statement
 - Discrimination Statement

**DEVELOPER'S AFFIDAVIT AND AGREEMENT
REGARDING ASSIGNMENT OF CONTRACTOR AGREEMENT
RIVERSTONE AMENITY CENTER CONSTRUCTION**

STATE OF FLORIDA
COUNTY OF _____

BEFORE ME, the undersigned, personally appeared John D. Alexander as Manager of AtlanticBlue Capital, LLC (fka Atlantic Property Company, LLC), as Manager of Riverstone, LLC ("**Developer**"), who, after being first duly sworn, deposes and says:

- (i) I, John D. Alexander, serve as manager for Developer and am authorized to make this affidavit on its behalf. I make this affidavit in order to induce the Towne Park Community Development District ("**District**") to accept an assignment of the Contractor Agreement (defined below).
- (ii) The agreement ("**Contractor Agreement**") between Developer and Henkelman Construction, Inc. ("**Contractor**"), dated June 19, 2020, and attached hereto as **Exhibit A**, X was competitively bid prior to its execution or _____ is below the applicable bid thresholds and was not required to be competitively prior to its execution.
- (iii) Developer, in consideration for the District's acceptance of an assignment of the Contractor Agreement agrees to indemnify, defend, and hold harmless the District and its successors, assigns, agents, employees, staff, contractors, officers, supervisors, and representatives (together, "**Indemnitees**"), from any and all liability, loss or damage, whether monetary or otherwise, including reasonable attorneys' fees and costs and all fees and costs of mediation or alternative dispute resolution, arising out of, wholly or in part by, or as a result of any claims, liabilities, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, or judgments, against Indemnitees and which relate in any way to the assignment of, or bid process for, the Contractor Agreement.
- (iv) Developer has obtained a release from Contractor (and all subcontractors and material suppliers thereto) acknowledging the assignment of the above referenced contract and the validity thereof, the satisfaction of the bonding requirements of Section 255.05, *Florida Statutes* (if applicable), and waiving any and all claims against the District arising as a result of or connected with this assignment. Such releases are attached as **Exhibit B**.
- (v) The Contractor has X furnished or will furnish a performance and payment bond in accordance with Section 255.05, *Florida Statutes*, which is attached hereto as **Exhibit C**, or _____ was not required to provide such a bond pursuant to Section 255.05, *Florida Statutes*.
- (vi) Developer X represents and warrants that there are no outstanding liens or claims relating to the Contractor Agreement, or _____ has posted a transfer bond in accordance with Section 713.24, *Florida Statutes*, which is attached hereto as **Exhibit D**.
- (vii) Developer represents and warrants that there are no payments to Contractor and any subcontractors or materialmen under the Contractor Agreement are outstanding and no disputes under the Contractor Agreement exist.

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

Executed this ____ day of _____, 2020.

WITNESS:

RIVERSTONE, LLC a Florida
limited liability company

By: AtlanticBlue Capital, LLC (fka Atlantic Property
Company, LLC)
Its: Manager

[Print Name]

By: John D. Alexander
Its: Manager

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by John D. Alexander, as Manager for AtlanticBlue Capital, LLC, Manager for Riverstone, LLC.

[notary seal]

(Official Notary Signature)
Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

Exhibit A Agreement by and between Developer and Henkelman Construction, Inc., dated June 19, 2020
Exhibit B Releases
Exhibit C Performance and Payment Bonds

**CONTRACTOR'S ACKNOWLEDGMENT AND ACCEPTANCE OF
ASSIGNMENT AND RELEASE
RIVERSTONE AMENITY CENTER CONSTRUCTION**

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Henkelman Construction, Inc. ("**Contractor**"), hereby agrees as follows:

- (i) The agreement ("**Contractor Agreement**") between Riverstone, LLC and Contractor dated June 19, 2020, has been assigned to the Towne Park Community Development District ("**District**"). Contractor acknowledges and accepts such assignment and its validity.
- (ii) Contractor represents and warrants that either:
 - a. X Contractor has or will furnish and record a performance and payment bond in accordance with Section 255.05, *Florida Statutes*, and has notified any subcontractors, material suppliers or others claiming interest in the work of the existence of the bond; or
 - b. Contractor has not been required to furnish or provide a performance and payment bond under Section 255.05, *Florida Statutes*, and has notified any subcontractors, materialmen or others claiming interest in the work that (a) no such bond exists; (b) the District, as a local unit of special purpose government, is not an "Owner" as defined in Section 713.01(23), *Florida Statutes*; and (c) there are no lien rights available to any person providing materials or services for improvements in connection with the Improvement Agreement.
- (iii) Contractor represents and warrants that all payments to any subcontractors or materialmen under the Contractor Agreement are current, there are no past-due invoices for payment due to the Contractor under the Contractor Agreement, and there are no outstanding disputes under the Contractor Agreement.
- (iv) Contractor hereby releases and waives any claim it may have against the District as a result of or in connection with such assignment.

[CONTINUED ON NEXT PAGE]

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

Executed this ____ day of _____, 2020.

HENKELMAN CONSTRUCTION, INC.

By: _____
Its: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2020, by _____, as _____ of Henkelman Construction, Inc.

(Official Notary Signature)

Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

[notary seal]

**ADDENDUM (“ADDENDUM”) TO CONTRACT (“CONTRACT”)
RIVERSTONE AMENITY CENTER CONSTRUCTION**

1. ASSIGNMENT. This Addendum applies to that certain Agreement between Owner and Contractor for Riverstone Amenity Center Construction, dated June 19, 2020 (“**Contract**”) between the Riverstone, LLC (“**District**”) and Henkelman Construction, Inc. (“**Contractor**”), which Contract was assigned to the District simultaneous with the execution of this Addendum. To the extent the terms of the Contract conflict with this Addendum, the terms of this Addendum shall control.

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

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

4. LOCAL GOVERNMENT PROMPT PAYMENT ACT. Notwithstanding any other provision of the Contract, all payments to the Contractor shall be made in a manner consistent with the Local Government Prompt Payment Act, Sections 218.70 through 218.80, *Florida Statutes*. Contractor shall make payments due to subcontractors and materialmen and laborers within ten (10) days in accordance with the prompt payment provisions contained in Section 218.735(6), 218.735(7), and 218.74, *Florida Statutes*. All payments due and not made within the time prescribed by Section 218.735, *Florida Statutes*, bear interest at the rate of one percent (1%) per month on the unpaid balance in accordance with Section 218.735(9), *Florida Statutes*.

5. RETAINAGE. The following provision addresses the holding of retainage under the Contract:

Prior to 50 percent completion of the construction services purchased pursuant to the Contract, the Owner may withhold from each progress payment made to the Contractor an amount not exceeding ten percent (10%) of the payment. After 50 percent completion of the construction services, the Contractor may present a payment request for up to one

half of the retainage held, less such amounts as may be withheld pursuant to this Contract or applicable law. After 50 percent completion of the construction services, and until final completion and acceptance of the Work by Owner, the Owner shall reduce to five percent (5%) the amount of retainage withheld from each subsequent progress payment made to the Contractor. Five percent of the contract price will be retained until final completion, acceptance of the Work, and final payment to the Contractor.

6. INDEMNIFICATION. Contractor's indemnification, defense, and hold harmless obligations under the Contract shall continue to apply to the original indemnitees and shall further include the District and its supervisors, consultants, agents, attorneys, managers, engineers and representatives. To the extent that a maximum limit for indemnification is required by law, and not otherwise set forth in the Contract, the indemnification limit shall be the greater of the limits of the insurance amounts set forth in the Contract or Three Million Dollars (\$3,000,000), which amounts Contractor agrees bears a reasonable commercial relationship to the Contract and are enforceable, and were included as part of the bid and/or assignment documents. The Contractor's obligations hereunder are intended to be consistent with all provisions of applicable law, and to the extent found inconsistent by a court of competent jurisdiction, the Contract shall be deemed amended and/or reformed consistent with the intent of this paragraph and such that the obligations apply to the maximum limits of the law.

7. TAX EXEMPT DIRECT PURCHASES. The parties agree that the District may in its sole discretion elect to undertake a direct purchase of any or all materials incorporated into the work performed according to the Contract. In such event, the following conditions shall apply:

- a. The District represents to Contractor that the District is a governmental entity exempt from Florida sales and use tax, and has provided Contractor with a copy of its Consumer Exemption Certificate.
- b. The District may elect to implement a direct purchase arrangement whereby the District will directly acquire certain materials ("**Direct Purchase Materials**") necessary for the work directly from the suppliers to take advantage of District's tax-exempt status.
- c. Prior to purchasing any materials, the Contractor shall contact the District to determine which materials will be treated as Direct Purchase Materials.
- d. The District shall issue a Certificate of Entitlement to each supplier of Direct Purchase Materials, and to the Contractor. Each Certificate of Entitlement will be in the format specified by Rule 12A-1.094(4)(c), Florida Administrative Code. Each Certificate of Entitlement shall have attached thereto the corresponding purchase order. Each Certificate of Entitlement shall affirm that (1) the attached purchase order is being issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works; (2) the vendor's invoice will be issued directly to the District; (3) payment of the vendor's invoice will be made directly by the District to the vendor from public funds; (4) the District will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor; and (5) the District assumes the risk of damage or loss at the time of purchase or delivery by the vendor. Each Certificate of Entitlement shall acknowledge that if the Department of Revenue determines the purchase is not a tax-exempt purchase by a governmental entity, then the District will be responsible for any tax, penalties and interest determined to be due.
- e. The District shall issue purchase orders directly to suppliers of Direct Purchase Materials. The District shall issue a separate Certificate of Entitlement for each purchase order. Such

purchase orders shall require that the supplier provide the required shipping and handling insurance and provide for delivery F.O.B. jobsite. Corresponding change orders shall be executed at the time of the direct purchase to reflect the direct purchases made by the District and if the original contract contemplated sale of materials and installation by same person, the change order shall reflect sale of materials and installation by different legal entities.

- f. Upon delivery of the Direct Purchase Materials to the jobsite, the District shall inspect the materials and invoices to determine that they conform to the purchase order. If the materials conform, the District shall accept and take title to the Direct Purchase Materials.
- g. Suppliers shall issue invoices directly to the District. The District shall process invoices and issue payment directly to the suppliers from public funds.
- h. Upon acceptance of Direct Purchase Materials, the District shall assume risk of loss of same until they are incorporated into the project. Contractor shall be responsible for safeguarding all Direct Purchase Materials and for obtaining and managing all warranties and guarantees for all material and products.
- i. The District shall, at its option, maintain builder's risk insurance on the Direct Purchase Materials.

8. PUBLIC RECORDS. The Contractor agrees and understands that Chapter 119, *Florida Statutes*, may be applicable to documents prepared in connection with the services provided hereunder and agrees to cooperate with public record requests made thereunder. In connection with this Contract, Contractor agrees to comply with all provisions of Florida's public records laws, including but not limited to Section 119.0701, *Florida Statutes*, the terms of which are incorporated herein. Among other requirements, Contractor must:

- a. Keep and maintain public records required by the District to perform the service.
- b. Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the District.
- d. Upon completion of this Agreement, transfer, at no cost, to the District all public records in possession of the Contractor or keep and maintain public records required by the District to perform the service. If the Contractor transfers all public records to the District upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

IF 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 PUBLIC RECORDS CUSTODIAN AT C/O _____, _____, _____, PHONE (____) ____-_____, AND _____

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

10. NOTICES. Notices provided to the District pursuant to the Contract shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the following individuals:

District:	Towne Park Community Development District 219 East Livingston Street Orlando, Florida 32801 Attn: District Manager
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With a copy to:	Hopping Green & Sams, P.A. 119 South Monroe, Suite 300 Tallahassee, Florida 32301 Attn: District Counsel
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11. SCRUTINIZED COMPANIES STATEMENT. Upon the Assignment, Contractor shall properly execute a sworn statement pursuant to Section 287.135(5), *Florida Statutes*, and by signing this Addendum represents that Contractor is able to execute such sworn statement. The statement shall be substantially in the form of the attached **Exhibit A**. If the Contractor is found to have submitted a false certification as provided in Section 287.135(5), *Florida Statutes*, or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in the boycott of Israel, or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria, the District may immediately terminate the Contract.

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

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

14. DISCRIMINATION STATEMENT. Upon the Assignment, Contractor shall properly execute a sworn statement under Section 287.134(2)(a), *Florida Statutes*, regarding discriminatory vendor list, and by signing this Addendum represents that Contractor is able to execute such sworn statement. The statement shall be substantially in the form of the attached **Exhibit D**.

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

IN WITNESS WHEREOF, the parties hereto hereby acknowledge and agree to this Addendum, executed on this ____ day of _____, 2020, effective as of the date of the Assignment of the Contract.

WITNESS:

HENKELMAN CONSTRUCTION, INC.

[Print Name] _____

By: _____
Its: _____

ATTEST:

**TOWNE PARK COMMUNITY
DEVELOPMENT DISTRICT**

Secretary

Joel D. Adams
Chairperson, Board of Supervisors

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

EXHIBIT A

**SWORN STATEMENT PURSUANT TO SECTION 287.135(5), FLORIDA STATUTES,
REGARDING SCRUTINIZED COMPANIES WITH ACTIVITIES IN SUDAN LIST OR
SCRUTINIZED COMPANIES WITH ACTIVITIES IN THE IRAN PETROLEUM
ENERGY SECTOR LIST**

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

1. This sworn statement is submitted to Towne Park Community Development District
by _____ (print name of authorized representative).
I am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in
the capacity of _____ (print individual's title)
for Henkelman Construction, Inc., ("Contractor"), and am authorized to make this Sworn Statement on
behalf of Contractor. Contractor's business address is: _____
_____.
2. I understand that, subject to limited exemptions, Section 287.135, *Florida Statutes*, declares a company that,
at the time of bidding or submitting a proposal for a new contract or renewal of an existing contract, is on
the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in
the Iran Petroleum Energy Sector List, created pursuant to Section 215.473, *Florida Statutes*, or that has
business operations in Cuba or Syria is ineligible for, and may not bid on, submit a proposal for, or enter
into or renew a contract with a local governmental entity for goods or services.
3. Based on information and belief, at the time the entity submitting this sworn statement accepts assignment of
its Contract with Riverstone, LLC, to the Towne Park Community Development District, neither the entity,
nor any of its officers, directors, executives, partners, shareholders, members, or agents, is listed on either the
Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the
Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria.
4. The entity will immediately notify the Towne Park Community Development District in writing if either
the entity, or any of its officers, directors, executives, partners, shareholders, members, or agents, is placed on
either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with
Activities in the Iran Petroleum Energy Sector List.

Under penalties of perjury under the laws of the State of Florida, I declare that I have read the foregoing Sworn
Statement under Section 287.135(5), *Florida Statutes*, Regarding Scrutinized Companies and all of the information
provided is true and correct.

Signature by authorized representative

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____ day of
_____, 2020, by _____, as _____ of
Henkelman Construction, Inc.

[notary seal]

(Official Notary Signature)
Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

EXHIBIT B

SWORN STATEMENT ON PUBLIC ENTITY CRIMES **PURSUANT TO SECTION 287.133(2)(a), FLORIDA STATUTES**

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

1. This sworn statement is submitted to Towne Park Community Development District.
2. I, _____ (print name of authorized representative) am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of _____ (print individual's title) for Henkelman Construction, Inc., ("Contractor"), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor's business address is _____.
4. Contractor's Federal Employer Identification Number (FEIN) is _____.

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

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

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

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

_____ The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members or agents who are active in management of the entity or an affiliate of the entity, has been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (please indicate which additional statement applies):

____ There has been a proceeding concerning the conviction before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

____ The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before an Administrative Law Judge of the State of Florida, Division of Administrative Hearings. The final order entered by the Administrative Law Judge determined that it was in the public interest to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

____ The person or affiliate has not been placed on the convicted vendor list. (Please describe any action taken by or pending with the Florida Department of Management Services.)

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

[CONTINUE ON NEXT PAGE]

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

Dated this ____ day of _____, 2020.

By: _____
Title: _____

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____
day of _____, 2020, by _____, as _____
of Henkelman Construction, Inc.

[notary seal]

(Official Notary Signature)
Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

EXHIBIT C

TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT **TRENCH SAFETY ACT COMPLIANCE STATEMENT**

INSTRUCTIONS

Because trench excavations on this project are expected to be in excess of 5 feet, Florida's Trench Safety Act, Sections 553.60 – 553.64, *Florida Statutes*, requires that construction on the project comply with Occupational Safety and Health Administration Standard 29 C.F.R.s. 1926.650 Subpart P. The Contractor is required to execute this Compliance Statement and the Compliance Cost Statement. The costs for complying with the Trench Safety Act must be incorporated into the Contract Price.

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

CERTIFICATION

1. I understand that the Trench Safety Act requires me to comply with OSHA Standard 29 C.F.R.s. 1926.650 Subpart P. I will comply with The Trench Safety Act, and I will design and provide trench safety systems at all trench excavations in excess of five feet in depth for this project.
2. The estimated cost imposed by compliance with The Trench Safety Act will be:
_____ Dollars \$ _____
(Written) (Figures)
3. The amount listed above has been included within the Contract Price.

Dated this _____ day of _____, 2020.

Contractor:
HENKELMAN CONSTRUCTION, INC.

By: _____
Title: _____

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____
_____ day of _____, 2020, by _____, as
_____ of Henkelman Construction, Inc.

[notary seal]

(Official Notary Signature)
Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

**TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT
TRENCH SAFETY ACT COMPLIANCE COST STATEMENT**

INSTRUCTIONS

Because trench excavations on this Project are expected to be in excess of 5 feet, Florida's Trench Safety Act, Sections 553.60 – 553.64, *Florida Statutes*, requires that the Contractor submit a statement of the costs of complying with the Trench Safety Act. Said costs must also be incorporated into the Contract Price. This form must be certified in the presence of a notary public or other officer authorized to administer oaths. By executing this statement, Contractor acknowledges that included in the various items of its Contract Price are costs for complying with the Florida Trench Safety Act. The Contractor further identifies the costs as follows:

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

Dated this ____ day of _____, 2020.

Subcontractor:

By: _____

Title: _____

STATE OF FLORIDA

COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, as _____ of Henkelman Construction, Inc.

[notary seal]

(Official Notary Signature)

Name: _____

Personally Known _____

OR Produced Identification _____

Type of Identification _____

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

EXHIBIT D

TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT
SWORN STATEMENT PURSUANT TO SECTION 287.134(2)(a), FLORIDA STATUTES,
ON DISCRIMINATION

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

1. This sworn statement is submitted to Towne Park Community Development District.
2. I, _____ (print name of authorized representative) am over eighteen (18) years of age and competent to testify as to the matters contained herein. I serve in the capacity of _____ (print individual's title) for Henkelman Construction, Inc., ("Contractor"), and am authorized to make this Sworn Statement on behalf of Contractor.
3. Contractor's business address is _____.
4. Contractor's Federal Employer Identification Number (FEIN) is _____.

(If the Contractor has no FEIN, include the Social Security Number of the individual signing this sworn statement: _____.)
5. I understand that a "discrimination" or "discriminated" as defined in Section 287.134(1)(b), *Florida Statutes*, means a determination of liability by a state circuit court or federal district court for a violation of any state or federal law prohibiting discrimination on the basis of race, gender, national origin, disability, or religion by an entity; if an appeal is made, the determination of liability does not occur until the completion of any appeals to a higher tribunal.
6. I understand that "discriminatory vendor list" as defined in Section 287.134(1)(c), *Florida Statutes*, means the list required to be kept by the Florida Department of Management Services pursuant to Section 287.134(3)(d), *Florida Statutes*.
7. I understand that "entity" as defined in Section 287.134(1)(e), *Florida Statutes*, means any natural person or any entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts let by a public entity, or which otherwise transacts or applies to transact business with a public entity.
8. I understand that an "affiliate" as defined in Section 287.134(1)(a), *Florida Statutes*, means:
 - a. A predecessor or successor of an entity that discriminated; or
 - b. An entity under the control of any natural person or entity that is active in the management of the entity that discriminated. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one entity of shares constituting a controlling interest in another entity, or a pooling of equipment or income among entities when not for fair market value under an arm's length agreement, shall be a prima facie case that one entity controls another entity
9. I understand that, pursuant to Section 287.134(2)(a), *Florida Statutes*, an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier,

subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.

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

- ___ Neither the entity submitting this sworn statement, nor any affiliate of the entity, has been placed on the discriminatory vendor list.
- ___ The entity submitting this sworn statement, or an affiliate of the entity, appears on the discriminatory vendor list.

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

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

Signature by authorized representative

STATE OF FLORIDA
COUNTY OF _____

Sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2020, by _____, as _____ of Henkelman Construction, Inc.

[notary seal]

(Official Notary Signature)

Name: _____
Personally Known _____
OR Produced Identification _____
Type of Identification _____

AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

Riverstone, LLC
2300 North Scenic Highway, ML 50
Lake Wales, Florida 33898

and the Contractor:
(Name, legal status, address and other information)

Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33801

for the following Project:
(Name, location and detailed description)

Riverstone Amenity Center Construction

The Architect:
(Name, legal status, address and other information)

Furr, Wegman & Banks Architects, P.A.
625 East Orange Street
Lakeland, Florida 33801

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS / ASSIGNMENT
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

§ 1.1 Assignment of Contract- It is the intent of the parties hereto that this Contract be assigned in whole or in part to the Towne Park Community Development District, a local unit of special purpose government established and existing pursuant to Chapter 190, Florida Statutes. Contractor agrees to accept such assignment of this Contract to the Towne Park Community Development District and to further execute any and all documents necessary to complete such assignment, including but not limited to, obtaining all insurance, payment and performance bonds, and any other provision of this Contract.

§ 1.2 Applicability of Sections 5.1.3, 5.1.7.1.1, 5.1.7.3, 5.2.2.1, 8.7.2, and 8.7.5 through 8.7.9 shall be applicable to and binding upon the Contractor immediately upon assignment of this Contract to the Towne Park Community Development District.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☐ A date set forth in a notice to proceed issued by the Owner.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

Upon written notice to proceed and issuance of all necessary permits to commence the Work.

Init.

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User Notes:

(1279489845)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☒ Not later than One Hundred Eighty (180) calendar days from the date of commencement of the Work.

☐ By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Seven Hundred Forty-Three Thousand Seven Hundred Fifty-Six Dollars (\$743,756.00), subject to additions and deductions as provided in the Contract Documents and Section 4.2.1 below.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item

Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

Price

Conditions for Acceptance

None

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item

Price

None

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item

Units and Limitations

Price per Unit (\$0.00)

See Contractor's Proposal dated December 16,
2019

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§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

See section 4.6 below

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

Contractor and Owner recognize that time is of the essence in this Contract and that Owner will suffer financial loss if the Work is not completed within the schedule set forth herein, plus any extensions thereof allowed in accordance with the terms of this Contract. The parties also recognize the delays, expense, and difficulties involved in participating in a legal or arbitration proceeding, and proving the actual loss suffered by Owner if the Work is not completed on time. Should the Contractor, or in case of its default, the Surety, fail to complete the Work by the Substantial Completion Dates set forth herein, or within such extra time as may have been granted by Owner, the Contractor, or in case of its default, the Surety, shall pay to Owner, not as a penalty but as liquidated damages, the amount of Two Hundred Fifty Dollars (\$250.00) per day. The Parties agree that an assessment of actual damages as of the date of its Contract would be uncertain, and the liquidated damages amount set forth herein is reasonable.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Notwithstanding anything to the contrary herein, Florida's Local Government Prompt Payment Act, Sections 218.70 et seq., Florida Statutes, shall govern all payments under this Contract and all payments to any subcontractors. Accordingly, Contractor shall submit each Application for Payment to Architect and Owner on the first day of each month, and, provided that all other conditions of this Contract are met, payment shall be made within twenty-five (25) days thereafter. 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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

§ 5.1.7.1.1 Until the work is at fifty percent (50%) completion, as defined in Section 218.735, Florida Statutes, the Owner shall withhold from each progress payment ten percent (10%) of the payment as retainage consistent with Section 5.1.6 of this Agreement. After the Work is at fifty percent (50%) completion, the Owner shall withhold from each progress payment five percent (5%) as retainage. The parties shall comply with Section 218.735, Florida Statutes with respect to retainage, and the requirements of such Section 218.735, Florida Statutes, to the extent applicable to this Contract, are incorporated herein by this reference.

§ 5.1.7.1.2 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

§ 5.1.7.3 Pursuant to Section 218.735, Florida Statutes, after 50-percent completion of the construction services purchased pursuant to this Contract, the Contractor may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Contractor, unless the Owner has grounds, pursuant to Section 218.735(8)(f), Florida Statutes, for withholding the payment of retainage.

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. When Contractor receives payment from Owner for labor, services, or materials furnished by subcontractors, suppliers or consultants hired by Contractor, Contractor shall remit payment due to those subcontractors, suppliers and consultants within ten (10) days after Contractor's receipt of payment from Owner, and Contractor shall require all subcontractors, suppliers and consultants to simultaneously execute a waiver and lien release in a form provided by Owner. All waiver and lien releases shall be provided to Owner prior to Contractor's request for final payment.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

Init.

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.2.2.1 The time established for progress payments and final payments should comply with the prompt payment provisions contained in Sections 218.735 and 218.74, Florida Statutes.

§ 5.3 Interest

(Paragraphs deleted)

All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, 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(4), Florida Statutes

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2017
- ☐ Litigation in a court of competent jurisdiction
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:
(Name, address, email address, and other information)

Warren K. Heath
Heath Construction and Management, LLC
2415 Cypress Gardens Boulevard
Winter Haven, Florida 33884

§ 8.3 The Contractor's representative:
(Name, address, email address, and other information)

Rob Hennessey
Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33881

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds in the forms set forth in the Project Manual

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 8.7 Other provisions:

§ 8.7.1 Assignment of Warranties

Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Contractor shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner. Any such warranties shall be in addition to the Contractor's general warranties provided under the Contract.

§ 8.7.2 Sovereign Immunity

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, 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.

Init.

§ 8.7.3 Governmental Approvals and Turnover

Contractor acknowledges that all work shall be subject to inspections, tests, and approvals by Owner, city, county, federal, state, other governmental entity, or utility company inspectors and that all or some portion of the work may be conveyed to another governmental entity or utility company. No work is complete until it passes final inspection / approval by the Owner as well as the applicable city, county, federal state, other governmental entity, or utility company. Contractor shall provide at its expense any written warranties, certifications, bonds or other documentation and/or guarantees as may be required in connection with the conveyance of any work, or as may be otherwise required, by any city, county, federal, state, other governmental entity or utility company.

§ 8.7.4 Public Records

The Contractor understands and agrees that all documents of any kind provided to the District 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 District is Jillian Burns ("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 District to perform the service; 2) upon request by the Public Records Custodian, provide the District 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 District; and 4) upon completion of the contract, transfer to the District, 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 District 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 841-5524, JBURNS@GMCFL.COM, 219 E. LIVINGSTON STREET, ORLANDO, FLORIDA 32801.

§ 8.7.5 Direct Purchase of Materials

1. 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.
2. Within 10 days of the issuance of the Notice to Proceed or other written authorization for Work, Contractor and Architect shall provide Owner with a list of materials that may be treated as Direct Purchase Materials, and Owner shall identify from that list which items the Owner would like to treat as Direct Purchase Materials.
3. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. 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.
4. 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

Init.

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.

5. 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.

6. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.

7. 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. Subject to the foregoing, all warranties, bonds, and other forms of indemnification provided by Contractor as part of Contract shall apply to all Direct Purchase Materials, as though Contractor had purchased the Direct Purchase Materials.

8. Contractor shall maintain builder's risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in the Owner's sole discretion, Owner shall maintain such insurance.

§ 8.7.6 Construction Defects

PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES

§ 8.7.7 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.

§ 8.7.8 Certification Regarding Corruption

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:

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.

§8.7.9 Public Entity Crimes

Pursuant to Section 287.133(3)(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, Florida Statutes 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, neither the Contractor, nor any supplier, subcontractor or consultant retained by Contractor, has been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor, or any supplier or subcontractor, is placed on the convicted vendor list, the Contractor shall immediately notify the District whereupon this Contract and/or any applicable subcontract may be terminated, as appropriate.

§8.7.10 Attorney Fees

In any litigation between Owner and Contractor arising out of this contract, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and costs from the other party.

§8.7.11 Third Parties

Riverstone, LLC, Heath Construction and Management, LLC, and the Towne Park Community Development District shall be third party beneficiaries of this Contract, with the right to enforce all warranties, performance bonds, insurance, and indemnification provisions hereunder.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor, as revised
- .2 Governmental Payment and Performance Bonds in the forms supplied by the District
- .3 AIA Document A201™-2017, General Conditions of the Contract for

(Paragraphs deleted)

Construction, as revised

- .5 Drawings

Number

Plans

Title

Riverstone Amenity
Center

Date

November 18, 2019

Pool Drawings

GCE Aquatic
Engineering

September 18, 2019

- .6 Specifications

Section

Title

Date

Pages

- .7 Addenda, if any:

Number

Date

Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required)

- ☐ AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

- ☐ The Sustainability Plan:

Title

Date

Pages

- ☐ Supplementary and other Conditions of the Contract:

Document

AIA Form A201

Title

General Conditions

Date

Upon Contract

Pages

39

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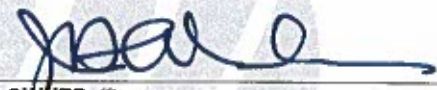
(1279489845)

9 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Contractor's Response to RFP, with Excel Bid Sheet

This Agreement entered into as of the day and year first written above.



OWNER (Signature)

J.P. Alexander, AS MANAGER
(Printed name and title)



CONTRACTOR (Signature)

RONALD HENKELMAN, AS PRESIDENT
(Printed name and title)

Additions and Deletions Report for

AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:56:25 ET on 05/22/2020.

PAGE 1

Riverstone, LLC
2300 North Scenic Highway, ML 50
Lake Wales, Florida 33898

...

Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33801

...

Riverstone Amenity Center Construction

...

Furr, Wegman & Banks Architects, P.A.
625 East Orange Street
Lakeland, Florida 33801

PAGE 2

1 THE CONTRACT DOCUMENTS / ASSIGNMENT

...

§ 1.1 Assignment of Contract- It is the intent of the parties hereto that this Contract be assigned in whole or in part to the Towne Park Community Development District, a local unit of special purpose government established and existing pursuant to Chapter 190, Florida Statutes. Contractor agrees to accept such assignment of this Contract to the Towne Park Community Development District and to further execute any and all documents necessary to complete such assignment, including but not limited to, obtaining all insurance, payment and performance bonds, and any other provision of this Contract.

§ 1.2 Applicability of Sections 5.1.3, 5.1.7.1.1, 5.1.7.3, 5.2.2.1, 8.7.2, and 8.7.5 through 8.7.9 shall be applicable to and binding upon the Contractor immediately upon assignment of this Contract to the Towne Park Community Development District.

...

[X] Established as follows:

...

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PAGE 3

Upon written notice to proceed and issuance of all necessary permits to commence the Work.

[☒] Not later than One Hundred Eighty (180) calendar days from the date of commencement of the Work.

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be (\$ —), Seven Hundred Thirty-Six Thousand Twenty-Six Dollars (\$736,026.00), subject to additions and deductions as provided in the Contract ~~Documents~~ Documents and Section 4.2.1 below.

None

None

See Contractor's Proposal dated December 16,
2019

PAGE 4

See section 4.6 below

Contractor and Owner recognize that time is of the essence in this Contract and that Owner will suffer financial loss if the Work is not completed within the schedule set forth herein, plus any extensions thereof allowed in accordance with the terms of this Contract. The parties also recognize the delays, expense, and difficulties involved in participating in a legal or arbitration proceeding, and proving the actual loss suffered by Owner if the Work is not completed on time. Should the Contractor, or in case of its default, the Surety, fail to complete the Work by the Substantial Completion Dates set forth herein, or within such extra time as may have been granted by Owner, the Contractor, or in case of its default, the Surety, shall pay to Owner, not as a penalty but as liquidated damages, the amount of Two Hundred Fifty Dollars (\$250.00) per day. The Parties agree that an assessment of actual damages as of the date of its Contract would be uncertain, and the liquidated damages amount set forth herein is reasonable.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the — day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the — day of the — month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than (—) days after the Architect receives the Application for Payment. (Federal, state or local laws may require payment within a certain period of time.) Notwithstanding anything to the contrary herein, Florida's Local Government Prompt Payment Act, Sections 218.70 et seq., Florida Statutes, shall govern all payments under this Contract and all payments to any subcontractors. Accordingly, Contractor shall submit each Application for Payment to Architect and Owner on the first day of each month, and, provided that all other conditions of this Contract are met, payment shall be made within twenty-five (25) days thereafter. 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

PAGE 5

§ 5.1.7.1.1 The following items are not subject to retainage: Until the work is at fifty percent (50%) completion, as defined in Section 218.735, Florida Statutes, the Owner shall withhold from each progress payment ten percent (10%) of the payment as retainage consistent with Section 5.1.6 of this Agreement. After the Work is at fifty percent (50%) completion, the Owner shall withhold from each progress payment five percent (5%) as retainage. The parties shall comply with Section 218.735, Florida Statutes with respect to retainage, and the requirements of such Section 218.735, Florida Statutes, to the extent applicable to this Contract, are incorporated herein by this reference.

§ 5.1.7.1.2 The following items are not subject to retainage:

...

N/A

...

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.) Pursuant to Section 218.735, Florida Statutes, after 50-percent completion of the construction services purchased pursuant to this Contract, the Contractor may present to the Owner a payment request for up to one-half of the retainage held by the Owner. The Owner shall promptly make payment to the Contractor, unless the Owner has grounds, pursuant to Section 218.735(8)(f), Florida Statutes, for withholding the payment of retainage.

...

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. When Contractor receives payment from Owner for labor, services, or materials furnished by subcontractors, suppliers or consultants hired by Contractor, Contractor shall remit payment due to those subcontractors, suppliers and consultants within ten (10) days after Contractor's receipt of payment from Owner, and Contractor shall require all subcontractors, suppliers and consultants to simultaneously execute a waiver and lien release in a form provided by Owner. All waiver and lien releases shall be provided to Owner prior to Contractor's request for final payment.

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§ 5.2.2.1 The time established for progress payments and final payments should comply with the prompt payment provisions contained in Sections 218.735 and 218.74, Florida Statutes.

...

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. (Insert rate of interest agreed upon, if any.)

—%—All payments due and not made within the time prescribed by Section 218.735, Florida Statutes, 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(4), Florida Statutes

...

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

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User Notes:

(1279489845)

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

PAGE 7

Warren K. Heath
Heath Construction and Management, LLC
2415 Cypress Gardens Boulevard
Winter Haven, Florida 33884

...

Rob Hennessey
Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33881

...

§ 8.5.1 ~~The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.~~

§ 8.5.2 ~~The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents in the forms set forth in the Project Manual~~

...

§ 8.7.1 Assignment of Warranties

Contractor shall assign to Owner all warranties extended to Contractor by material suppliers and subcontractors. If an assignment of warranty requires the material supplier and/or subcontractor to consent to same, then Contractor shall secure the material supplier's and/or subcontractor's consent to assign said warranties to Owner. Any such warranties shall be in addition to the Contractor's general warranties provided under the Contract.

§ 8.7.2 Sovereign Immunity

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, 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.

§ 8.7.3 Governmental Approvals and Turnover

Contractor acknowledges that all work shall be subject to inspections, tests, and approvals by Owner, city, county, federal, state, other governmental entity, or utility company inspectors and that all or some portion of the work may be conveyed to another governmental entity or utility company. No work is complete until it passes final inspection / approval by the Owner as well as the applicable city, county, federal state, other governmental entity, or utility company. Contractor shall provide at its expense any written warranties, certifications, bonds or other documentation and/or guarantees as may be required in connection with the conveyance of any work, or as may be otherwise required, by any city, county, federal, state, other governmental entity or utility company.

§ 8.7.4 Public Records

The Contractor understands and agrees that all documents of any kind provided to the District 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 District is Jillian Burns ("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 District to perform the service; 2) upon request by the Public Records Custodian, provide the District 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 District; and 4) upon completion of the contract, transfer to the District, 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 District 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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 841-5524, JBURNS@GMCFL.COM, 219 E. LIVINGSTON STREET, ORLANDO, FLORIDA 32801.

§ 8.7.5 Direct Purchase of Materials

1. 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.
2. Within 10 days of the issuance of the Notice to Proceed or other written authorization for Work, Contractor and Architect shall provide Owner with a list of materials that may be treated as Direct Purchase Materials, and Owner shall identify from that list which items the Owner would like to treat as Direct Purchase Materials.
3. Owner shall issue purchase orders directly to suppliers of Direct Purchase Materials. 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.
4. 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.
5. 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.
6. Suppliers shall issue invoices directly to Owner. Owner shall process invoices and issue payment directly to the suppliers.
7. 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. Subject to the foregoing, all warranties, bonds, and other forms of indemnification provided by Contractor as part of Contract shall apply to all Direct Purchase Materials, as though Contractor had purchased the Direct Purchase Materials.

8. Contractor shall maintain builder's risk insurance on the Direct Purchase Materials and shall name Owner as an additional insured under such insurance policy or alternatively, in the Owner's sole discretion, Owner shall maintain such insurance.

§ 8.7.6 Construction Defects

PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES

§ 8.7.7 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.

§ 8.7.8 Certification Regarding Corruption

Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph:

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.

§8.7.9 Public Entity Crimes

Pursuant to Section 287.133(3)(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, Florida Statutes 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, neither the Contractor, nor any supplier, subcontractor or consultant retained by Contractor, has been placed on the convicted vendor list within the last 36 months and, in the event that the Contractor, or any supplier or subcontractor, is placed on the convicted vendor list, the Contractor shall immediately notify the District whereupon this Contract and/or any applicable subcontract may be terminated, as appropriate.

§8.7.10 Attorney Fees

In any litigation between Owner and Contractor arising out of this contract, the prevailing party in such litigation shall be entitled to recover reasonable attorney's fees and costs from the other party.

§8.7.11 Third Parties

Highland Cassidy, LLC, Heath Construction and Management, LLC, and the Towne Park Community Development District shall be third party beneficiaries of this Contract, with the right to enforce all warranties, performance bonds, insurance, and indemnification provisions hereunder.

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- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds-Governmental Payment and Performance Bonds in the forms supplied by the District

- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
.4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

Construction, as revised

Plans

Riverstone Amenity
Center

November 18, 2019

Pool Drawings

GCE Aquatic
Engineering

September 18, 2019

AIA Form A201
AIA Form A101

General Conditions
Insurance

Upon Contract 39
Execution 5

PAGE 11

Contractor's Response to RFP, with Excel Bid Sheet

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:56:25 ET on 05/22/2020 under Order No. 0016573136 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the day of in the year
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

Towne Park Amenity Center Construction

THE OWNER:
(Name, legal status and address)

Riverstone, LLC
2300 North Scenic Highway, ML 50
Lakes Wales, Florida 33898

THE CONTRACTOR:
(Name, legal status and address)

Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33801

TABLE OF ARTICLES

- A.1 GENERAL**
- A.2 OWNER'S INSURANCE**
- A.3 CONTRACTOR'S INSURANCE AND BONDS**
- A.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE A.1 GENERAL

The Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™, 2017, General Conditions of the Contract for Construction.

ARTICLE A.2 OWNER'S INSURANCE

(Paragraphs deleted)

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201®–2017, General Conditions of the Contract for Construction. Article 11 of A201®–2017 contains additional insurance provisions.

maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows: <i>(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)</i>	
Coverage	Sub-Limit
<i>(Paragraph deleted)</i>	
§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.	
§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.	
<i>(Paragraphs deleted)</i>	

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner and Heath Construction and Management, LLC, as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies, and on the insurance policies provided under Section A.3.3.2.1..

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, Heath Construction and Management, LLC, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner and Heath Construction and Management, LLC, as additional insureds for claims caused in whole or in part by the Contractor's

Init.

negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.1.4 Additional Insured Obligations in the Event of Assignment of Contract. Upon assignment of the Contract, Contractor shall amend any all insurance policies and endorsements to include the name of the assignee, its agents, and staff.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

For any "occurrence" based policies, Contractor shall maintain such required insurance until the expiration of five years from the date of expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than Two Million Dollars (\$2,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One Million Dollars (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than One Million Dollars (\$1,000,000) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ \$1,000,000) per claim and One Million Dollars (\$ \$1,000,000) in the aggregate.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.

(Paragraphs deleted)

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration)

For any "occurrence" based policies, Contractor shall maintain such required insurance until the expiration of five years from the date of expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point)

☒ § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance. The Contractor shall comply with all obligations of the Owner

under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

- ☐ § A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- ☐ § A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- ☒ § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.
- ☒ § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.
- ☒ § A.3.3.2.6 Other Insurance
(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Umbrella Policy	Three Million Dollars (\$3,000,000)

§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	Contract Sum, as may be amended (including for any Direct Purchase Materials) Contract Sum, as may be amended (including for any Direct Purchase Materials)
Performance Bond	

Governmental Payment and Performance Bonds in the forms provided by the Owner.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Init.

Additions and Deletions Report for AIA® Document A101® – 2017 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:55:23 ET on 05/22/2020.

PAGE 1

Towne Park Amenity Center Construction

...

Highland Cassidy LLC
346 E. Central Avenue
Winter Haven, Florida 33880

...

Henkelman Construction, Inc.
1830 N. Crystal Lake Drive
Lakeland, Florida 33801

...

The ~~Owner and Contractor~~ shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

...

§ A.2.1 General

~~Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~

§ A.2.2 Liability Insurance

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.~~

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~~§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.~~

§ A.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ A.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ A.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☐ **§ A.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ A.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ A.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ A.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ A.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ A.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ A.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the

Work, arising out of physical loss or damage covered by the required property insurance; including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ **§ A.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ **§ A.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

...

§ A.3.1.1 Certificates of Insurance. The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured and Heath Construction and Management, LLC, as additional insureds on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies, and on the insurance policies provided under Section A.3.3.2.1..

...

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, Heath Construction and Management, LLC, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured and Heath Construction and Management, LLC, as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.1.4 Additional Insured Obligations in the Event of Assignment of Contract. Upon assignment of the Contract, Contractor shall amend any all insurance policies and endorsements to include the name of the assignee, its agents, and staff.

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For any "occurrence" based policies, Contractor shall maintain such required insurance until the expiration of five years from the date of expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

...

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (~~\$~~) each occurrence, (~~\$~~) general aggregate, and (~~\$~~ Two Million Dollars (\$2,000,000)) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

PAGE 4

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than (~~\$~~ One Million Dollars (\$1,000,000)) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ A.3.2.6 Employers' Liability with policy limits not less than (~~\$~~) each accident, (~~\$~~) each employee, and (~~\$~~ One Million Dollars (\$1,000,000)) each accident, One Million Dollars (\$1,000,000) each employee, and One Million Dollars (\$1,000,000) policy limit.

...

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ 1,000,000) in the aggregate.

...

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (~~\$~~) per claim and (~~\$~~) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (~~\$~~) per claim and (~~\$~~) in the aggregate.~~

...

For any "occurrence" based policies, Contractor shall maintain such required insurance until the expiration of five years from the date of expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions.

...

- [X] § A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such ~~insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3 insurance.~~ The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

☒ § A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

☒ § A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

☒ § A.3.3.2.6 Other Insurance

...

Umbrella Policy

Three Million Dollars (\$3,000,000)

...

Payment Bond

Contract Sum, as may be amended (including for any Direct Purchase Materials) Contract Sum, as may be amended (including for any Direct Purchase Materials)

...

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement. Governmental Payment and Performance Bonds in the forms provided by the Owner.

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following **PROJECT:**
(Name and location or address)

Riverstone Amenity Center Construction

THE OWNER:
(Name, legal status and address)

Riverstone, LLC
2300 North Scenic Highway, ML 50
Lake Wales, Florida 33898

THE ARCHITECT:
(Name, legal status and address)

Furr, Wegman & Banks Architects, P.A.
625 East Orange Street
Lakeland, Florida 33801

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The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Architect for this Project, including but not limited to all Instruments of Service (e.g., the Drawings and Specifications), shall be and remain the sole and exclusive property of the Owner when developed and shall be considered work for hire. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner..

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 In the event of assignment of this Contract to the Towne Park Community Development District, there will be no lien rights available in connection with the Project.

§ 2.2 Evidence of the Owner's Financial Arrangements

(Paragraph deleted)

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Contractor will have obtained an electronic copy of the complete set of Drawings and Specifications during the proposal process, and, accordingly, Contractor will not be furnished any printed sets of Drawings and Specifications.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. If, in the Contractor's opinion, any work is indicated in Drawings or Specifications, or is specified in such a manner as will make it impracticable to produce a generally acceptable piece of Work, or should discrepancies appear between Drawings and Specifications, Contractor shall refer to Architect for decision before proceeding with Work. Furthermore, figures govern scale dimensions and large scale drawings govern those of smaller scale. No deviation shall be made from Drawings and Specifications except upon written order of the Architect.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Prior to commencing any excavation or grading, the Contractor shall satisfy himself as to the accuracy of all survey data as indicated in the Drawings and Specifications. Unless the Contractor contracts for and obtains survey data, then Owner or Architect will provide as-built site survey of site to allow Contractor to review for accuracy against survey data in Drawings and Specifications provided with bidding documents. Should the Contractor discover any inaccuracies, errors or omissions in the survey data, the Contractor shall immediately notify the Architect in order that proper adjustments can be anticipated and ordered. Commencement by the Contractor of any excavation or

grading shall be held as an acceptance of the survey data by the Contractor, after which time the Contractor has no claim against the Owner resulting from alleged errors, omissions or inaccuracies of the said survey data.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy allowed by law or by the Contract Documents

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in

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construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, or archaeological sites not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's final construction schedule for the Work, which schedule shall be materially consistent with the schedule included with the Contractor's proposal. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to

completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.10.4 A current, updated copy of the schedule shall be included with each request for payment.

§ 3.10.5 The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the prosecution of the Work in accordance with the approved progress schedule. If the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve the progress by increasing the number of shifts, overtime operations, days of work and the amount of construction plant, all without additional cost to the Owner.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified

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materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, 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 the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by

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excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Architect, Heath Construction and Management, LLC and supervisors, members, directors, employees, staff, lawyers, engineers, consultants, contractors, agents and representatives (together, "Indemnitees") of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, that Owner shall have the right in its discretion to be represented therein by counsel of its own selection at its own expense. Further, to the extent the obligations set forth herein are invalid for any reason under applicable law, the parties agree that the provisions of this Contract shall be reformed to require the Contractor to indemnify, defend and hold harmless the Indemnitees to the maximum extent permitted by law, and, to the extent the law requires a cap on the obligations hereunder, the parties agree that the amount of such cap shall be Five Million Dollars (\$5,000,000.00), the amount of which the parties agree bears a reasonable commercial relationship to the Contract and was part of the project specifications or bid documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, and except to the extent required by law, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent, if such discrepancies or defects would not have been discoverable by a reasonable inspection on the part of the Contractor.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any,

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provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, but only with the prior written consent of Owner.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

(Paragraph deleted)

§ 9.2 Schedule of Values

The Contractor's summary of costs submitted in conjunction with the Contractor's proposal shall be the schedule allocated to the entire Contract Sum for various portions of the Work. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment and/or Change Order requests.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Notwithstanding anything to the contrary herein, "Substantial Completion" for each portion of the Work shall be considered to be on the date which all applicable governmental agencies having jurisdiction over the Work have issued unconditional certificates of completion and have signed off on all final inspections with respect to each portion of the work and the Owner is able to utilize each portion of the Work set forth in the Contract Documents for the intended purpose. Also notwithstanding anything to the contrary contained herein, Contractor shall be

responsible for obtaining the final inspections and applicable written approvals from all governmental agencies with jurisdiction with respect to each portion of the Work, and in connection therewith, Owner and Architect shall comply with all of its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, and pursuant to Section 218.735(7), Florida Statutes if applicable, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Notwithstanding anything to the contrary herein, the time limitations set forth in Section 218.735(7), Florida Statutes for delivery of the list, and final contract completion date, shall apply to this Contract if assigned to the Towne Park Community Development District.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the

Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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 or encumbered (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 manufacturers' 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 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.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

(Paragraph deleted)

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Heath Construction and Management, LLC, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

(Paragraphs deleted)

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner

shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, and without intending to waive or limit such obligations, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner is aware of a need to correct the Work and fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 1.1 of the Contract and Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, and costs incurred by reason of such termination, but shall not be entitled to recovery consequential damages of any kind (including but not limited to overhead and profit on Work not executed).

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at its option (the "Optional Termination"), terminate the Contract in whole or in part at any time by written notice thereof to Contractor ("Notice of Termination"). Upon any such termination under this Optional Termination provision, Contractor shall be deemed to have waived any and all claims for damages of any kind from the Optional Termination, including but not limited to consequential damages or lost profits. Upon receipt of any such termination notice under this Optional Termination provision, Contractor shall, unless the notice requires otherwise:

- a. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;
- b. 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;
- c. 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;
- d. 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;
- e. Complete performance of any Work which is not terminated; and
- f. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors and the amounts due to each.

§ 14.4.2 Upon
(Paragraphs deleted)

termination under the provisions of this Section, and subject to any offsets, 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.

(Paragraph deleted)

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ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

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- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

(Paragraph deleted)

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§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose

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presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



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PAGE 1

Riverstone Amenity Center Construction

...

Riverstone LLC
346 E. Central Avenue
Winter Haven, Florida 33880

...

(Name, legal status and address)

Furr, Wegman & Banks Architects, P.A.
625 East Orange Street
Lakeland, Florida 33801

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3.1.3, 4, 9.4, 9.5

Contract Assignment

1.1, 1.2

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~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Architect for this Project, including but not limited to all Instruments of Service (e.g., the Drawings and Specifications), shall be and remain the sole and exclusive property of the Owner when developed and shall be considered work for hire. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' Owner's reserved rights.~~

~~§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. Owner..~~

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§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. In the event of assignment of this Contract to the Towne Park Community Development District, there will be no lien rights available in connection with the Project.

...

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

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§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Contractor will have obtained an electronic copy of the complete set of Drawings and Specifications during the proposal process, and, accordingly, Contractor will not be furnished any printed sets of Drawings and Specifications.

...

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. If, in the Contractor's opinion, any work is indicated in Drawings or Specifications, or is specified in such a manner as will make it impracticable to produce a generally acceptable piece of Work, or should discrepancies appear between Drawings and Specifications, Contractor shall refer to Architect for decision before proceeding with Work. Furthermore, figures govern scale dimensions and large scale drawings govern those of smaller scale. No deviation shall be made from Drawings and Specifications except upon written order of the Architect.

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§ 3.3.4 Prior to commencing any excavation or grading, the Contractor shall satisfy himself as to the accuracy of all survey data as indicated in the Drawings and Specifications. Unless the Contractor contracts for and obtains survey data, then Owner or Architect will provide as-built site survey of site to allow Contractor to review for accuracy against survey data in Drawings and Specifications provided with bidding documents. Should the Contractor discover any inaccuracies, errors or omissions in the survey data, the Contractor shall immediately notify the Architect in order that proper adjustments can be anticipated and ordered. Commencement by the Contractor of any excavation or grading shall be held as an acceptance of the survey data by the Contractor, after which time the Contractor has no claim against the Owner resulting from alleged errors, omissions or inaccuracies of the said survey data.

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§ 3.5.3 The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy allowed by law or by the Contract Documents

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§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, or archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's ~~construction schedule for the Work~~ final construction schedule for the Work, which schedule shall be materially consistent with the schedule included with the Contractor's proposal. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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§ 3.10.4 A current, updated copy of the schedule shall be included with each request for payment.

§ 3.10.5 The Contractor shall furnish sufficient forces, construction plant and equipment, and shall work such hours, including night shifts and overtime operations, as may be necessary to ensure the prosecution of the Work in accordance with the approved progress schedule. If the Contractor falls behind the progress schedule, the Contractor shall take such steps as may be necessary to improve the progress by increasing the number of shifts, overtime operations, days of work and the amount of construction plant, all without additional cost to the Owner.

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Architect, ~~Architect's consultants, and agents and employees~~ Heath Construction and Management, LLC and supervisors, members, directors, employees, staff, lawyers, engineers, consultants, contractors, agents and representatives (together, "Indemnitees") of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent or wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding, or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, that Owner shall have the right in its discretion to be represented therein by counsel of its own selection at its own expense. Further, to the extent the obligations set forth herein are invalid for any reason under applicable law, the parties agree that the provisions of this Contract shall be reformed to require the Contractor to indemnify, defend and hold harmless the Indemnitees to the maximum extent permitted by law, and, to the extent the law requires a cap on the obligations hereunder, the parties agree that the amount of such cap shall be Five Million Dollars (\$5,000,000.00), the amount of which the parties agree bears a reasonable commercial relationship to the Contract and was part of the project specifications or bid documents.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, and except to the extent required by law, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the

Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent-apparent~~, if such discrepancies or defects would not have been discoverable by a reasonable inspection on the part of the Contractor.

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending ~~mediation and binding dispute resolution~~; mediation; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may ~~determine-determine~~, but only with the prior written consent of Owner.

...

~~§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.~~

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be The Contractor's summary of costs submitted in conjunction with the Contractor's proposal shall be the schedule allocated to the entire Contract Sum for various portions of the Work. This schedule shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. Applications for Payment and/or Change Order requests.~~

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Notwithstanding anything to the contrary herein, "Substantial Completion" for each portion of the Work shall be considered to be on the date which all applicable governmental agencies having jurisdiction over the Work have issued unconditional certificates of completion and have signed off on all final inspections with respect to each portion of the work and the Owner is able to utilize each portion of the Work set forth in the Contract Documents for the intended purpose. Also notwithstanding anything to the contrary contained herein, Contractor shall be responsible for obtaining the final inspections and applicable written approvals from all governmental agencies with jurisdiction with respect to each portion of the Work, and in connection therewith, Owner and Architect shall comply with all of its obligations required by the issuing authority in order to enable the Contractor to obtain such Certificate.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, and pursuant to Section 218.735(7), Florida Statutes if applicable, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Notwithstanding anything to the contrary herein, the time limitations set forth in Section 218.735(7), Florida Statutes for delivery of the list, and final contract completion date, shall apply to this Contract if assigned to the Towne Park Community Development District.

PAGE 32

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims;~~

damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Heath Construction and Management, LLC, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

...

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall

be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

PAGE 33

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, and without intending to waive or limit such obligations, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner is aware of a need to correct the Work and fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, Section 1.1 of the Contract and Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, ~~as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~ termination, but shall not be entitled to recovery consequential damages of any kind (including but not limited to overhead and profit on Work not executed).

§ 14.4.1 The Owner may, ~~at any time, terminate the Contract for the Owner's convenience and without cause, its option (the "Optional Termination"). terminate the Contract in whole or in part at any time by written notice thereof to Contractor ("Notice of Termination"). Upon any such termination under this Optional Termination provision, Contractor shall be deemed to have waived any and all claims for damages of any kind from the Optional Termination, including but not limited to consequential damages or lost profits. Upon receipt of any such termination notice under this Optional Termination provision, Contractor shall, unless the notice requires otherwise:~~

- a. Immediately discontinue Work on the date and to the extent specified in the notice except to the extent necessary to protect Work in place;
- b. 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;
- c. 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;
- d. 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;
- e. Complete performance of any Work which is not terminated; and
- f. Deliver to Owner an affidavit regarding the identity of unpaid potential lienors and the amounts due to each.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall ~~1—cease operations as directed by the Owner in the notice; 2—take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and 3—except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.~~ termination under the provisions of this Section, and subject to any offsets, 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.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of

~~Subcontracts; and the termination fee, if any, set forth in the Agreement.~~

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- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, ~~except anticipated profit arising directly from the Work profit.~~

...
~~§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:55:53 ET on 05/22/2020 under Order No. 1534666122 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

The company
that builds trust.

HENKELMAN

CONSTRUCTION, INC.

December 16, 2019

Patrick Marone
Cassidy Organization
346 E Central Avenue
Winter Haven, FL 33880

RE: *Riverstone Amenity Center*
Revised Bid Proposal

Dear Patrick,

Thank you for the opportunity to offer our construction services on this project. This proposal is based on plans by Furr & Wegman Architects, PA dated November 18, 2019 and Pool Drawings by GCE Aquatic Engineering dated September 18, 2019.

Our total price to perform the work as detailed below is **\$ 736,026.00 (Seven Hundred Thirty Six Thousand, Twenty Six Dollars)**.

Listed below are clarifications to further elaborate our proposal.

1. Permit and impact fees are not included.
2. Builders Risk Insurance is included.
3. Payment & Performance Bond is not included. Add **\$ 7,730.00** for bond if required.
4. Landscape Allowance is not included. We assume that sod is part of this landscape allowance.
5. Sun Sail Structure Allowance is not included.
6. Cabana Allowance is not included.
7. An Allowance of **\$ 2,500.00** is included for Construction Materials Testing.
8. Pavers are included as the same paver bricks that were used at Citrus Isle and Orchid Grove Amenity Centers.
9. Pool waste water will stub out 5' from the pool pump location only. Pipe extension to an approved disposal location is not included.
10. Dog park hose bibbs and underground piping are included. You may deduct **(\$ 1,300.00)** if these are to be installed by others.
11. Building pad is to be prepared to -4" below finished floor elevation by others.
12. Pool location is to be prepared to -10" below finished pool coping elevation by others.
13. Excess soil from pool excavation will be left at the site for haul away by others.
14. Water and sewer will stub out 5'-0" from the building for connection to utilities by others.
15. No sitework, grading, utilities, paving, or curb is included.

16. Dumpster pad and enclosure are not included.
17. Sidewalks are included as shown on the highlighted plan provided.
18. Toilet partitions are Global Partitions Color Thru Phenolic.
19. All toilet accessories are manufactured by ASI in lieu of Bobrick, Koala, and Dyson.
20. We assume Duke Energy will have the transformer set for our temporary power use during construction.
21. Secondary electrical conduit and wire is included to the transformer location shown on E101. Phone and data conduit will also terminate at this transformer location. No primary electrical conduit or conductors are included.
22. Electric card readers are not included.
23. Monument signs are not included.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Hennessey", with a stylized flourish at the end.

Robert Hennessey
Project Manager

**Towne Park
Community Development District**

**Agreement between the District and Fuqua
Janitorial Services**

**TEMPORARY AMENDMENT TO THE AGREEMENT BETWEEN TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT AND FUQUA JANITORIAL SERVICES
FOR JANITORIAL MAINTENANCE SERVICES**

THIS TEMPORARY AMENDMENT (“Temporary Amendment”) is made and entered into this 19th day of June, 2020, by and between:

TOWNE PARK COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in the City of Lakeland, Florida, with an address of c/o District Manager, PFM Group Consulting LLC, 12051 Corporate Boulevard, Orlando, Florida 32817 (“District”); and

ALTHEA JEAN FUQUA D/B/A FUQUA SUPPLY & SERVICE D/B/A FUQUA JANITORIAL SERVICES, with a mailing address of 5962 Murphy Road, Bartow, Florida 33830 (“Contractor,” together with District, “Parties”).

RECITALS

WHEREAS, the District is a local unit of special-purpose government established pursuant to the Uniform Community Development District Act of 1980, as codified in Chapter 190, *Florida Statutes*, and located in the City of Lakeland, Florida; and

WHEREAS, the District and Contractor previously entered into that *Agreement Between Towne Park Community Development District and Fuqua Janitorial Services for Janitorial Maintenance Services*, dated November _____, 2019 (“Agreement”), which the Agreement is incorporated herein by this reference; and

WHEREAS, the District desires to temporarily increase the frequency of the janitorial maintenance services and price for the same in anticipation of re-opening of its facilities in accordance with the Directives (defined herein) during the COVID-19 pandemic; and

WHEREAS, the Contractor represents that it is qualified to provide the additional janitorial maintenance services, including additional cleaning and disinfecting services during COVID-19 pandemic in accordance with the Directives (defined herein), and has agreed to provide to the District those services identified in **Exhibit A**, attached hereto and incorporated by reference herein (“Temporary Services”); and

WHEREAS, Section 20 of the Agreement provides that the Agreement may be amended by an instrument in writing executed by both Parties; and

WHEREAS, the Parties now desire to amend the Agreement to temporarily change the frequency of the services and price for the same.

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

1. RECITALS. The recitals stated above are true and correct and by this reference are incorporated herein and form a material part of this Temporary Amendment.

2. AFFIRMATION OF THE AGREEMENT. The District and the Contractor agree that nothing contained herein shall alter or amend the Parties' rights, responsibilities and obligations under the Agreement, except to the extent set forth in Section 3 of this Temporary Amendment. The Agreement is hereby affirmed and continues to constitute a valid and binding agreement between the Parties. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

3. TEMPORARY AMENDMENT. For the duration of this Temporary Amendment, Section 2 (Description of Work and Services) and Section 4 (Compensation; Term) of the Agreement shall be amended to include the following supplemental provisions:

A. Contractor understands and acknowledges that during the COVID-19 pandemic, the District plans to re-open its facilities in phases, in accordance with applicable Federal, State and local governmental directives, including but not limited to Executive Orders issued by Governor DeSantis regarding COVID-19 public health emergency, State and local emergency declarations regarding COVID-19 public health emergency and protocols and guidelines provided by the Center for Disease Control and Prevention, all as extended or supplemented (collectively, "Directives"). During the phased re-opening of the District's facilities in accordance with the Directives, Contractor shall provide professional janitorial maintenance services as provided **Exhibit A** to this Temporary Amendment, no less than one (1) time per day the respective facility is open, as such schedule shall be coordinated with and confirmed by the District Manager.

B. Contractor understands and acknowledges that the professional janitorial maintenance services provided for the duration of this Temporary Amendment shall, at minimum, meet those cleaning and disinfecting protocols and guidelines recommended by the Center for Disease Control and Prevention, including but not limited to using disinfectants listed under "List N: Disinfectants for Use Against SARS-CoV-2 (COVID-19)" published by the United States Environmental Protection Agency, as such list is available at the following link: <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2-covid-19>.

C. As compensation for the Temporary Services, the District shall pay Contractor Seventy Dollars (\$70.00) per cleaning of pool facilities, and Seventy-Five Dollars (\$75.00) per cleaning of the clubhouse, as scheduled in accordance with Section 3.A. of this Temporary Amendment.

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

5. **EFFECTIVE DATE; TERM.** This Temporary Amendment shall be effective as of the day and year first written above and shall remain in force and effect until further written notice from the District. Upon written notice from the District providing that Contractor may resume the service levels provided in the Agreement, this Temporary Amendment shall be deemed terminated and the provision of services, including price and frequency of services, shall revert back to the terms provided in the Agreement.

IN WITNESS WHEREOF, the Parties execute this Temporary Amendment to be effective the day and year first written above.

ATTEST:

**TOWNE PARK COMMUNITY
DEVELOPMENT DISTRICT**

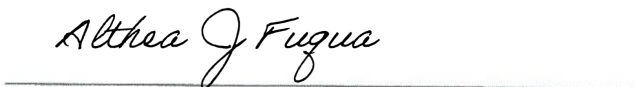

Secretary/Assistant Secretary


Chairperson, Board of Supervisors

WITNESS:

**ALTHEA JEAN FUQUA D/B/A FUQUA SUPPLY &
SERVICE D/B/A FUQUA JANITORIAL SERVICES**


Witness


Althea J. Fuqua

Print Name of Witness

Exhibit A: Contractor's Proposal for Temporary Services

Exhibit A



**Commercial Cleaning Services &
Floor Care**

5962 Murphy Road, Bartow, FL 33830 • Ph: 863-651-9348

Estimate

**ADDRESS
TOWNEPARK
COMMUNITY DEVELOPMENT
DISTRICT**

**ESTIMATE # 2072
DATE OF ESTIMATE 6/11/2020**

SCOPE OF WORK

- All restrooms to be sanitized daily with bleach vacuum and mopping restroom floors with sanitary cleaner
- Restock consumables as needed
- Keep all water fountains sanitized and clean
- Keep all tables under and around pool patio sanitized
- Keep all trash emptied and removed from premises.
- Keep pool chairs sanitized to the best of our ability daily according to chairs and tables not occupied during our time on site.

**CLUB HOUSE CLEANING WOULD BE CHARGED SEPERATELY
\$75.00 PER CLEAN**

Cost of services- \$70.00 per clean

**Towne Park
Community Development District**

Proposals for Riverstone Ponds Maintenance

(provided under separate cover)

**Towne Park
Community Development District**

Fiscal Year 2019 Audited Financial Statement

(provided under separate cover)

**Towne Park
Community Development District**

Escrow Fund Releases No. 6

(provided under separate cover)

**Towne Park
Community Development District**

Pay Applications

(provided under separate cover)

**Towne Park
Community Development District**

Phase 3A #

**Towne Park
Community Development District**

Riverstone Phase 2 #

**Towne Park
Community Development District**

Riverstone Phase 3 & 4 #

**Towne Park
Community Development District**

Payment Authorization Nos. 151-157

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #151

5/8/2020

Item No.	Payee	Invoice Number	Amount
1	Business Observer Legal Advertising on 05/01/2020	20-00659K	\$ 153.13
2	Grunit Pool Contractors May Pool Service & Maintenance	1395	\$ 1,350.00
3	The Lake Doctors May Water Management Services	503864	\$ 1,144.00
4	Lakeland Electric 3606 Peregrine Wy # W/I ; Service 04/01/2020 - 05/01/2020	---	\$ 41.48
	3883 White Ibis Rd # Rec ; Service 04/01/2020 - 05/03/2020	---	\$ 937.70
	3896 White Ibis Rd # Pmp ; Service 04/02/2020 - 05/03/2020	---	\$ 386.67
Total			\$ 4,012.98



Chairperson

RECEIVED MAY 18 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #152

5/15/2020

Item No.	Payee	Invoice Number	Amount
1	PFM Group Consulting		
	DM Fee: May 2020	DM-05-2020-0072	\$ 2,083.33
	Website Fee: May 2020	DM-05-2020-0073	\$ 100.00
2	VGlobalTech		
	Quarterly ADA & WCAG Audits	1597	\$ 300.00
Total			\$ 2,483.33



Chairperson

RECEIVED MAY 18 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #153

5/22/2020

Item No.	Payee	Invoice Number	Amount
1	Fuqua Janitorial Services May Pool Area Cleaning	8123	\$ 855.00
2	PFM Group Consulting Reimbursables: March 2020	OE-EXP-00805	\$ 9.50
	Reimbursables: April 2020	OE-EXP-00866	\$ 8.00
	Billable Expenses: January	109614	\$ 5.43
3	Supervisor Fees - 05/14/2020 Meeting Rennie Heath	---	\$ 200.00
	Scott Shapiro	---	\$ 200.00
	Brian Walsh	---	\$ 200.00
	Jeffrey Shenefield	---	\$ 200.00
		Total	\$ 1,677.93



Chairperson

RECEIVED

By Amanda Lane at 11:34 am, May 27, 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #154

5/29/2020

Item No.	Payee	Invoice Number	Amount
1	Hopping Green & Sams General Counsel Through 04/30/2020	114886	\$ 2,212.50
2	PFM Group Consulting Reimbursables: February 2020	OE-EXP-00759	\$ 94.75
3	Spectrum 3883 White Ibis Road ; Service 05/24/2020 - 06/2	50774201-01	\$ 104.98
Total			\$ 2,412.23



Chairperson

Received via email on June 1, 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #155

6/5/2020

Item No.	Payee	Invoice Number	Amount
1	Absolute Engineering Engineering Services Through 05/31/2020	20258	\$117.50
2	Business Observer Legal Advertising on 05/29/2020	20-00731K	\$150.94
3	Carr Riggs & Ingram FY 2019 Audit	16919127	\$ 2,000.00
4	FloraLawn Premier Lawn & Pest June Lawn Maintenance	89944	\$ 12,704.00
5	Florida Department of Health Towne Park Estates Pool Permit Fee	53-BID-4706154	\$ 280.00
6	Grunit Pool Contractors June Pool Service & Maintenance	1410	\$ 1,350.00
7	The Lake Doctors June Water Management Services	510014	\$ 1,144.00
8	Lakeland Electric 3896 White Ibis Rd # Pmp ; Service 05/04/2020 - 06/02/2020	---	\$ 371.91
	3883 White Ibis Rd E Rec ; Service 05/04/2020 - 06/02/2020	---	\$ 753.19
	3606 Peregrine Wy # W/I ; Service 05/02/2020 - 06/01/2020	---	\$ 38.69
Total			\$18,910.23


Chairperson

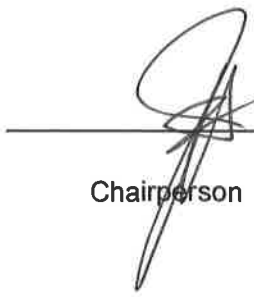
Received via email on June 8, 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #156

6/12/2020

Item No.	Payee	Invoice Number	Amount
1	The Ledger / News Chief Legal Advertising on 05/28/2020	L060G0J8Z8	\$ 248.50
Total			\$ 248.50


Chairperson

RECEIVED

By Amanda Lane at 10:37 am, Jun 15, 2020

**TOWNE PARK
COMMUNITY DEVELOPMENT DISTRICT**

Payment Authorization #157

6/18/2020

Item No.	Payee	Invoice Number	Amount
1	Fuqua Janitorial Services June clubhouse/pool cleaning	8133	\$1,260.00
2	Hopping Green & Sams District Counsel thru 05/31/2020	115391	\$4,261.05
3	PFM District Management Fee: June 2020 Website Fee: June 2020	DM-06-2020-0064 DM-06-2020-0065	\$2,083.33 \$100.00
Total			\$7,704.38



Chairperson

**Towne Park
Community Development District**

Monthly Financials

Towne Park CDD
 Budget to Actual
 For the Month Ending 06/30/2020

	Year To Date			FY 2020 Adopted Budget
	Actual	Budget	Variance	
<u>Revenues</u>				
Assessments	\$ 429,861.70	\$ 323,212.50	\$ 106,649.20	\$ 430,950.00
Other Income & Other Financing Sources	538.29	-	538.29	-
Net Revenues	\$ 430,399.99	\$ 323,212.50	\$ 107,187.49	\$ 430,950.00
<u>General & Administrative Expenses</u>				
Supervisor Fees	\$ 4,600.00	\$ 3,000.00	\$ 1,600.00	\$ 4,000.00
D&O Insurance	2,415.00	1,950.00	465.00	2,600.00
Trustee Services	8,808.58	8,250.00	558.58	11,000.00
Management	18,749.97	18,750.00	(0.03)	25,000.00
Field Management	139.58	900.00	(760.42)	1,200.00
Engineering	587.50	7,500.00	(6,912.50)	10,000.00
Dissemination Agent	5,500.00	4,125.00	1,375.00	5,500.00
District Counsel	31,965.57	15,000.00	16,965.57	20,000.00
Assessment Administration	12,500.00	9,375.00	3,125.00	12,500.00
Reamortization Schedules	-	375.00	(375.00)	500.00
Audit	6,000.00	7,500.00	(1,500.00)	10,000.00
Travel and Per Diem	36.61	-	36.61	-
Telephone	-	150.00	(150.00)	200.00
Postage & Shipping	409.69	112.50	297.19	150.00
Copies	50.40	750.00	(699.60)	1,000.00
Legal Advertising	3,098.09	2,250.00	848.09	3,000.00
Miscellaneous, Contingency	318.18	11,250.00	(10,931.82)	15,000.00
Web Site Maintenance	1,200.00	1,800.00	(600.00)	2,400.00
Dues, Licenses, and Fees	175.00	187.50	(12.50)	250.00
Water	-	6,000.00	(6,000.00)	8,000.00
Pond Maintenance	10,296.00	18,750.00	(8,454.00)	25,000.00
General Liability Insurance	3,020.00	2,437.50	582.50	3,250.00
Property & Casualty Insurance	11,616.00	15,000.00	(3,384.00)	20,000.00
Landscaping Maintenance & Material	88,044.05	135,000.00	(46,955.95)	180,000.00
Hurricane Cleanup	-	3,750.00	(3,750.00)	5,000.00
Total General & Administrative Expenses	\$ 209,530.22	\$ 274,162.50	\$ (64,632.28)	\$ 365,550.00

Towne Park CDD
 Budget to Actual
 For the Month Ending 06/30/2020

	Year To Date			FY 2020 Adopted Budget
	Actual	Budget	Variance	
<u>Pool & Clubhouse #1</u>				
Maintenance Staff	\$ -	\$ 750.00	\$ (750.00)	\$ 1,000.00
Electric	7,370.64	7,500.00	(129.36)	10,000.00
Water	1,067.19	3,750.00	(2,682.81)	5,000.00
Pool Maintenance & Repairs	13,650.00	9,000.00	4,650.00	12,000.00
Janitorial Expenses	6,633.00	4,500.00	2,133.00	6,000.00
Pest Control	2,475.00	375.00	2,100.00	500.00
Internet/Phone	874.82	750.00	124.82	1,000.00
Facility Repair & Maintenance	780.00	1,875.00	(1,095.00)	2,500.00
Facility Management	-	1,800.00	(1,800.00)	2,400.00
	<u>\$ 32,850.65</u>	<u>\$ 30,300.00</u>	<u>\$ 2,550.65</u>	<u>\$ 40,400.00</u>
<u>Pool & Clubhouse #2</u>				
Maintenance Staff	\$ -	\$ 1,350.00	\$ (1,350.00)	\$ 1,800.00
Electric	-	4,350.00	(4,350.00)	5,800.00
Water	-	2,175.00	(2,175.00)	2,900.00
Pool Maintenance & Repairs	-	5,250.00	(5,250.00)	7,000.00
Janitorial Expenses	-	2,625.00	(2,625.00)	3,500.00
Pest Control	-	225.00	(225.00)	300.00
Internet/Phone	-	375.00	(375.00)	500.00
Facility Repair & Maintenance	-	1,050.00	(1,050.00)	1,400.00
Facility Management	-	1,350.00	(1,350.00)	1,800.00
Total Pool & Clubhouse Expenses	<u>\$ -</u>	<u>\$ 18,750.00</u>	<u>\$ (18,750.00)</u>	<u>\$ 25,000.00</u>
Total Expenses	<u>\$ 242,380.87</u>	<u>\$ 323,212.50</u>	<u>\$ (80,831.63)</u>	<u>\$ 430,950.00</u>
Income (Loss) from Operations	<u>\$ 188,019.12</u>	<u>\$ -</u>	<u>\$ 188,019.12</u>	<u>\$ -</u>
<u>Other Income (Expense)</u>				
Interest Income	\$ 155.95	\$ -	\$ 155.95	\$ -
Total Other Income (Expense)	<u>\$ 155.95</u>	<u>\$ -</u>	<u>\$ 155.95</u>	<u>\$ -</u>
Net Income (Loss)	<u><u>\$ 188,175.07</u></u>	<u><u>\$ -</u></u>	<u><u>\$ 188,175.07</u></u>	<u><u>\$ -</u></u>

Towne Park CDD
Statement of Activities
As of 6/30/2020

	General Fund	Debt Service, S2016, S2018	Debt Service, S2019	Capital Projects, S2016, S2018	Capital Projects, S2019	Long Term Debt Group	Total
<u>Revenues</u>							
On-Roll Assessments	\$88,553.46						\$88,553.46
Off-Roll Assessments	338,964.41						338,964.41
Other Assessments	2,343.83						2,343.83
Other Income & Other Financing Sources	538.29						538.29
On-Roll Assessments		\$224,134.71					224,134.71
Off-Roll Assessments		332,109.20					332,109.20
Other Assessments		4,546,121.07					4,546,121.07
Other Assessments			\$105,260.72				105,260.72
Inter-Fund Group Transfers In			2,505.48				2,505.48
Debt Proceeds			415,892.05				415,892.05
Developer Contributions				\$1,635,264.02			1,635,264.02
Other Income & Other Financing Sources				16,500.00			16,500.00
Inter-Fund Transfers In				2,492.40			2,492.40
Developer Contributions					\$373,473.23		373,473.23
Other Income & Other Financing Sources					6,219.60		6,219.60
Inter-Fund Transfers In					(4,997.88)		(4,997.88)
Debt Proceeds					4,729,107.95		4,729,107.95
Total Revenues	<u>\$430,399.99</u>	<u>\$5,102,364.98</u>	<u>\$523,658.25</u>	<u>\$1,654,256.42</u>	<u>\$5,103,802.90</u>	<u>\$0.00</u>	<u>\$12,814,482.54</u>
<u>Expenses</u>							
Supervisor Fees	\$4,600.00						\$4,600.00
D&O Insurance	2,415.00						2,415.00
Trustee Services	8,808.58						8,808.58
Management	18,749.97						18,749.97
Field Management	139.58						139.58
Engineering	587.50						587.50
Dissemination Agent	5,500.00						5,500.00
District Counsel	31,965.57						31,965.57
Assessment Administration	12,500.00						12,500.00
Audit	6,000.00						6,000.00
Travel and Per Diem	36.61						36.61
Postage & Shipping	409.69						409.69
Copies	50.40						50.40
Legal Advertising	3,098.09						3,098.09
Contingency	318.18						318.18
Web Site Maintenance	1,200.00						1,200.00
Dues, Licenses, and Fees	175.00						175.00
Clubhouse Electric	7,370.64						7,370.64

Towne Park CDD
Statement of Activities
As of 6/30/2020

	General Fund	Debt Service, \$2016, \$2018	Debt Service, \$2019	Capital Projects, \$2016, \$2018	Capital Projects, \$2019	Long Term Debt Group	Total
Water	1,067.19						1,067.19
Lake/Pond Repair & Maintenance	10,296.00						10,296.00
Amenity - Pool Maintenance	13,650.00						13,650.00
Amenity - Janitorial	6,633.00						6,633.00
Amenity - Internet	874.82						874.82
General Insurance	3,020.00						3,020.00
Property & Casualty	11,616.00						11,616.00
Landscaping Maintenance & Material	88,044.05						88,044.05
Pest Control	2,475.00						2,475.00
Facility Repair & Maintenance	780.00						780.00
Principal Payments - Series 2016		\$25,000.00					25,000.00
Principal Payments - Series 2018-2B		770,000.00					770,000.00
Principal Payments - Series 2018-3A		2,105,000.00					2,105,000.00
Interest Payments - Series 2016		84,237.51					84,237.51
Interest Payments - Series 2018-2B		176,665.63					176,665.63
Interest Payments - Series 2018-3A		531,006.26					531,006.26
Interest Payments - Series 2019-3B			\$173,363.64				173,363.64
Interest Payments - Series 2019-3C			93,772.05				93,772.05
Engineering				\$81,675.83			81,675.83
Landscaping Maintenance & Material				238,517.07			238,517.07
Contingency				466,705.35			466,705.35
Trustee Services					\$4,900.00		4,900.00
Management					10,000.00		10,000.00
Engineering					488,172.62		488,172.62
District Counsel					69,809.12		69,809.12
Trustee Counsel					5,000.00		5,000.00
Bond Counsel					91,500.00		91,500.00
Assessment Administration					25,000.00		25,000.00
Landscaping Maintenance & Material					145,290.00		145,290.00
Contingency					8,596,562.67		8,596,562.67
Capital Expenditures					75,530.34		75,530.34
Total Expenses	<u>\$242,380.87</u>	<u>\$3,691,909.40</u>	<u>\$267,135.69</u>	<u>\$786,898.25</u>	<u>\$9,511,764.75</u>	<u>\$0.00</u>	<u>\$14,500,088.96</u>
<u>Other Revenues (Expenses) & Gains (Losses)</u>							
Interest Income	\$155.95						\$155.95
Interest Income		\$13,451.99					13,451.99
Interest Income			\$4,134.00				4,134.00
Interest Income				\$926.51			926.51
Interest Income					\$23,265.33		23,265.33

Towne Park CDD
Statement of Activities
As of 6/30/2020

	General Fund	Debt Service, S2016, S2018	Debt Service, S2019	Capital Projects, S2016, S2018	Capital Projects, S2019	Long Term Debt Group	Total
Total Other Revenues (Expenses) & Gains (Losses)	<u>\$155.95</u>	<u>\$13,451.99</u>	<u>\$4,134.00</u>	<u>\$926.51</u>	<u>\$23,265.33</u>	<u>\$0.00</u>	<u>\$41,933.78</u>
Change In Net Assets	\$188,175.07	\$1,423,907.57	\$260,656.56	\$868,284.68	(\$4,384,696.52)	\$0.00	(\$1,643,672.64)
Net Assets At Beginning Of Year	<u>\$72,701.33</u>	<u>\$971,408.78</u>	<u>\$510,404.94</u>	<u>(\$882,719.11)</u>	<u>\$3,227,198.46</u>	<u>\$0.00</u>	<u>\$3,898,994.40</u>
Net Assets At End Of Year	<u><u>\$260,876.40</u></u>	<u><u>\$2,395,316.35</u></u>	<u><u>\$771,061.50</u></u>	<u><u>(\$14,434.43)</u></u>	<u><u>(\$1,157,498.06)</u></u>	<u><u>\$0.00</u></u>	<u><u>\$2,255,321.76</u></u>

Towne Park CDD
Statement of Financial Position
As of 6/30/2020

	General Fund	Debt Service, S2016, S2018	Debt Service, S2019	Capital Projects, S2016, S2018	Capital Projects, S2019	Long Term Debt Group	Total
<u>Assets</u>							
<u>Current Assets</u>							
General Checking Account	\$254,032.57						\$254,032.57
Due From Other Funds	2,343.83						2,343.83
Deposits	4,500.00						4,500.00
Debt Service Reserve S2016		\$111,787.50					111,787.50
Debt Service Reserve S2018-2B		108,628.12					108,628.12
Debt Service Reserve S2018-3A		287,548.44					287,548.44
Revenue S2016		76,153.28					76,153.28
Revenue S2018-2B		26,797.59					26,797.59
Revenue S2018-3A		176,293.98					176,293.98
Prepayment S2016		1,987.37					1,987.37
Prepayment S2018-2B		809,053.62					809,053.62
Prepayment S2018-3A		797,066.45					797,066.45
Debt Service Reserve S2019-3B			\$335,843.76				335,843.76
Debt Service Reserve S2019-3C			322,120.00				322,120.00
Revenue S2019-3B			111,535.58				111,535.58
Revenue S2019-3C			1,400.52				1,400.52
Interest S2019-3B			1,520.61				1,520.61
Interest S2019-3C			984.86				984.86
Accounts Receivable - Due from Developer				\$1,156.82			1,156.82
Acquisition/Construction S2016				0.21			0.21
Acquisition/Construction S2018-2B				68.50			68.50
Acquisition/Construction S2018-3A				55,042.61			55,042.61
Acquisition/Construction S2019-3B					\$110,598.31		110,598.31
Acquisition/Construction S2019-3C					5.68		5.68
Accounts Receivable - Due from Developer					801,854.37		801,854.37
Total Current Assets	<u>\$260,876.40</u>	<u>\$2,395,316.35</u>	<u>\$773,405.33</u>	<u>\$56,268.14</u>	<u>\$912,458.36</u>	<u>\$0.00</u>	<u>\$4,398,324.58</u>
<u>Investments</u>							
Amount Available in Debt Service Funds						\$3,168,721.68	\$3,168,721.68
Amount To Be Provided						20,016,278.32	20,016,278.32
Total Investments		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$23,185,000.00</u>	<u>\$23,185,000.00</u>

Towne Park CDD
Statement of Financial Position
As of 6/30/2020

	General Fund	Debt Service, S2016, S2018	Debt Service, S2019	Capital Projects, S2016, S2018	Capital Projects, S2019	Long Term Debt Group	Total
Total Assets	<u>\$260,876.40</u>	<u>\$2,395,316.35</u>	<u>\$773,405.33</u>	<u>\$56,268.14</u>	<u>\$912,458.36</u>	<u>\$23,185,000.00</u>	<u>\$27,583,324.58</u>
<u>Liabilities and Net Assets</u>							
<u>Current Liabilities</u>							
Due To Other Funds			\$2,343.83				\$2,343.83
Accounts Payable				\$172.50			172.50
Deferred Revenue				1,156.82			1,156.82
Retainage Payable S2018-3A				69,373.25			69,373.25
Deferred Revenue					\$801,854.37		801,854.37
Accounts Payable					797,192.17		797,192.17
Retainage Payable S2019-3C					470,909.88		470,909.88
Total Current Liabilities		<u>\$0.00</u>	<u>\$2,343.83</u>	<u>\$70,702.57</u>	<u>\$2,069,956.42</u>	<u>\$0.00</u>	<u>\$2,143,002.82</u>
<u>Long Term Liabilities</u>							
Revenue Bonds Payable - Long-Term						\$23,185,000.00	\$23,185,000.00
Total Long Term Liabilities		<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$23,185,000.00</u>	<u>\$23,185,000.00</u>
Total Liabilities	<u>\$0.00</u>	<u>\$0.00</u>	<u>\$2,343.83</u>	<u>\$70,702.57</u>	<u>\$2,069,956.42</u>	<u>\$23,185,000.00</u>	<u>\$25,328,002.82</u>
<u>Net Assets</u>							
Net Assets, Unrestricted	\$186.20						\$186.20
Net Assets - General Government	72,515.13						72,515.13
Current Year Net Assets - General Government	188,175.07						188,175.07
Net Assets, Unrestricted		\$971,408.78					971,408.78
Current Year Net Assets, Unrestricted		1,423,907.57					1,423,907.57
Net Assets, Unrestricted			\$510,404.94				510,404.94
Current Year Net Assets, Unrestricted			260,656.56				260,656.56
Net Assets, Unrestricted				(\$882,719.11)			(882,719.11)
Current Year Net Assets, Unrestricted				868,284.68			868,284.68
Net Assets, Unrestricted					\$3,227,198.46		3,227,198.46
Current Year Net Assets, Unrestricted					(4,384,696.52)		(4,384,696.52)
Total Net Assets	<u>\$260,876.40</u>	<u>\$2,395,316.35</u>	<u>\$771,061.50</u>	<u>(\$14,434.43)</u>	<u>(\$1,157,498.06)</u>	<u>\$0.00</u>	<u>\$2,255,321.76</u>
Total Liabilities and Net Assets	<u>\$260,876.40</u>	<u>\$2,395,316.35</u>	<u>\$773,405.33</u>	<u>\$56,268.14</u>	<u>\$912,458.36</u>	<u>\$23,185,000.00</u>	<u>\$27,583,324.58</u>

**Towne Park
Community Development District**

Staff Reports