

July 16, 2015

VISTA EAST 2.0

Memorandum of Terms

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Introduction-

This Memorandum of Terms (“MOT”) is an outline of proposed terms to serve as a precursor to a Development Agreement authorized by Section 163.3221, Florida Statutes, which is intended to provide for the orderly development of large undeveloped tracts of land and create a master public/private arrangement known as Vista East 2.0 for the development of an improved Regional Road Network in east and southeast Orlando. The parties to the proposed Development Agreement would be Mockingbird Orlando, LLC as the owner of the Vista Park Property (the “Vista Park Owner”); Carlsbad Orlando, LLC as the owner of the property commonly known as the “Starwood Property” (the “Starwood Owner”); Bal Bay Realty, Ltd., as the owner of the property commonly known as the “Bal Bay Property” (the “Bal Bay Owner”); a to-be-formed limited liability company (the “Developer”); and the City of Orlando (the “City”). The various road segments are depicted on maps that are attached as Exhibits as noted below. Each road segment has been assigned a letter and a number, *i.e.*, (**Segment E1**), that correlate with the various maps and with the Regional Roadway Network Schedule and Estimated Costs (the “Schedule”) that is attached as Exhibit “A.” This MOT is being approved by the City at the same time a Petition for Annexation of the Starwood Property is being accepted by the City.

I. Vista Park Development Concepts

The Vista Park Property is located within the City's municipal boundaries. The portion of the Development Agreement pertaining to the Vista Park Property will modify the terms of the existing Post Annexation Agreement dated April 2, 2008, and recorded in Official Records Book 09671, Page 2920, of the Public Records of Orange County, Florida and will include the following concepts:

1. Vista Park UXO Remediation -

- A. **City Acknowledgment** - The Vista Park Property is within the boundary of the Former Pinecastle Jeep Range, a formerly used defense site ("FUDS"). The City acknowledges the need to remediate the entire Vista Park Property due to threat to public health, safety and welfare from use of the Vista Park Property during the World War II era as a bombing range and the documented existence of unexploded ordinance ("UXO") as well as munitions and explosives of concern ("MEC"). The Vista Park Owner will utilize the best available technologies and methodologies for the remediation work plan as determined by a consultant qualified as an explosive or munitions emergency expert (the "EME Contractor"). The City will, at no cost to the City, cooperate and support the Vista Park Owner in commencing the remediation work plan and will reasonably facilitate the EME Contractor in completing the remediation project in accordance with the work plan schedule.
- B. **FDEP as Jurisdictional Authority** - The City approves the proposed FDEP Voluntary Clean-up Order ("VCO") Order, the text of which (without Appendices) is attached hereto as Exhibit "B", and the Integrated Corrective Action Plan ("ICAP") as an "Explosives or Munitions Emergency Response" ("EME Response") in compliance with FDEP requirements and Florida Administrative Code. The City will accept FDEP review and oversight of the ICAP and the associated work plan and will support the Vista Park Owner as reasonably requested in the performance of a private remediation of the Vista Park Property. FDEP approval and issuance of a no further action ("NFA") letter on the entire site or individual portions of the site by FDEP shall be sufficient for the release of the Vista Park Property or portions thereof as applicable from the City's Development Moratorium prohibiting construction within the boundary of the Former Pinecastle Jeep Range.
- C. **Site Construction Approvals/Vegetation Clearance/Restoration Plan** - The City agrees to issue all necessary approvals/permits for the EME Contractor to construct all site improvements necessary for implementation of the remediation project including but not limited to: stabilized access/haul roads, drainage ditches/holding ponds for dewatering, and the clearance of all wetland and upland vegetation as approved and permitted by FDEP and more specifically delineated in the VCO. The City shall accept and approve the Restoration Plan and mitigation requirements approved by FDEP, and the FDEP requirements will be

deemed to have satisfied all City requirements for site restoration after the remediation project has been completed.

- D. **Notice of Site History** – The City agrees that as a condition of development approval after completion of the remediation project and issuance of the NFA letter by FDEP, the Vista Park Owner will be required to record a notice in the Public Records providing information on the history of the site (the “Notice of Site History”). The language to be included in the Notice of Site History will be mutually agreed upon by City and Owner. Other than this Notice of Site History, there will be no other special requirements or obligations imposed on the Vista Park Owner or assigns regarding UXO, MEC or remediation measures.
- E. **Former Orange County Landfill** – The City acknowledges that there is an approximate 30-acre parcel within the Vista Park Property that was operated by Orange County as a landfill. Orange County did not reclaim or close the operation in accordance with FDEP rules or regulations. The Vista Park Owner will obtain a standard Consent Order from FDEP and approved Work Plan for capping and closure of the landfill in accordance with FDEP standards and requirements. The City will approve reasonable land uses for the former landfill area upon completion of restoration and verification that the site poses no environmental or other hazards for the use of the site or parcels adjoining the site.

2. **Vista Park Property Design/Approvals/Permitting -**

- A. **Development Processes** – The City approves the Conceptual PD Master Plan for the Property attached hereto as Exhibit “C” that includes the anticipated alignments of the Econ Trail Extension and the Hazeltine Extension. The Vista Park Owner will submit an amendment to the currently approved comprehensive plan for the Vista Park Property and will simultaneously submit a PD zoning application and a proposed PD Master Plan that will be substantially consistent with the approved Conceptual PD Master Plan for review and approval by the City in accordance with established City policies and practices.
- B. **Development Phasing** - Once the PD for the Vista Park Property is approved by the City, the Vista Park Owner shall have the right to develop the Vista Park Property in phases and shall receive Specific Parcel Master Plan (“SPMP”) approval on each phase provided the SPMP is generally in conformance with the approved PD Master Plan and the terms of the Development Agreement that pertain to the Vista Park Property.
- C. **Post Remediation Modifications** – The City acknowledges that changes or modifications to the approved PD Master Plan that are reasonably required as a result of physical site alterations, site restoration plan requirements, or other changes that result from the UXO/MEC remediation project shall be deemed in compliance with the PD Master Plan and the terms of the Development Agreement. The City Planning Director shall be authorized to issue planning determinations that modifications are reasonably due to site restoration plan

requirements and/or post remediation site conditions and therefore do not constitute a material change to the approved PD Master Plan or the Development Agreement.

- D. **Wetlands** – The City agrees that the post-remediation site conditions after completion of the Site Restoration Plan, in accordance with the VCO approved by FDEP, will be utilized for future permitting of wetland impacts for development of the Vista Park Property.

II. Bal Bay Property Development Concepts

The Bal Bay Property is located within the City's municipal boundaries. The portion of the Development Agreement pertaining to the Bal Bay Property will include the following concepts:

1. The Bal Bay Owner will submit a PD zoning application and a proposed PD Master Plan for the Bal Bay Property, consistent with the Property's approved comprehensive plan designations, for review and approval by the City in accordance with established City policies and practices at such time as the Bal Bay Owner elects to proceed with the zoning process.
2. Once a PD for the Bal Bay Property is approved by the City, the Bal Bay Owner shall have the right to develop the Bal Bay Property in phases and shall receive SPMP approval on each phase, provided the SPMP is generally in conformance with the approved PD Master Plan and the terms of the Development Agreement that pertain to the Bal Bay Property.

III. Starwood Property Annexation and Development Concepts

The Starwood Property is currently located in unincorporated Orange County. The portion of the Development Agreement pertaining to the Starwood Property will include the following concepts:

1. **Annexation** – The Starwood Owner shall voluntarily petition for annexation of the 2,600+/- Starwood Property. The City agrees to process the Annexation Petition and initiate a Comprehensive Plan Amendment and simultaneous PD zoning application in order to incorporate Starwood into the municipal boundaries of the City and assign a future land-use designation and zoning consistent with the Conceptual PD Master Plan included on Exhibit "C" attached hereto. The City shall waive its scheduled fees for processing the Annexation Petition, Comprehensive Plan Amendment and PD Zoning Application.
2. **Master Plan Approval/Design/Permitting -**
 - A. **Approval** - City approves the Conceptual PD Master Plan for the Starwood Property included on Exhibit "D" attached hereto.

- B. **Phasing** – Following approval of the PD zoning for the Starwood Property, the Starwood Owner shall have the right to develop the Starwood Property in phases and shall receive SPMP approval on a specific parcel or combination of parcels in phases provided the SPMP's are generally consistent with the approved PD Master Plan and the terms of the Development Agreement that pertain to the Starwood Property.
3. **UXO Agreement with Orange County** - The Starwood Property is within the boundary of the Former Pinecastle Jeep Range. The Starwood Owner entered into an agreement with Orange County providing for a study to be mutually agreed between the parties for confirmation that there is no known UXO or MEC contamination on the Starwood Property presenting any risk to public, health, safety and welfare or environmental contamination as defined under CERCLA (the "County UXO Agreement"). The Starwood Owner engaged Buffalo Restoration, LLC, the same EME Contractor that prepared the ICAP and associated work plan for the Vista Park Property to also conduct a study and sampling of the Starwood Property. The Explosives or Munitions Field Validation Investigation for the Starwood Property the ("Field Validation") has been delivered to City staff. It provides reasonable evidence that the Starwood Property should not be subject to a development moratorium or unusual development restrictions as the result of its location within the Former Pinecastle Jeep Range. The City and the Starwood Owner shall agree on a Notice to Contractors to be placed in the Public Records along with other reasonable actions for UXO/MEC awareness consistent with the recommendation provided by the EME Consultant as part of the Starwood Field Validation. The City will assist the Starwood Owner in requesting Orange County to record a termination or satisfaction of the County UXO Agreement. Further, the City will provide the Starwood Owner with reasonable documentation for recording purposes to address issues affecting title in the event Orange County will not record a termination or satisfaction document regarding the County UXO Agreement.

IV. Additional Development Concepts Applicable to Vista Park Property, Starwood Property and Bal Bay Property

The following concepts will be applicable to development of the Vista Park Property, the Bal Bay Property and the Starwood Bay Property as indicated below. The term "Property Owner" refers individually to the Vista Park Owner, the Bal Bay Owner or the Starwood Owner as the context dictates. The term "Property Owners" refers, collectively, to the Vista Park Owner, the Bal Bay Owner and the Starwood Owner. The term "Property" may refer to either the Vista Park Property, the Bal Bay Property or the Starwood Property based on the context in which the term is used. The term "Properties" refers, collectively, to the Vista Park Property, the Bal Bay Property and the Starwood Property.

1. **Wetland Buffers and Setbacks** – The City agrees to not require more stringent wetland buffer widths than are required in permits issued by the applicable Water Management District and approved by the City in Ordinance No. 2013-76 for the Weewahootie PD.

2. **Permitting** – The City agrees to waive application fees for submittal of PD zoning applications and to waive all fees for SPMP applications, PD amendments, site plans and subdivision approvals for a period of five years following approval of the first SPMP for the Vista Park Property, the Bal Bay Property and the Starwood Property, respectively. The City agrees to issue building permits prior to the receipt of the CLOMR from FEMA. The City agrees to assign a single point of contact for expediting and facilitating plan reviews, building permit issuance, and plat approvals for the Vista Park Property, the Bal Bay Property and the Starwood Property, respectively, including all road construction plan review and permitting.
3. **PD Design Guidelines** – PD Design Guidelines shall be substantially similar to those approved for the Weewahootie PD in Ordinance No. 2013-76.
4. **Trip Conversion** - The PD Ordinances for each of the Properties will include a land use/trip conversion matrix.
5. **City Park Site Dedication** - The Property Owners shall reserve and donate a minimum of 15 Acres of land for Soccer / Multi Use fields in a location acceptable to City and suitable for regional use. The City will be responsible for the Park improvements including infrastructure and access to be further defined in a separate Park Development Agreement . The donation of land within either the Vista Park Property or the Starwood Property for the proposed City Park Site will be fully credited towards the City's development requirement related to regional parks.
6. **Gated Communities** – The City will allow gating of subdivisions and private streets within specific parcels of the Vista Park Property, the Bal Bay Property and the Starwood Property to be agreed upon and identified in the approved PD Master Plan. The City agrees that if the Vista Park Owner, the Bal Bay Owner or the Starwood Owner designates and markets portions of the Vista Park Property, the Bal Bay Property or the Starwood Property as an “Age Restricted Community,” then all development pods within the age restricted areas will be allowed gating and security typical of similar communities.
7. **Sewer Capacity** – The City acknowledges that it provides sewer service to some of the Properties through an interlocal service agreement with Orange County Utilities. To the extent the City continues to provide sewer service to any of the Properties, the City shall reserve and guarantee sewer service capacity for a period of 10 years from the commencement of vertical construction for the first phase of approved development within each of the Properties, respectively. The Property Owners or their assigns shall pay the required connection fees prior to issuance of building permits.
8. **Electric Utility Service Franchise Area** – The Vista Park and the Starwood Property are currently split by the OUC and Duke Energy service franchise areas. In the event that both OUC and Duke Energy are equally capable of providing electric service to the Property, the respective Property Owner agrees to request that OUC be the electric service provider for the entire Property.

9. **School Capacity Agreement** – The Vista Park Owner, the Bal Bay Owner and the Starwood Owner will each negotiate with the Orange County School Board and appropriately mitigate the impacts of its respective Property’s approved development plan on school capacity in accordance with the School Board’s duly adopted procedures.
10. **Community Development Districts (“CDDs”)** – The City agrees to allow and cooperate with a Property Owner’s reasonable request to form one or more CDD’s for its Property in accordance with City policy and guidelines.
11. **Continuing Agricultural Uses** – The City will allow the continuation of agricultural land uses for the Properties until such time as a plat is recorded on a particular parcel, at which time agricultural uses will no longer be allowed on the platted parcel.
12. **Central Florida Expressway Authority/All Aboard Florida** – The City acknowledges that the Starwood Owner, the Bal Bay Owner and the Vista Park Owner are in negotiations to sell, in lieu of condemnation, approximately 170 Acres on the entire northern boundary of the Starwood Property, approximately 18 acres of the Bal Bay Property to the Central Florida Expressway Authority (“CFX”) for expansion of the Beachline/SR 528, along with the construction of the high-speed rail known as the All Aboard Florida (“AAF”). The City acknowledges that the Starwood Owner and the Bal Bay Owner will need to address and incorporate mitigation measures to reduce the noise, vibration and visual impacts potentially produced by operation of the AAF rail system. The City will review and reasonably approve the design of the buffer improvements as agreed to among CFX/AAF, the Starwood Owner and the Bal Bay Owner as satisfying requirements for separation, buffer, and setbacks between the development parcels and the AAF railway.

V. Regional Roadway Network Concepts

The Vista Park Owner, the Starwood Owner and the Bal Bay Owner will establish a Florida Limited Liability Company that will serve as the Developer of the Regional Road Network outlined below and that will be addressed more fully in the Development Agreement. The City hereby accepts the traffic studies prepared by GMB Associates setting forth the trip generation, infrastructure phasing and trip capacity for the Vista Park Property, the Bal Bay Property and the Starwood Property (collectively the “Transportation Studies”) that have been reviewed and approved by the City’s Transportation Planning staff and that are on file with the City.

1. Econ Trail

- A. **Proposed Econ Trail Improvements** - The proposed improvements include: (i) the addition of third and fourth lanes to the existing Econ Trail located within the City’s municipal boundaries; (ii) the addition of third and fourth lanes to the existing Econ Trail located within unincorporated Orange County (collectively, the “Econ Trail Widening Project”); and (iii) an extension of Econ Trail from the road’s current terminus south of Lee Vista Blvd. through the Vista Park Property, over the Beachline/SR 528 and through the Bal Bay Property to Dowden Road/Innovation Way in the approximate alignment as illustrated on the graphic

attached as Exhibit "E" (the "Econ Trail Extension"). The Econ Trail Widening Project and the Econ Trail Extension are collectively referred to herein as the "Econ Trail Improvements." The graphic attached as Exhibit "E" includes labels for each segment of the proposed Econ Trail Improvements. The segment of the Econ Trail Extension that passes over the Beachline/SR 528 is referred to herein as the "Beachline Flyover" and is labeled as **Segment E5**.

B. Econ Trail Widening Project –

(i) **City Segment** - The Developer will design, permit and construct the Econ Trail Widening Project extending from the City's municipal boundary south of Curry Ford Road to Lee Vista Blvd., including necessary intersection improvements at Lee Vista Blvd. ("**Segment E1**") simultaneously with construction of **Segment E2** of the Econ Trail Extension. The City shall be responsible for obtaining adequate right-of-way, obtaining land for drainage facilities, providing any necessary wetland mitigation and funding the cost of **Segment E1** located on City property.

(ii) **County Segment** - In the event the segment of Econ Trail located in unincorporated Orange County that extends from the City's municipal boundary north to Curry Ford Road ("**Segment EC**") has not been formally programmed for design and construction by December 31, 2016, the City shall work cooperatively with Orange County and use best efforts to obtain a commitment for funding the design and construction of **Segment EC**, including necessary intersection improvements at Curry Ford Road. The agreement with Orange County should provide for the completion of **Segment EC** to coincide with construction completion of **Segment E1** in the City. At the request of the City or the County, the Developer will construct **Segment EC** on behalf of the County simultaneously with the construction of **Segment E1**, subject to reasonable guarantees of funding for all costs related to design and construction of the **Segment EC**.

(iii) **Econ Trail Extension** – The Developer shall obtain from the applicable Property Owner deeds and easements in favor of the City sufficient to dedicate to the City all right-of-way and easements necessary for the construction of **Segments E2, E3, E4, E5 and E6**. The deeds and easements shall be placed in escrow with an escrow agent mutually acceptable to the City and the Developer the "Escrow Agent." The Developer and shall design, permit and privately construct **Segments E2, E3, E4, E5 and E6** of the Econ Trail Extension as a new 4-lane divided roadway in accordance with the same adopted cross-section design for IWN, with all associated drainage improvements, as approved in the Annexation and Development Agreement recorded at Official Records Book 10681, Page 9316, in the Public Records of Orange County, FL.

(iv) **Beachline Flyover** - The Bal Bay Owner shall obtain an agreement and easement from CFX for the private construction of the Beachline Flyover **Segment E5** of the Econ Trail Extension.

2. Innovation Way Improvements

- A. **Innovation Way North** - As used herein, the term “Innovation Way North” or “IWN” means the roadway that extends from the eastern ramps of SR 417 to Aerospace Parkway within the Suburban Land Reserve (“SLR”) property. As used herein, the term “New IWN Roadway” means the portion of IWN that will extend from the current terminus of the Storey Park PD’s Phase I limits of construction (**Segment IWN1**), east through the Kakkar Property (**Segment IWN2**), then through the Starwood Property (**Segments IWN3, IWN4 and IWN5**), terminating at the eastern boundary of the Starwood Property in an approximate alignment as illustrated in Exhibit “F.” The graphic attached as Exhibit “F” includes labels for each segment of Innovation Way North.
- B. **New IWN Roadway Design** – The Developer will from the applicable Property Owner deeds and easements in favor of the City sufficient to dedicate to the City all right-of-way and easements necessary for the construction of **Segments IWN3, IWN 4 and IWN 5** of the New IWN Roadway. The deeds and easements will be placed in escrow with the Escrow Agent. The Developer will design and obtain permits for the construction of **Segments IWN3, IWN4 and IWN5** in accordance with its adopted cross-section design with all associated drainage improvements as approved in the Annexation and Development Agreement recorded at Official Records Book 10681, Page 9316, in the Public Records of Orange County, FL. In addition, the Developer will design and obtain permits for **Segments IWN1 and IWN2**; provided that the necessary right-of-way and easements have been obtained from the owners of those Segments. The alignment of the New IWN Roadway will be coordinated with the Segment of IWN currently being constructed within the Storey Park PD and **Segment IWN6** extending through the SLR Property. The City will assist the Developer in obtaining an agreement with SLR for the construction of **Segment IWN6** so the roadway will form a complete arterial connection between SR 417 and the Beachline/SR528.

3. Funding for Phase One Regional Roadway Network –

- A. **Funding Commitments** - As used herein, Phase One of the Regional Roadway Network is defined as the Econ Trail Extension (**Segments E2, E3, E4, E5 and E6**), and Innovation Way North (**Segments IWN1, IWN2 and IWN3**). The City and the Developer agree to cooperate to ensure the completion of Phase One of the Regional Roadway Network. The City agrees to irrevocably commit and fund a total of **\$40 Million** toward its 50% share of the design, permitting, and construction costs for the Phase One Regional Roadway Network, of which approximately **\$31 Million** will be allocated to **Segments E2, E3, E4, E5, and E6** and the remaining **\$9 Million** will be allocated to **Segments IWN1, IWN2, and IWN3**. The City agrees to guarantee the availability of these funds as of the Design and Construction Phase dates of the respective roadways in accordance with the Schedule attached as Exhibit “A.” The Vista Park Owner, the Bal Bay Owner and the Starwood Owner will irrevocably commit to fund a minimum of

50% of the road construction costs or such greater amount to guarantee sufficient funding to complete the Phase One Regional Roadway Network. In the event, the total actual design and construction costs of the Phase One Regional Roadway Network results in the City's 50% contribution being less than \$40M total, any surplus may, at the City's election, be allocated to **Segment E1, Segment EC, Segment IWN1, IWN2** or to the City's share of the **Segments IWN4 and IWN5**.

- B. **Contingency** - The City's and the Developer's obligations for funding Phase One of the Regional Roadway Network are contingent upon the Developer, with assistance from the City, being able to obtain an agreement with the owner of the Storey Park PD regarding **Segment IWN1** and the owner of the Kakkar Property regarding **Segment IWN2** in which each owner: (i) agrees to allow Developer to construct the IWN Segment located on its property; (ii) agrees fund 50% of Allowable Costs as set forth in Exhibit "G" for the IWN Segment located on its property; and (iii) agrees dedicate all right-of-way and easements required for construction of the IWN Segment located on its property at no cash cost to the City but in return for Transportation Impact Fee Credits as set forth in Subsection V.10. below. The exact maximum cost and linear feet of Segments IWN1 and IWN2 are subject to confirmation of the current IWN limits within the Storey Park PD.
4. **Funding for Phase Two of Regional Road Network** - As used herein, Phase Two of the Regional Roadway Network is defined as **Segments IN4 and IWN5**. The City will pursue all available sources of funds to finance or otherwise provide for its 50% contribution toward Phase Two of the Regional Road Network to enable construction commencement in accordance with the Schedule attached Exhibit "A" as follows:
- (i) The City will apply for Trip funding from the State of Florida or other governmental grants or programs available to the City for regional road projects.
 - (ii) The City will earmark all revenue from the City's share of the State of Florida gasoline tax revenue generated from completed residential development on the Storey Park, Vista Park, Bal Bay and Starwood projects.
 - (iii) The City will pipeline all transportation impact fees paid by the Storey Park, Starwood, Bal Bay, and Vista Park Developments to the Regional Roadway Network as described herein.
- B. **Alternative for Funding Phase Two of Regional Roadway Network** –
- (i) The Developer shall have the right but not the obligation to advance construction of **Segments IWN4 and IWN5** and obtain a subsequent reimbursement from the City for its 50% share at such time as City obtains funds that can be used for **Segments IWN4 and IWN5**. In lieu of obtaining a reimbursement from the City for its share of the cost for **Segments IWN4 and IWN5**, the Developer may agree to accept additional City Transportation Impact

Fee Credits equal to 110% of the City's 50% share of the cost for **Segments IWN4 and IWN5**.

(ii) If City is successful in obtaining a Trip Funding Grant or other grant in order to complete construction of Phase Two of the Regional Roadway Network, the Property Owners, the Developer and the City will amend the Development Agreement to reflect the amount of funds received by the City. The City and the Starwood Owner will use their best efforts to obtain an agreement with SLR, CFX, and Orange County that coordinates the Phase Two IWN alignment and construction schedule with construction of **Segment IWN6** on the SLR property and the planned Beachline Interchange so that both projects are completed at the same time and the entire regional arterial can open.

5. **Econ Trail Construction Phasing** - The Econ Trail Improvements will be built in two phases:

- A. **Phase One Design:** The Developer will commence design and permitting for the construction of **Segments E1 and E2** upon substantial completion and acceptance by the City of the Vista Park remediation (estimated in 2017) in accordance with the schedule attached as Exhibit "A." In addition, the Developer will simultaneously complete 30% engineering plans for **Segments E3, E4, and E6** and will place into escrow executed deeds with complete legal descriptions for all at-grade right-of-way and easement necessary for construction of **Segments E3, E4, and E6**.
- B. **Phase One Construction:** The Developer will privately construct **Segments E1, and E2** from the road's current terminus south approximately .7 miles to connect with a to-be constructed East/West Road within the Vista Park Property as depicted on the graphic attached as Exhibit "E." In addition, if requested to do so by the City or the County, the Developer will also construct **Segment EC** as part of Phase One construction. Phase One construction shall commence within 90 days following receipt of all required construction permits.
- C. **Phase Two Design and Construction:** The Developer shall complete the balance of engineering design for Phase 2 of the Econ Trail Extension (**Segments E3, E4, E5 and E6**) during the period of Phase One construction and will commence Phase Two construction within 180 days following receipt of all required permits and approvals (expected 2019). Upon completion of the Phase Two construction, the entire four-lane arterial link from Curry Ford Road to Dowden Road would be open for public use.

6. **IWN Construction Phasing Plan** - The New IWN Roadway will be constructed in two phases:

- A. **Phase One** – The Developer will privately construct **Segments IWN1, IWN2, and IWN3**. Phase One construction shall commence no more than 90 days following the issuance of all required governmental approvals and permits,

currently estimated to be 2nd quarter of 2016 in accordance with the Schedule attached Exhibit "A." In addition, the Developer will complete 30% design plans for **Segments IWN4 and IWN5** prior to completion of Phase One of the New IWN Roadway construction, and will place into escrow executed deeds with complete legal descriptions for all right-of-way and easements needed for constructing the entire length of the New IWN Roadway.

- B. **Phase Two/Notice of City Funding** - Developer will complete design and permitting for **Segments IWN4 and IWN5** in accordance with the Schedule attached as Exhibit "A," estimated in late 2019. The Developer shall commence construction of **Segments IWN4 and IWN5** upon written notice from the City that it has obtained sufficient funding to pay its 50% share of road construction costs for **Segments IWN4 and IWN5**; unless the Developer elects to proceed under the alternative method for funding set forth in Subsection V.4.B. above.
7. **Funding for Econ Trail Widening Project** – The City will acquire any additional right-of-way that may be needed, in accordance with prior agreements, and will fund 100% of the design, permitting and construction of **Segment E1**. The City, through an agreement with Orange County, will fund **Segment EC** if **Segment EC** has not been previously programmed for construction by Orange County. The current estimated construction cost for the Econ Trail Widening Project is \$5.6 Million, which would be reduced by any contribution Orange County makes to the cost of the **EC Segment**. The Developer will guarantee completion and maximum price of the Econ Trail Widening Project prior to construction commencement upon award of the roadway construction contract.
8. **Hazeltine Extension** -
- A. **Hazeltine Right-of-Way** – The City has heretofore designated the Hazeltine Extension as part of the City's Major Thoroughfare Network. The Developer shall be required to obtain the right-of-way and easements necessary for construction of the Hazeltine Extension as a 4-lane divided connector road extending from the Econ Trail Extension within the Vista Park Property, west to the intersection of Narcoossee Road and place the deeds and easements in escrow with the Escrow Agent. The general alignment of the Hazeltine Extension is illustrated on the graphic attached as Exhibit "E" (**Segment H1**). The City acknowledges that the portion of **Segment H1** labeled as "McCoy PD" on Exhibit "E," is owned by an unrelated third party. The City also acknowledges that the City is obligated under the terms of the existing Vista Park Post Annexation Agreement to acquire the McCoy PD portion of **Segment H1** through condemnation in the event the Developer is unable to acquire this property using best efforts to obtain a private purchase agreement. In the event of condemnation, the Developer agrees to reimburse the City the cost of the condemnation to a maximum cap of \$100,000 per acre. The Vista Park Owner shall be obligated to execute the deed and all easements necessary for construction of **Segment H1** and place them in escrow with the Escrow Agent at or before the time construction commences on Phase One of the Econ Trail Extension.

- B. **Hazeltine Construction** – The Developer will construct the Hazeltine Extension initially in a two-lane configuration from the Econ Trail Extension, west to Narcoossee Road, with initial intersection improvements in accordance with the schedule attached as Exhibit “A,” and in accordance with the Transportation Studies. The Developer agrees to complete construction of the third and fourth lanes of **Segment H1** within 4 years following the completion of Phase One of the Econ Trail Extension.

9. **Starwood North/South Connector Road** –

- A. The Starwood N/S Connector Road is located only partially within the Starwood Property. The Starwood N/S Connector Road will be a 4-lane arterial in the approximate location and alignment as illustrated on the graphic attached as Exhibit “F” (**Segments SNSC1 and SNSC2**). The Developer shall be obligated to complete sufficient design and engineering for the Starwood N/S Connector Road such that the right-of-way and associated easements for the ultimate 4-lane cross-section on the Starwood Property can be dedicated to the City at the commencement of construction of Phase Two of the New IWN Roadway.
- B. **North/South Connector Road Off-site Right-of-Way** – A segment of the Starwood N/S Connector Road is located outside of the Starwood Property boundaries and is controlled by public and private entities separate and distinct from the Starwood Owner (**Segment SNSC3**) as depicted on the graphic attached as Exhibit “H.” **Segment SNSC3** is located south of the centerline of Wewahootee Road and the OUC Railroad right-of-way. The City will be obligated to acquire, through condemnation or otherwise, the necessary access rights or right-of-way for **Segment SNSC3**, including portions of Wewahootee Road, at such time as the Developer sends notice to the City of its intent to commence design and permitting of **Segment SNSC3**. The cross-hatching on Exhibit “H,” attached, shows the location of the off-site parcels within **Segment SNSC3** over which access rights or right-of-way must be acquired. The Developer will use best efforts to purchase the strip of land within **Segment SNSC3** that is currently owned by Lake Hart Partners II Ltd. (“Lake Hart Partners’ Strip”) as depicted on Exhibit “H.” In the event the Developer is unable to purchase the Lake Hart Partners’ Strip, the City agrees to acquire it through condemnation at the City’s cost, except that the Developer will reimburse the City up to a maximum of \$50,000 towards the City’s cost of condemning the Lake Hart Partners’ Strip.
- C. **North/South Connector Road- Design, Permitting, Construction** – The Developer will design, permit and construct the initial two lanes of the Starwood N/S Connector Road (**Segments SNSC1 and SNSC2**) with all associated drainage facilities and appropriate intersection improvements in accordance with the road construction phasing schedule attached as Exhibit “A.” The Developer agrees to complete the construction of the initial two lanes of **Segments SNSC1 and SNSC2** within three years following the completion of **Segment IWN4**. The Developer shall construct **Segment SNSC3** within three years after construction

of **Segment SNSC2** or within three years after construction completion of Innovation Way South ("IWS") to the intersection of the North/South Connector Road, whichever occurs later. Notwithstanding anything to the contrary stated above, the Developer shall not be obligated to permit or construct any portion of **Segment SNSC3** until IWS is constructed by others as a continuous segment open to the public from SR 417 to the planned intersection of the Starwood N/S Connector Road and IWS.

10. **Stormwater Drainage/Fill Requirement** – The Developer shall be allowed to design stormwater management areas serving both a public roadway and private development in a system of interconnected ponds and utilizing the allocated capacity in the Lee Vista Blvd. Master Drainage System as applicable. Each Property Owner will designate and reserve sufficient fill from the ponds on its respective property sufficient to accommodate that Property Owner's roadway Segment or Segments without having to import fill for the road construction.
11. **Wetland Mitigation** - Each Property Owner shall be responsible for mitigating any wetland impacts that are anticipated based on the design of the particular Segment or Segments to be constructed through the Vista Park Property, the Bal Bay Property and the Starwood Property as applicable, either through on-site or off-site mitigation. The actual cost of mitigating wetland impacts related to any Segment shall be deemed an Allowable Cost as indicated in Exhibit "G" attached.
12. **Utilities** – Utility mains will be allowed in easement areas adjacent to the right-of-way for all road segments addressed in the Development Agreement.
13. **Materials Testing**-. Materials testing will be conducted by an engineer under a continuing contract with the City and designated by City's Permitting Department but, will be paid by the Developer as an allowable cost of construction of all road segments addressed in the Development Agreement.
14. **Conveyance of Constructed Roadway Segments** - Upon the City's issuance of a Certificate of Completion for each Segment of the roadway, that Segment shall be conveyed to the City by release from escrow of the applicable deeds and easements and by execution of a Bill of Sale by the applicable Property Owner, subject to the City's requirements for accepting constructed roadways.
15. **Transportation Impact Fee Credits** –
 - A. The Vista Park Owner, the Bal Bay Owner, the Starwood Owner and other property owners who dedicate right-of-way and/or easements and make cash contributions for the design and construction of the Econ Trail Improvements and the New IWN Roadway will receive City Transportation Impact Fee Credits for 50% of the value of their right-of-way and easement dedications based on an agreed land value of \$100,000 per acre and will also receive City Transportation Impact Fee Credits for 100% of their documented cash contributions of Allowable Costs set forth in Exhibit "G". Landscaping in addition to that listed as an

Allowable Cost on Exhibit “G” shall be provided at the applicable Property Owner’s expense as part of individual development plan permits and shall not be eligible for City Transportation Impact Fee Credits.

- B. **Hazeltine Extension and Segments SNSC1, SNSC2, and SNSC3** – The City acknowledges that the Hazeltine Extension and Starwood North/South Connector will be part of the City’s adopted Regional Thoroughfare Network. Developer shall receive 100% Transportation Impact Fee Credits for the additional capacity created by the on-site and off-site segments of the Hazeltine Extension and the SNSC1, SNSC2, and SNSC3 beyond that capacity needed for full build out of the Vista Park and Starwood Development Programs in accordance with the approved traffic study. Credit calculations will be based upon Paragraph 15.A above
- C. **Existing Credits (Prior Rate Vested)** – The City acknowledges that the Vista Park Owner currently has \$1.5 Million in unused Transportation Impact Fee credits known as the “Fisch Credits,” and these credits shall have “Prior Rate Vesting” status until December 31, 2020.
- D. **Transferability** - City agrees that all Transportation Impact Fee credits shall be transferable or assignable to properties located south of Lee Vista Boulevard and east of Narcoossee Road, except for the Fisch Credits, which can be only be transferred to and used within the Vista Park Property, the Bal Bay Property and the Starwood Property.

16. **Vesting** –

- A. **Vista Park Property and Bal Bay Property** –For a period of 12 years after completion of the portions of the Regional Roadway Network that extend through the Vista Park Property and the Bal Bay Property, respectively, the City will allocate sufficient trips to provide transportation vesting for full build-out of the Vista Park Property and the Bal Bay Property’s approved development programs. The comprehensive plan approval for the Bal Bay Property recognizes the following proposed uses: 1,387,000 s.f. of Retail/Commercial use, 300 Hotel Rooms, 120,000 s.f. of Office and 425 Residential Units on 205.8 acres within the area designated as Activity Center & Mixed Use Corridor; 87,600 s.f. of Office-Low Intensity on the 15.5 acres designated as Office-Low Intensity; and 525 Residential Units on the 69.1 acres designated as Residential-Low Density. In addition, 203 acres are designated as Conservation. During the 12-year vesting period, the Vista Park Property and the Bal Bay Property shall be deemed to have satisfied all mitigation requirements for off-site transportation impacts in accordance with the following schedule:

(i) Vista Park Property – Following completion of that portion of the Regional Roadway Network that includes the Econ Trail Extension within the Vista Park Property, the Econ Trail Widening (**Segments E1 and EC**), and the Hazeltine Extension (**Segment H1**).

(ii) Bal Bay Property – Following completion of that portion of the Regional Roadway Network that includes the Econ Trail Extension (**Segments E2, E3, E4, E5 and E6**) and the Econ Trail Widening.

- B. **Starwood Property** – Upon the completion of Phase One of the Regional Roadway, Network 60% of the projected total PM peak hour trips for the Starwood Development Program shall be vested. Completion of the New IWN Roadway, completion of Segment **IWN6**, and connection to Innovation Way South (“IWS”) via the Starwood North/South Connector Road (as depicted on Exhibit “D”) shall vest the approved Starwood Development Program for 100% of its total PM peak hour trips, and the Starwood Property shall be deemed to have satisfied all mitigation requirements for off-site transportation impacts generated by the full buildout of the approved Starwood Development Program. In the event IWS has not been constructed easterly to the intersection of the Starwood North/South Connector Road within 5 years following completion of **Segment SNSC2**, the Starwood Development Program will be granted full vesting without this connection.
17. **Good Faith** – This MOU is a good faith understanding of the intentions of the parties as of the date of its execution. Notwithstanding that the parties specifically acknowledge that this MOU is not a contract, the parties further acknowledge that the representations in this MOU shall be relied upon by the parties to this MOU as they move forward toward implementing the public/private arrangement contemplated in this MOU. The parties acknowledge that issues will need to be resolved and negotiated in connection with the proposed Development Agreement. The parties further specifically acknowledge that no cause of action shall accrue to any party regardless of the outcome of the negotiations regarding the proposed Development Agreement or in the event the anticipated public/private arrangement does not proceed. Subsequent to the execution of this MOU, it is the intention of the parties to undertake good faith negotiations regarding the proposed Development Agreement which shall set forth the terms, conditions and obligations of the parties with respect to the matters described herein.

[Signatures Appear on Following Pages]

WITNESSES:

Mayra Rapul
Signature of Witness

MAYRA RAFULS
Print/Type Name of Witness

Sylvia M. Martinez
Signature of Witness

Sylvia M. Martinez
Print/Type Name of Witness

MOCKINGBIRD ORLANDO, LLC, a
Florida limited liability company

By: John J. Brunetti, Jr.

Print Name: JOHN J. BRUNETTI, JR.

Its: Manager

Date: July 15, 2015

[Signatures Continue on Following Pages]

WITNESSES:

CARLSBAD ORLANDO, LLC, a Florida
limited liability company

Beverly J. Hernandez
Signature of Witness

Beverly J. Hernandez
Print/Type Name of Witness

By: Steven H. Gray
Steven H Gray, Manager
Date: 7-15-15

Amanda Durham
Signature of Witness

Amanda Durham
Print/Type Name of Witness

[Signatures Continue on Following Pages]

WITNESSES:

Mayra Rafuls
Signature of Witness

MAYRA RAFULS
Print/Type Name of Witness

Sylvia M. Martinez
Signature of Witness

Sylvia M. Martinez
Print/Type Name of Witness

BAL BAY REALTY, LTD., a Florida
limited partnership

By: BAL BAY MANAGERS, INC., a
Florida corporation
Its: GENERAL PARTNER

By: Joan J. Brunetti, Jr.
Print Name: JOAN J. BRUNETTI, JR.
Its: Vice President
Date: July 15, 2015

[Signatures Continue on Following Page]

CITY OF ORLANDO

ATTEST:

Print Name: _____
City Clerk

Mayor/Pro Tem _____

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of
Orlando, Florida, only.

Print Name: _____
Assistant City Attorney

Regional Roadway Network Schedule and Estimated Costs

						Design and Permitting Completion Date	Right of Way Delivery Date	Construction Start Date	Estimated Segment Length (mi)	Estimated Cost	Allowable Project Traffic (Ext ADT)
Project Phase	Segment	Roadway	Roadway Segment	Improvement							
Mockingbird	I	EC	Econ Trail Orange County	Curry Ford to City of Orlando boundary	Add lanes and reconstruct (4LD)	1/1/2017	N/A	5/1/2017	1.02	\$2,800,512	18,700
		E1	Econ Trail City of Orlando	City of Orlando Boundary to Lee Vista Boulevard	Add lanes and reconstruct (4LD)	1/1/2017	N/A	5/1/2017	1.30	\$3,569,280	
		E2	Econ Trail Extension	Lee Vista Boulevard to Mockingbird EW Road	New construction (4LD)	6/30/2017	6/30/2017	10/28/2017	0.69	\$9,050,000	
	II	E3	Econ Trail Extension	Mockingbird EW Road to Hazeltine Road Extension	New construction (4LD)	9/3/2018	3/7/2018	1/1/2019	1.05	\$13,825,000	25,040
		E4	Econ Trail Extension	Hazeltine Road Extension to Beachline Flyover	New construction (4LD)	9/3/2018	3/7/2018	1/1/2019	0.36	\$4,750,000	
		H1	Hazeltine Road Extension	Econ Trail Extension to Narcoossee Road	New construction (2L)	9/3/2018	3/7/2018	1/1/2019	0.90	\$7,125,000	
	III	H1	Hazeltine Road Extension	Econ Trail Extension to Narcoossee Road	Add lanes and reconstruct (4LD)	9/3/2018	3/7/2018	12/26/2021	0.90	\$4,750,000	31,300
Starwood	I	IWN1	Innovation Way North	Lennar Phase I limit to Kakkar Property	New construction (4LD)	6/30/2016	3/2/2016	9/28/2016	0.36	\$4,812,500	33,600
		IWN2	Innovation Way North	Kakkar Property to W. Starwood Property Boundary	New construction (4LD)	6/30/2016	3/2/2016	9/28/2016	0.39	\$5,175,000	
		IWN3	Innovation Way North	W. Starwood Property to 2100' w/in Starwood Property	New construction (4LD)	6/30/2016	3/2/2016	9/28/2016	0.40	\$5,250,000	
	II	IWN4	Innovation Way North	2100' w/in Starwood Property to Starwood N/S Connector	New construction (4LD)	6/29/2020	3/2/2017	10/27/2020	1.40	\$18,545,000	56,000
		IWN5	Innovation Way North	Starwood N/S Connector to E Starwood Property Boundary	New construction (4LD)	6/29/2020	3/2/2017	10/27/2020	1.18	\$15,625,000	
		IWN6	Innovation Way North (5)	E Starwood Property Boundary to Proposed Beachline Interchange	New construction (4LD)	TBD	TBD	TBD	0.61	\$8,095,000	
		SNSC1	Starwood N/S Connector	Innovation Way North to 2,300' S. of Innovation Way North	New construction (2L)	6/29/2020	6/29/2020	10/27/2020	0.44	\$3,450,000	
	III	SNSC2	Starwood N/S Connector	2,300' S. of Innovation Way North to Wewahootee Road	New construction (2L)	6/4/2023	6/4/2023	12/1/2023	1.42	\$11,250,000	N/A
Regional	II	E5	Econ Trail Extension	Beachline Flyover	4LD Flyover	3/7/2018	N/A	7/5/2018	0.13	\$15,000,000	N/A
		E6	Econ Trail Extension	Beachline Flyover to Dowden Road	New construction (4LD)	9/3/2018	3/7/2018	1/1/2019	1.16	\$16,125,000	N/A
	III	SNSC3	Starwood N/S Connector	Wewahootee Road to Innovation Way South	New construction (2L)	6/3/2024	3/1/2019	12/1/2023	0.21	\$1,650,000	N/A

Notes:

- (1) The Project or Phase Date correlates to the anticipated commencement of construction for the segment of the project.
- (2) Regional projects provide vesting for Bal Bay Development.
- (3) Total allowable Mockingbird External ADT is 31,300 trips.
- (4) Total allowable Starwood External ADT is 56,000 trips.
- (5) City of Orlando to assist with design/permitting, securing right of way and construction with SLR for completion of Innovation Way North to the proposed Beachline interchange.
- (6) Econ Trail extension is anticipated to be completed by 6/1/2020 to provide the regional connectivity between Lee Vista Boulevard and Dowden Road.
- (7) Innovation Way North Roadway is anticipated to be completed by 6/1/2021 to provide the regional connectivity between Narcoossee Road and the proposed ICP interchange.

Exhibit "B"

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN RE:

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

and

Mockingbird Orlando, LLC,
Orange County, Florida

OGC FILE NO. 15-0404

VOLUNTARY CLEANUP ORDER

This Voluntary Cleanup Order (Order) is entered into between the State of Florida Department of Environmental Protection ("Department" or "FDEP") and Mockingbird Orlando, LLC ("Owner") to reach disposition and settlement of certain matters at issue between the Department and Owner.

The Department finds and Owner agrees to and admits the following:

DEFINITIONS

1. Munitions and Explosives of Concern (MEC) means specific categories of military munitions that may pose unique explosives safety risks, including:
 - a. Unexploded Ordnance (“UXO”), defined as military munitions that have been primed, fused, armed, or otherwise prepared for explosive action; that have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; or that remain unexploded whether by malfunction, design, or any other cause. (see 10 U.S.C. 101(e)(5); and
 - b. Discarded Military Munitions (“DMM”), defined as munitions that have been abandoned without proper disposal or removed from storage in a

military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of consistent with applicable environmental laws and regulations. (see 10 U.S.C. 2710(e)(2)); and

- c. Munitions Constituents ("MC"), defined as any materials originating from unexploded ordnance (e.g., TNT, RDX) that represent discarded military munitions, or other military munitions, including explosive and nonexplosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions (see 10 U.S.C. 2710 (e)(3)).

2. For the purposes of this Order, MEC shall also include any contamination, as defined under Rule 62-780.200(9), Florida Administrative Code (F.A.C.), that is associated with or derived from Unexploded Ordnance, Discarded Military Munitions, or Munitions Constituents; as well as contamination, as defined under Rule 62-780.200(9), F.A.C., resulting from military operations, or derived from detonation or release of ordinance, military munitions, or any similar such material including explosive residues, detonation fragments, or related debris therefrom.

PARTIES

3. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapters 403 and 376, Florida Statutes, and Chapters 62-730 and 62-780, F.A.C., (collectively the "Regulations"). The Department has jurisdiction over the matters addressed in this Order.

4. Mockingbird is the owner of the property known as the Vista Park (the "Vista Park Property," or "Property"), described with particularity at Exhibit 1 to this Order, located within the

Former Pinecastle Jeep Range ("FPJR"). The FPJR was operated by the U.S. Army Air Corps between April 23, 1943 (lease signed October 30, 1943, but effective April 23, 1943 to reflect date of U.S. custody and control of the FPJR) and August 6, 1948. The Property contains "wetlands" as that term is defined in section 373.019(27), Florida Statutes, and Rule 62-340.200(19), F.A.C.

5. Owner is a "person" within the meaning of Section 403.031(5), Florida Statutes.

BACKGROUND

6. The United States Government established the FPJR in 1943 and 1944, when the U.S. leased approximately 12,483 acres near Orlando, Florida for use by the Army Air Corps (the "Lease"). The leased property was known by various names during the period of occupation and use by the Army Air Corps, including the Tactical Demonstration Range, the Pinecastle Bombing Range, and the Pinecastle Chemical Demonstration Range; and the FPJR was utilized as a subpost, or auxiliary site, of Pinecastle Army Air Field, the predecessor to McCoy Air Force Base. Elements of the Army Air Force Tactical Center, headquartered at Pinecastle Army Air Field, used the FPJR for gunnery range training, including student instruction in employment of aerial weapons, small arms training with a 50 caliber moving machine gun, a 45 position rifle range, and a separate 5-target rifle range. The facility was also employed for choreographed munitions demonstrations, including ordnance demonstrations, convoy strafing demonstrations, chemical warfare demonstrations, and tactical air forces demonstrations.

7. On December 2, 1946, the U.S. War Department declared the FPJR surplus. Range clearance activities were conducted by the War Department at the FPJR from March to September, 1947, and during the summer of 1948; and on August 6, 1948 the War Department terminated the Lease with the then-owner of the Property, Magnolia Ranch, Inc., for the majority of the range acreage (11,833 acres).

8. In 1952, court records indicate that Magnolia Ranch, Inc. filed damage claims against the United States in the United States Court of Claims. The case was settled in 1955, but additional UXO clearance was conducted at the FPJR, by United States defense agencies, in April and June of 1953.

9. Owner represents that it acquired the Vista Park Property, a 1,574 acre parcel, through various private party purchases prior to 1970. At the time(s) of Owner's acquisition of the Vista Park Property, Owner further asserts that it made appropriate inquiries into the previous ownership and uses of the Property, including completion of appropriate property title reviews and status assessments, which revealed no evidence of impacts to the Property from its use as part of the FPJR.

10. Owner neither admits nor denies liability under provisions of sections 376.308 and 403.727(4), Florida Statutes, and is neither asserting nor disclaiming any affirmative defense provided under section 376.308(2), Florida Statute, by its execution of this Order.

11. The FPJR is now designated as a Formerly Used Defense Site ("FUDS") under the Defense Environmental Restoration Program ("DERP"), 10 U.S.C. § 2701, which administers environmental restoration activities for facilities formerly owned, leased or otherwise possessed by the United States. Under the jurisdiction of the Secretary of Defense, the United States Army ("Army") is the executive agent for the DERP program; and the US Army Corps of Engineers ("Corps") is the Army organization that manages and executes the FUDS program. The Corps utilizes an MEC clean-up process for FUDS consistent with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601-9675) ("CERCLA") and the Federal National Oil and Hazardous Substances Pollution Contingency Plan, as codified at 40 C.F.R. part 300, et seq. (the "National Contingency Plan" or "NCP").

12. On June 13, 2007, Parsons Engineering issued one of many Site Inspection Reports ("SI Reports") prepared for the Corps at the FPJR, which includes the Property. This

particular SI Report disclosed results of a study regarding MEC at the FPJR, and identified the presence of several bomb craters, munitions debris, and soil samples containing concentrations of explosive compounds.

13. Release of the June 13, 2007, SI Report generally coincided with a discovery [by an agent of Owner], in June 2007, of three fuzed practice bombs and an incendiary device (a small bomb) on the Vista Park Property.

14. As a result of this and other discoveries, including discovery of fuzed explosive devices on the grounds of the Odyssey Middle School, beyond the northern boundary of the Vista Park Property, the Corps commenced a Time Critical Removal Action ("TCRA") on the grounds of Odyssey Middle School and at the Tivoli Gardens and Warwick subdivisions, in Orlando, Florida, in August of 2007. The Corps extended the TCRA evaluative review and investigation into and across the northern portion of the Vista Park Property. The result of the Corps' TCRA activity at the FPJR is summarized in the TCRA Site Specific Removal Report, a public document.

15. Throughout the fall of 2007, the Corp's TCRA continued to disclose additional discoveries of munitions throughout the northern portion of the FPJR.

16. As a result of events that led to the TCRA, the Corps also accelerated its previously published schedules for conduct of a Remedial Investigation/Feasibility Study (the "RI/FS") for the FPJR; and the Corps initiated their RI/FS in February of 2008.

17. The RI/FS published by the Corps determined that the Vista Park Property is included within two of four Munitions Response Sites ("MRS") identified at the FPJR. Both the "Demonstration Range South" MRS and the "Remaining Area" MRS have been defined by the Corps to include portions of the Vista Park Property. The other two MRS areas, "Demonstration Range North" MRS and "Demonstration Range East" MRS, do not include any portion of the Vista Park Property.

18. Owner represents that the RI/FS, and related decision documents, also disclose that, while the Corps has estimated substantial costs for limited remediation of the Demonstration Range South MRS (total estimated remediation cost of approximately \$15.1 million), the Corps has not budgeted for, nor identified specific plans for, actions to remediate the entire Vista Park Property at any time in the foreseeable future. (See Remedial Investigation Decision Documents, USACE Jacksonville District).

19. As a result of the public health, safety and welfare concerns associated with continuing discoveries of MEC and munitions debris throughout the northern portion of the FPJR, the City of Orlando placed a temporary moratorium on construction activity and permitting, effective December 6, 2007, in and upon all properties within the boundary of the FPJR until a "licensed or certified geophysical contractor" has "certified" the site as "clear" "using generally accepted industry practices." The City of Orlando has published a "City of Orlando Area of Temporary Halt" map, which depicts boundaries within which the moratorium on construction is effective. The Vista Park Property is located within the moratorium area declared by the City of Orlando.

20. Owner has contracted for sale of the Property to a third party; but a necessary condition precedent to any title transfer is that Owner must obtain approval of FDEP for, and reasonably prompt implementation of, a site rehabilitation plan to remove and remediate unexploded ordnance, including MEC, consistent with all requirements of federal, state and local laws.

21. Owner has determined that it may not undertake site rehabilitation or other remedial action respecting explosive risks except as prescribed under CERCLA, the NCP, and Rule 62-730.320, F.A.C., and in accord with the general procedures for voluntary cleanup activity prescribed at Chapter 62-780, F.A.C.; and the Department has reviewed and accepted Owner's preliminary identification of previous site investigations and assessment of MEC expected at the Property, as presented at Sections 4.2 and 4.3 of Owner's Integrated Corrective

Action Plan (the "ICAP"), the Explosives or Munitions Emergency Response ["EMER"] plan prepared by Owner's EMER Specialists, Buffalo Restoration LLC, and attached here as Exhibit 2.

DETERMINATIONS AND FINDINGS

22. The Department has determined based on information prepared for the Corps and information provided by Owner that significant quantities of MEC, including potential UXO, appear to remain at the Property as a result of the historic operations/activities at the FPJR. MEC and its constituents, where abandoned, may be hazardous waste as defined in Rule 62-730.020, F.A.C., and subject to site rehabilitation of contamination pursuant to Chapter 62-780, F.A.C.

23. The Department has further determined, and hereby finds that:

- a. an emergency involving hazardous waste may exist if Mockingbird proceeds with a sale leading to planned development of the Property without an FDEP-approved explosives remediation plan, pursuant to 62-730.320, F.A.C.; and
- b. expanded public use of and access to the Property, as planned by Owner, will present a potential imminent threat to human health, safety, or the environment without implementation of an FDEP-approved explosives remediation plan; and
- c. the protection of human health, public safety, and the environment require that emergency remedial actions, approved by FDEP and prescribed in this Order, shall be taken before public access to and use of the Property.

24. The Department further finds that the provisions of sections 376.308(1) and 403.427, Florida Statutes define whether Owner has liability under Florida Law for the site rehabilitation of MEC or related debris at the Vista Park Property. The Department has

determined that, because the Property remains contaminated with potentially hazardous MEC, Owner may not proceed with plans for site rehabilitation, including remediation of explosive risks, at the Property except in accordance with an FDEP-approved site rehabilitation plan and the provisions of Rule 62-730.320, F.A.C.

25. The Department has determined that MEC existing on the Property may be appropriately characterized and removed as prescribed in the corrective measures and objectives for emergency detonation or thermal treatment of UXO developed by qualified EMER Specialists (see Rule 62-730.320, F.A.C.) on behalf of Owner and as prescribed in the ICAP.

26. The Department has also determined that the ICAP, attached here, does constitute an acceptable Cleanup Agreement Document ("CAD") which establishes appropriate response action activities for an authorized explosives or munitions emergency response ("EME Response"), as prescribed at Chapter 62-780 and Rule 62-730.320, F.A.C., and at paragraph 27, below. Owner shall apply appropriate cleanup target levels ("CTL"), determined in accordance with Chapter 62-780, F.A.C., and shall perform the approved EME Response, to accomplish a comprehensive protective site clearance of MEC at the Property, in the prescribed phases, and shall submit completion reports to the Department for those portions of the Property to be cleared in any given phase. The Department's acceptance of a completion report for any given phase will permit Owner to proceed with sale and further development of the Property pursuant to Florida Law, and as may otherwise be prescribed or authorized by local and regional land use authorities, including Owner's approved Annexation Agreement and PD Approval Agreement, as modified or amended and submitted to the City of Orlando (the "Application for Development").

27. Having reached resolution of the matter, the Department and Owner mutually agree, and it is hereby

ORDERED:

A. Upon the effective date of this Order, Owner shall commence, and continue to completion, its FDEP-approved EMER plan, the ICAP [Exhibit 2], for control, mitigation, elimination or removal of MEC and its related risks at the Vista Park Property, and post-remediation site restoration and appropriate mitigation of wetland impacts as specified in Appendix 7.7-A to the ICAP. Owner shall perform its activities in compliance with the ICAP and include adequate measures to protect human health and the environment where cleared parcels are located adjacent to parcels still subject to action as prescribed herein below. Such measures may include a surface clearance of the adjacent parcels, or fencing and signage, or other appropriate measures as are authorized by the Application for Development and approved by the Department. In addition to the information required by Rule 62-730.320, F.A.C., the ICAP incorporates the following plans, schedules or information, as finally approved by FDEP:

- (i) A Technical Management Plan that includes the following: legislative, regulatory and policy citations/references; technical Project objectives; Project Work organization documentation; Project deliverables and periodic reporting; and Project schedules identifying any proposed phasing of work thereunder.
- (ii) A Field Investigation Plan that includes the following: identification of Removal Areas and descriptions of necessary tasks required to implement the Plan, including testing of associated soil, sediment, ground water, and other environmental conditions of the Project sites to define the nature and extent of contamination therein.
- (iii) A Quality Management Plan that includes the following: duties and responsibilities of QC personnel; quality control processes; methodology for management of deficiencies and non-conformance; equipment calibration testing and maintenance procedures; and QC recordkeeping requirements.

(iv) An Explosives Management Plan that complies with CERCLA, the NCP, and Rule 62-730.320(6), F.A.C. Instead of requesting permission or notifying the Department prior to each treatment event, the Department shall be provided weekly reports, every Monday, for treatment events that occurred during the previous week. These reports can be submitted via electronic mail to Peter Cornais [FUDS contact] at peter.cornais @dep.state.fl.us; Tim Bahr [RCRA contact] at tim.bahr @dep.state.fl.us; and Tom Lubozynski [Central District contact] at Tom.Lubozynski@dep.state.fl.us. The reports should contain the following information for each event:

1. Date and time the treatment or detonation occurred;
2. Description of the treatment or detonation site with sufficient information for the site to be located;
3. Personnel that were present;
4. The type of UXO and the amount of UXO that was destroyed; and
5. Description of the actual procedure(s) used for the treatment or detonation.

(v) An Environmental Protection Plan that includes the following: approach, methods and operational procedures employed to protect the natural environment during performance of all ICAP work activity.

- (vi) A Site Restoration Plan that includes all FDEP-approved objectives, conceptual standards, and post-MEC clearance restoration criteria for the Property.

B. Prior to conducting any land clearing, dewatering, or vegetative removal activities pursuant to the approved ICAP, Owner shall complete the following:

- (i) A minimum of 30 days prior to the commencement of MEC Remedial Action Work Plan activities (hereafter "remediation activities") pursuant to the ICAP, Owner shall schedule a field review and approval of the flagged, preliminary delineation of the landward extent of wetlands and other surface waters, as shown in Figure 4 of Appendix 7.7-A, (hereafter the "Site Restoration Plan" or SRP) and the wetland community descriptions, as shown in Figure 5 of the SRP. Within 14 days following completion of the field inspection, Owner shall submit a revised GPS delineation of the landward extent of wetlands and other surface waters, if so directed by the Department. All wetlands and other surface waters shall be delineated in accordance with Chapter 62-340, F.A.C.
- (ii) A minimum of 30 days prior to the commencement of remediation activities, Owner shall provide a preliminary evaluation of the existing conditions of all wetlands on site using the Uniform Mitigation Assessment methodology (UMAM), Chapter 62-345, F.A.C. This preliminary evaluation shall be subject to Department review and approval during the onsite field inspection, as described in paragraph B.(i), above. The Department shall provide its final written UMAM assessment of the existing wetland

conditions to Owner within 10 business days of completion of the onsite field inspection.

- (iii) Owner shall submit a preliminary UMAM calculation of anticipated wetland impacts for the entire project to determine the number of credits to be reserved at the mitigation bank. Owner shall submit documentation from the mitigation bank(s) showing that the anticipated required mitigation credits have been reserved, prior to initiation of any onsite work. Credits reserved shall be of an appropriate type, as determined by the Department. Credits shall be purchased on a sector-by-sector basis, as described in paragraph I., below.

C. As promptly as possible, but within not more than one hundred and eighty (180) calendar days of the effective date of this Order, Owner shall begin to implement the approved ICAP in accordance with this Order.

D. Prior to initiating any MEC remediation activities for a specific area or Sector of the Property pursuant to the ICAP, Owner shall complete the following:

- (i) Owner shall provide the Department with notice prior to commencement of any remediation work or other activities within wetlands or other surface waters, within each Sector of the Property. This notice shall, at a minimum, include:
 - a. a scaled and dimensioned site plan that clearly establishes the boundaries of the sector;
 - b. a proposed timeline for all activities to be conducted within that sector;
 - c. a pre-construction topographic map of all areas of anticipated excavation; and

d. a sediment and erosion control plan/dewatering plan.

- (ii) Owner shall conduct surveys for water bird nesting colonies prior to any remediation activities. If nesting is observed, Owner shall maintain a minimum distance of 330 feet between the edge of the nesting area and any disturbance activity during the breeding season (Rodgers and Smith 1995). If maintaining the recommended buffer is impracticable or the removal of nesting habitat is necessary for the project, Owner shall contact the Florida Fish and Wildlife Conservation Commission (FWC) staff prior to conducting remediation activities to discuss minimization and permitting alternatives.
- (iii) Florida sandhill cranes may occur within or adjacent to the construction areas. Owner shall conduct surveys for this species. If nesting is observed within or adjacent to the construction site, FWC recommends maintaining a minimum distance of 400 feet between the edge of the nesting area and any disturbance activity during the breeding season (Stys 1997). If maintaining the recommended buffer is impracticable or the removal of nesting habitat is necessary for the project, Owner shall contact FWC staff prior to conducting remediation activities to discuss minimization and permitting alternatives.
- (iv) Owner shall make reasonable accommodations for Department staff to perform an on-site inspection of each Sector prior to commencement of remedial work activity within that Sector. Such inspections may be conducted, as determined by the Department to be necessary, to review the proposed erosion control and water

management plan, wetland delineations and conditions, any special listed species management plans, and the MEC remediation methods to be used. If the Department elects to not conduct such an inspection upon reasonable accommodation by Owner, no further action under this subparagraph shall be required, for that Sector.

E. During all MEC remediation activities, Owner shall, to the greatest practicable extent, eliminate and reduce adverse impacts when working within wetlands and other surface waters. Such measures may include, but are not necessarily limited to:

- (i) conducting work within wetlands during the dry season, where practicable;
- (ii) the use of existing field roads and temporary mats to provide access for vehicles and equipment within wetlands; and
- (iii) selective clearing of vegetation and the preservation of large, canopy trees and root structures, where practicable.

F. Owner shall segregate the first 12 inches of topsoil from earth removed while performing all excavations within wetlands. While work is in progress segregated topsoil shall be contained using any necessary performance based erosion control measure.

G. Temporary dewatering activities and discharges shall only be conducted where necessary to perform remediation and associated activities described within the ICAP, and shall not result in:

- (i) adverse flooding, or harm to offsite property or the public health, safety or welfare; or
- (ii) violations of state water quality standards within surface waters outside the project boundary.

H. Following MEC remediation activities, Owner shall restore all disturbed areas to pre-construction ground elevations and hydrologic conditions, following completion of MEC remediation work within each sector. Excavated areas shall be restored to match approximate, pre-construction surrounding grades and elevations. The segregated wetland topsoil noted in paragraph F., above, shall be replaced within the first top 12 inches of the restored soil elevation.

I. As further prescribed herein below, and within not more than thirty (30) calendar days of complete implementation of the ICAP for a specific area or Sector of the Property, Owner shall submit an Area Specific Completion Report ("ASCR") for Department review. The ASCR shall, among other things, demonstrate that EMER action/activity has been completed within a prescribed area in accordance with all terms of the ICAP, along with any special protective measures employed for a species encountered during remedial activity, and that the established MEC clearance goals of the ICAP have been achieved. The ASCR shall document areas cleared, dewatered, length of dewatering, any temporary roads through wetlands, and length of presence of the temporary roads through wetlands.

J. Within 30 days of submittal of the ASCR for each Sector, Owner shall provide Department staff the opportunity to enter and inspect all completed work within the Sector of the Property for compliance with this Order. If Department staff do not perform this inspection within this 30-day period, that shall not be considered to constitute non-compliance with this condition. Within 30 days of the Department's inspection of a completed Sector, the Department shall provide Owner with a post-remediation impact assessment for all wetland and other surface waters within which MEC remediation or other activities have occurred. Unimpacted wetland areas need not be reassessed. The site conditions will be documented following completion of remedial action in each ICAP search Sector, and the Department shall assign a score as described below that most closely resembles the observed, post-remediation conditions, where a wetland score of 0.1 reflects low wetland value and subsequently increased

values reflect increasing wetland value, using the following reference descriptions as benchmarks for the Department's assessment:

- (i) For wetlands identified as wet pasture, prior to remediation, as depicted in Figure 5 of the SRP:
 - a. Score of 0.2: The wet pasture has been re-graded to pre-remediation contours; all dewatering of wetlands has ceased and pre-remediation hydrology has been restored; the pasture area has been replanted in with native groundcover vegetation.
- (ii) For all other wetlands:
 - a. Score of 0.1: All vegetation is removed and the soil surface disturbed results in an essentially denuded and bare site; tree stumps have been removed; preexisting wetland contours have been re-established as practicable; no fill of wetlands which remain is present; all dewatering of wetlands has ceased and pre-remediation hydrology has been restored;
 - b. Score of 0.3: Trees and shrubs have been cut, but stump and root mass removal has been limited solely to those areas necessary for MEC remediation; preexisting wetland contours have been re-established as practicable; no fill of wetlands which remain is present; all dewatering of wetlands has ceased and pre-remediation hydrology has been restored.

K. Concurrently with the post-remediation impact assessment described in paragraph J., above, the Department shall provide Owner with a mitigation debit requirement

summary for all work conducted within the completed sector. This summary shall specify the required amount of mitigation bank credit necessary to offset wetland and surface water impacts within the sector. In recognition that MEC inherently constitutes a threat to the public health, safety and welfare, and that removal of such material is in the public interest, the required amount of mitigation bank credit shall be calculated as follows, for all impacted wetland and other surface water areas within the completed sector:

$$(P - I) * A * 0.2 = \text{Required Mitigation Bank Credit}$$

Where the terms are defined as:

- P = The Department's pre-remediation score for that wetland area (as described in condition B (ii), above)
- I = The Department's impacted (post-remediation) score for that wetland area (as described in condition J. above)
- A = The area (in acres) of the impacted portion(s) of that wetland area.

L. Within 60 days of the Department's provision of the post-remediation and impact assessment and mitigation requirement summary described in paragraphs J. and K., above, Owner shall submit to the Department proof of purchase of the required mitigation bank credits necessary to offset all impacts for activities conducted within the completed Sector. Owner shall purchase credits that the Department determines to be appropriate to offset the project impacts.

M. Based upon the Department's review of the ASCR for each Sector, the Department will notify Owner in writing of its acceptance or rejection of the findings and terms of any ASCR within thirty (30) days of receipt, or provide Owner with written notification of the

reasons why additional time is needed for the Department to accept or reject any portions of any ASCR.

- (i) If the Department rejects any portion of an ASCR, it shall include in its notice of rejection a statement identifying all ICAP requirements the Department considers incomplete or not satisfactorily performed, and a proposed schedule for completion of said requirements.
- (ii) Owner shall, within fifteen (15) days of receipt of Department's notice of ASCR rejection, either (1) submit a notice of acceptance of the Department's determination, and begin the performance of scheduled additional requirements; or (2) submit a notice of dispute respecting the determination. Disputes of any Department determination respecting a proposed ASCR shall be administered as prescribed at paragraph 40 of this Order.
- (iii) Any Owner failure to timely submit a notice as prescribed at subparagraph (D)(ii), above, shall be deemed acceptance of the Department determination and requirements.

N. Owner shall submit a Final Completion Report ("FCR") to the Department within thirty (30) calendar days of full and satisfactory completion of all requirements of this Order for the Property, and the Department shall either accept or reject Owner's FCR, in writing, within forty-five (45) days of receipt, or provide Owner with written notification of the reasons why additional time is needed for the Department to accept or reject any portions of the FCR. If the Department accepts Owner's FCR, said acceptance shall constitute the Department's final determination that no further corrective measures or actions are required on or at the Vista Park Property for necessary MEC clearance under this Order, and related Site Rehabilitation (the "NFA Determination") pursuant to this Order. Following the NFA Determination, where Owner

has also satisfied the requirements for site rehabilitation under Chapter 62-780, Owner may request and the Department shall issue a Site Rehabilitation Completion Order pursuant to the applicable provisions of Chapter 62-780, F.A.C.

- (i) If the Department rejects any portion of Owner's proposed FCR, the Department shall include in its notice a statement identifying all EMER or Site Restoration requirements that the Department considers incomplete or not satisfactorily performed and a schedule for completion of said requirements.
- (ii) Owner shall, within fifteen (15) days of receipt of the Department's notice of FCR rejection, either 1) submit a notice of acceptance of the Department's determination, and begin performance of scheduled additional requirements; or 2) submit a notice of dispute respecting the determination. Disputes of any Department determination respecting the proposed FCR shall be administered as prescribed at paragraph 40 of this Order.
- (iii) Any Owner failure to submit a notice as prescribed at subparagraph (E)(ii), above, shall be deemed acceptance of the Department's determination and requirements.

O. If the Department determines that any violation of this Order or the Regulations has occurred with respect to any activity, or proposed activity, of Owner, its EMER, or any of the subcontractors, suppliers or agents engaged for work under this Order, the Department shall provide a written explanation of its determination to Owner, and will make its best efforts to provide such notice and written explanation within twenty-one (21) calendar days of the time when the Department knew of an alleged violation. Within fifteen (15) calendar days of receipt of the Department's notice of violation, Owner shall: 1) submit a notice of acceptance of the determination and a proposed plan for correction or elimination of the violation(s); or 2)

submit a notice of dispute of the determination. If Owner fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Department's determination. Any Owner dispute of Department determinations shall be administered as prescribed at paragraph 40 of this Order.

P. Owner shall submit brief progress reports in writing to the Department every fourteen days. Progress reports shall include the following information:

- i. a summary description of all ICAP activities performed during the previous two weeks; and,
- ii. a summary description of activities planned for performance in the upcoming two weeks (may take the form of a critical path project schedule).

Q. Should Owner determine, in its sole discretion, that continuation/final completion of activities prescribed by this Order is no longer economically feasible, and that Owner cannot continue to finance the ICAP work, Owner may notify the Department of its desire to voluntarily terminate this Order. Such notification shall include a proposed time frame for completing restoration and mitigation, pursuant to the conditions of this Order and the SRP, of all wetlands and other surface waters impacted by any MEC remediation work or related activities. Approval for any such Owner request shall not be unreasonably withheld; provided, however, that the Department does not determine, and provide written documentation of its determination, that the Property where EME Response actions have commenced, but may remain incomplete, does not present a greater risk to human health, safety or the environment than was presented prior to Owner's undertaking the activities prescribed by this Order. The Department shall not

unreasonably withhold or delay this determination. Owner acknowledges and agrees that termination of this Order shall be contingent upon Owner's prior completion of SRP obligations for any impacted wetlands and other surface waters on the Property, pursuant to the conditions of this Order and the SRP, within the time frame agreed upon by the parties.

SCOPE AND EFFECT OF ORDER

28. This Order shall be effective upon the latest date of signature by both parties. This Order may be modified or amended, but only by a writing duly signed and authorized by the Department and concurred in by Owner.

29. The Parties' obligations under this Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions approved pursuant to this Order are incorporated herein and become enforceable under the terms of this Order and applicable laws as of the date of receipt by Owner.

30. The Department's approval of any submission or action under this Order shall not constitute a defense to, nor an excuse for, any subsequent violation of any requirement of this Order or the Regulations by Owner, its agents or representatives.

31. Owner shall comply with all applicable federal, State, and/or local laws or regulations, and shall obtain all necessary approvals or permits to conduct the investigations and corrective measures required by this Order. The Department makes no representation with respect to approval and permit requirements of federal or local laws or regulations, or State laws or regulations other than those prescribed by provisions of the regulations for hazardous waste management.

32. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both this Order and the number of the paragraph pursuant to

which the document is required. Any work performed pursuant to a plan, or amended plan, submitted for Department approval under this Order, but commenced and continuously pursued prior to the Department's written approval of said plan, shall be solely at the risk of Owner. The Department may, however, ratify such pre-approval work, and any Department approval or ratification of a plan or action submitted by Owner is effective upon receipt by Owner. Any previously approved Owner plans, including all procedures and schedules contained in such plans, are hereby incorporated by reference into this Order.

AFFECTED NON-PARTY INTERESTS

33. Owner shall publish the following Notice in a newspaper of general circulation (as defined in Section 50.031 of the Florida Statutes) in Orange County, Florida. This Notice shall be published one time only within fourteen (14) days after the effective date of this Order, and Owner shall provide proof of the publication to the Department within seven (7) days of the publication.

"STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION NOTICE OF VOLUNTARY CLEANUP ORDER

The Department of Environmental Protection gives notice of agency action of entering into an Order with Mockingbird Orlando LLC ("Owner") pursuant to Section 120.57(4), Florida Statutes. The Order addresses the FDEP approval of Owner's proposed explosives or munitions emergency response at The Vista Park Property, identified in Attachment 1 to the Order. The Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 3319 Maguire Boulevard, Suite 232; Orlando, Florida 32803-3767.

Persons who are not parties to this Order but whose substantial interests are affected by this Order have a right, pursuant to Sections 120.569 and 120.57, Florida Statutes, to petition for an administrative hearing.

The petition must contain the information set forth below and must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 21 days of publication of this Notice. A copy of the petition must also be mailed at the time of filing to the District Office named above at the address indicated. Failure to file a petition within the 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, Florida Statutes.

The petition shall contain the following information:

- (i) The Department's Order identification number and the county in which the subject matter or activity is located;
- (ii) The name, address, and telephone number of each petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding;
- (iii) An explanation of how the petitioner's substantial interests will be affected by the Order;
- (iv) A statement of when and how the petitioner received notice of the Order;
- (v) A statement of all material facts disputed by petitioner, if any;

- (vi) A statement of the specific facts the petitioner contends warrant reversal or modification of the Order;
- (vii) A statement of which rules or statutes the petitioner contends require reversal or modification of the Order; and
- (viii) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the Department to take with respect to the Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received), within 21 days of publication of this Notice, in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Sections 120.569 and 120.57, Florida Statutes, and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 28-106.205, Florida Administrative Code.

A person whose substantial interests are affected by the Order may file a timely petition for an administrative hearing under Sections 120.569 and 120.57, Florida Statutes, or may choose to pursue mediation as an alternative remedy under Section 120.573, Florida Statutes, before the deadline for filing a petition. Choosing mediation will not adversely affect the right to a hearing if mediation

does not result in a settlement. The procedures for pursuing mediation are set forth below.

- (i) Mediation may only take place if the Department and all the parties to the proceeding agree that mediation is appropriate. A person may pursue mediation by reaching a mediation agreement with all parties to the proceeding (which include Owner, the Department, and any person who has filed a timely and sufficient petition for a hearing) and by showing how the substantial interests of each mediating party are affected by the Order. The agreement must be filed in (received by) the Office of General Counsel of the Department at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, within 10 days after the deadline as set forth above for the filing of a petition.
- (ii) The agreement to mediate must include the following:
 - (a) The names, addresses, and telephone numbers of any persons who may attend the mediation;
 - (b) The name, address, and telephone number of the mediator selected by the parties, or a provision for selecting a mediator within a specified time;
 - (c) The agreed allocation of the costs and fees associated with the mediation;
 - (d) The agreement of the parties on the confidentiality of discussions and documents introduced during mediation;

(e) The date, time, and place of the first mediation session, or a deadline for holding the first session, if no mediator has yet been chosen;

(f) The name of each party's representative who shall have authority to settle or recommend settlement; and

(g) Either an explanation of how the substantial interests of each mediating party will be affected by the action or proposed action addressed in this notice of intent or a statement clearly identifying the petition for hearing that each party has already filed, and incorporating it by reference.

(h) The signatures of all parties or their authorized representatives.

(ii) As provided in Section 120.573, Florida Statutes, the timely agreement of all parties to mediate will toll the time limitations imposed by Sections 120.569 and 120.57, Florida Statutes, for requesting and holding an administrative hearing. Unless otherwise agreed by the parties, the mediation must be concluded within sixty days of the execution of the agreement. If mediation results in settlement of the administrative dispute, the Department must enter a final order incorporating the

agreement of the parties. Persons whose substantial interests will be affected by such a modified final decision of the Department have a right to petition for a hearing only in accordance with the requirements for such petitions set forth above, and must therefore file their petitions within 21 days of this published Notice. If mediation terminates without settlement of the dispute, the Department shall notify all parties in writing that the administrative hearing processes under Sections 120.569 and 120.57, Florida Statutes, remain available for disposition of the dispute, and the notice will specify the deadlines that then will apply for challenging the agency action and electing remedies under those two statutes.”

OFF-SITE ACCESS

34. To the extent any EME Response action prepared by Owner requires access to property not owned or controlled by Owner, Owner shall use its best efforts to obtain access from the owners of such property, which access shall allow for the conduct of required activities, and particularly those necessary to the health and safety of the general public, during implementation of the EME Response work. Owner will also use its best efforts to obtain necessary permission of any adjacent property owner for Department access to such property, to review and oversee activities, as necessary, pursuant to this Order. In the event that off-site

access cannot be obtained despite Owner's best efforts, Owner shall promptly notify the Department, in writing, regarding the efforts undertaken and the potential or expected consequences of failure to obtain such access.

35. If necessary off-site access is obtained, but thereafter revoked by owners or entities controlling access, Owner shall notify the Department within (5) business days of such refusal or revocation. The Department may at any time seek to obtain access as is necessary to implement the terms of this Order; and Owner shall reimburse the Department for any damages, costs, or expenses, including expert and attorney's fees, that the Department is ordered to pay or incurs in connection with efforts to obtain access necessary to implement all terms of this Order. Owner shall pay any reimbursement sums to the Department, or arrange a payment schedule therefor with the Department, within 30 days of written demand by the Department.

36. Owner shall notify the Department in writing when Owner's EMER Response Specialist, or any of their subcontractors, initially mobilizes to the Property, or thereafter mobilizes to a new Sector of the Site [ICAP creates seven (7) Sectors]. Owner shall provide bi-weekly reporting to the Department, as prescribed at paragraph 27(G) of this Order; and upon request, shall provide the Department with copies of any blue print diagrams, construction drawings, or related permits for any EME Response activity undertaken pursuant to this Order.

FORCE MAJEURE

37. Owner shall perform the requirements of this Order within the schedules and time limits set forth herein and in any approved plan, unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Owner and which cannot be overcome by due diligence. The occurrence of a force majeure event does not terminate this Order or alleviate the parties' obligations hereunder.

ADMINISTRATIVE APPEAL/REVIEW

38. Owner reserves its rights and defenses regarding liability in any proceedings regarding the Property.

39. Owner acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes, on the terms of this Order. Owner acknowledges its right to appeal the terms of this Order pursuant to Section 120.68, Florida Statutes, but waives that right upon signing this Order.

40. With regard to any agency action taken by the Department concerning proposals submitted by Owner, as required by Chapter 62-780, F.A.C., Owner may file a Petition for Formal or Informal Administrative Hearing.

A. If Owner objects to or disputes the Department's agency action, pursuant to Sections 120.569 and 120.57, Florida Statutes, Owner shall have the burden to establish that the Department's agency action was not reasonable.

B. Owner's petition must contain the information set forth in paragraphs 27 D, E, or F of this Order, must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS-35, Tallahassee, Florida 32399-3000, within 15 days of receipt of the Department's agency action, and must conform with the requirements of Rule 28-106.201 or Rule 28-106.301, Florida Administrative Code.

C. Failure to file a petition within the prescribed time period shall constitute a waiver by Owner of its right to request an administrative proceeding under Sections 120.569 and 120.57, Florida Statutes.

D. If both parties agree, the Department and Owner may mediate the dispute as provided in Section 120.572, Florida Statutes. If the parties agree to mediation, the time for filing a petition pursuant to this paragraph is tolled until such time as the mediation is unsuccessful. Upon notice from the Department that the mediation is unsuccessful, Owner shall have 21 days to file its petition as provided herein.

E. If Owner seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Owner in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all issues unresolved at the time of the request for administrative proceeding.

F. All other aspects of this Order shall remain in full force and effect at all times.

41. Except as prescribed at paragraph 27(H), should any event [including administrative or judicial challenges by third parties] occur which causes delay or the reasonable likelihood of delay in complying with requirements of this Order, Owner shall promptly notify the Department and shall, within seven calendar days of such notification, engage the Department in negotiations to establish that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Owner, and to reach agreed-upon adjustments to the ICAP schedule which incorporate all reasonable measures necessary to avoid or minimize delay.

GENERAL PROVISIONS

42. Nothing herein shall be construed to limit the authority of the Department to undertake any action against Owner in response to or to recover the costs of responding to

conditions at or emanating from the site that require Department action to abate an imminent hazard to the public health or welfare, or to the environment.

43. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, Florida Statutes. Failure to comply with the terms of this Order shall constitute a violation of Section 403.161(1)(b), Florida Statutes.

44. Owner is fully aware that a violation of the terms of this Order may subject Owner to judicial imposition of damages and/or civil and criminal penalties.

45. Owner shall allow all authorized representatives of the Department access to the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes of the Department.

46. The Department retains exclusive jurisdiction over Owner's proposed EMER Plan and the activities prescribed therein [and hereby expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes or the rules promulgated there-under not specifically addressed by the terms of this Order, including but not limited to undisclosed releases, contamination or polluting conditions.]

47. Electronic signatures or other versions of the parties' signatures, such as portable document format (pdf) or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order shall be effective until reduced to writing and executed by both the Owner and the Department.

48. All submittals and payments required by this Order to be submitted to the Department shall be sent to the Florida Department of Environmental Protection, Peter Cornais, Program Administrator, Waste Cleanup, Division of Waste Management; 2600 Blair Stone Road, Tallahassee, Florida 32399-2400.

49. In the event of a sale or conveyance of the Property, and if all of the requirements of this Order have not been fully satisfied, Owner shall, at least 30 days prior to

the sale or conveyance of the Property, (1) notify the Department of such sale or conveyance, (2) provide the name and address of the purchaser, or operator, or person(s) in control of the facility, and (3) provide a copy of this Order with all attachments to the new owner. The sale or conveyance of the Property shall not relieve Owner of the obligations imposed in this Order.

50. Any plan, report, notice or other document or communication required under this Order shall be sent or directed, in writing or by electronic mail which shall be in writing under this Order, to:

A. For the Department:

Florida Department of Environmental Protection

ATTN: Peter Cornais, Program Administrator
Waste Cleanup Program
2600 Blair Stone Road, MS 4505
Tallahassee, Florida 32399-2400
peter.cornais@dep.state.fl.us

With a copy to:

John A. Coates, P.E.
Assistant Director
Division of Waste Management
2600 Blair Stone Road, MS 4500
Tallahassee, Florida 32399-2400
john.coates@dep.state.fl.us

Larry Morgan
Senior Deputy General Counsel
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
larry.morgan@dep.state.fl.us

Lisa Prather
Environmental Consultant
DEP Central District Office
3319 Maguire Boulevard, Suite 232
Orlando, Florida 32803-3767
lisa.prather@dep.state.fl.us

B. For the Owner:

Mockingbird Orlando, LLC
ATTN: John J. Brunetti, Sr., Agent
2200 E. 4th Avenue

Hialeah, FL 33013
(305) 885-8000
cheriehialeah@aol.com

With a copy to:

Robert Yeager, c/o Vista East, LLC
Managing Agent
Mockingbird Orlando LLC
130 S. Orange Avenue, Suite 202
Orlando, Florida 32801
robert.yeager@sullivanpropertiesinc.com

Hubert A. Farbes, Jr.
Martha L. Fitzgerald
Brownstein Hyatt Farber Schreck, LLP
410 17th Street, Suite 2200
Denver, Colorado 80202
hfarbes@bhfs.com
mfitzgerald@bhfs.com

and

Steven H. Gray
Gray, Ackerman & Haines, P.A.
125 NE First Avenue, Suite 1
Ocala, FL 34470-6675
sgray@gahlaw.com

51. The terms, conditions and entitlements under this Order shall inure to the benefit of and be binding upon Owner, its respective successors and assigns.

EFFECTIVE DATE


52. This Order is a final order of the Department pursuant to Section 120.52(7), Florida Statutes, and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon the timely filing of a petition this Order will not be effective until further order of the Department.

AUTHORIZATION TO SIGN

53. The undersigned warrant that they are authorized to legally bind their respective principals to the terms of this Order. This Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Order.

DONE AND ORDERED this 30 day of JUNE, 2015, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION:



Name

for Jorge Caspary

Date June 26, 2015

Director, Division of Waste Management
Florida Department of Environmental Protection
2600 Blair Stone Road, MS 4500
Tallahassee, Florida 32399-2400

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APPROVED FOR MOCKINGBIRD ORLANDO, LLC


Mockingbird Orlando, LLC
By: John J. Brunetti, Sr., Agent
2200 E. 4th Avenue
Hialeah, FL 33013
(305) 885-8000
cheriehialeah@aol.com

Date 6/29/15

Filed, on this date, pursuant to Section 120.52, F.S., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

June 30, 2015

Date

Copies furnished to:
Lea Crandall, Agency Clerk
Mail Station 35

Exhibit 1

LOCATION OF THE PROPERTY

The Vista Park Property is located approximately 9 miles southeast of downtown Orlando and 3 miles east of the Orlando International Airport.

Legal Description

The South 1/2 of Section 19; the South 1/2 of Section 20, lying West of State Road 417 (Eastern Beltway); All of Section 29, lying West of State Road 417 (Eastern Beltway, and lying North of State Road 528 (Beeline Expressway); All of Section 30, lying North of State Road 528 (Beeline Expressway) and that part of Section 31, lying North of State Road 528 (Beeline Expressway), all being in Township 23 South, Range 31 East. Said land lying and being in Orange County, Florida.

LESS:

From a 6 inch x 6 inch concrete monument with nail (no identification) at the Northwest corner of the Northwest 1/4 of Section 31, Township 23 South, Range 31 East, Orange County, Florida, said corner being N00°15'33"E, 2655.41 feet from a 6 inch x 6 inch concrete monument with a 3/4 inch diameter iron pipe (no identification) at the Southwest corner of said Northwest 1/4 of Section 31, as shown on the Orlando-Orange County Expressway Authority Right of Way Map for State Road 528 / Narcoossee Road Interchange, Project 907, on file with the Orlando-Orange County Expressway Authority, Orlando, Florida, run S00°15'33"W, 815.01 feet along the West boundary of said Northwest 1/4 of Section 31, said boundary also being the West boundary of that certain parcel of land as described and recorded in Official Records Book 7269, Page 3555, Public Records of Orange County, Florida, for the POINT OF BEGINNING; thence continue S00°15'33"W, 81.55 feet along said West boundaries to a point on the existing Northerly limited access right of way line of State Road 528 as shown on the aforesaid Right of Way Map; thence continue S00°15'33"W, 53.45 feet along said West boundaries and said existing Northerly limited access right of way line to a point being 150.00 feet North of, when measured at right angles to, the centerline of survey of State Road 528, as shown on the aforesaid Right of Way Map; thence S89°53'38"E, 155.99 feet continuing along said existing Northerly limited access right of way line parallel with said centerline of survey to a point at the beginning of a tangent curve concave Northerly and having a radius of 5579.58 feet; thence Northeasterly 164.05 feet continuing along said existing Northerly limited access right of way line parallel with said centerline of survey and the arc of said curve with a chord bearing of N89°15'49"E and a chord distance of 164.04 feet, through a central angle of 01°41'04" to a point; thence N00°15'33"E, 135.13 feet parallel with the aforesaid West boundary of the

Northwest 1/4 of Section 31, to a point; thence S89°39'03"W, 320.02 feet to the Point of Beginning.

Being subject to any rights of way, easements and restrictions of record.

ADDRESS

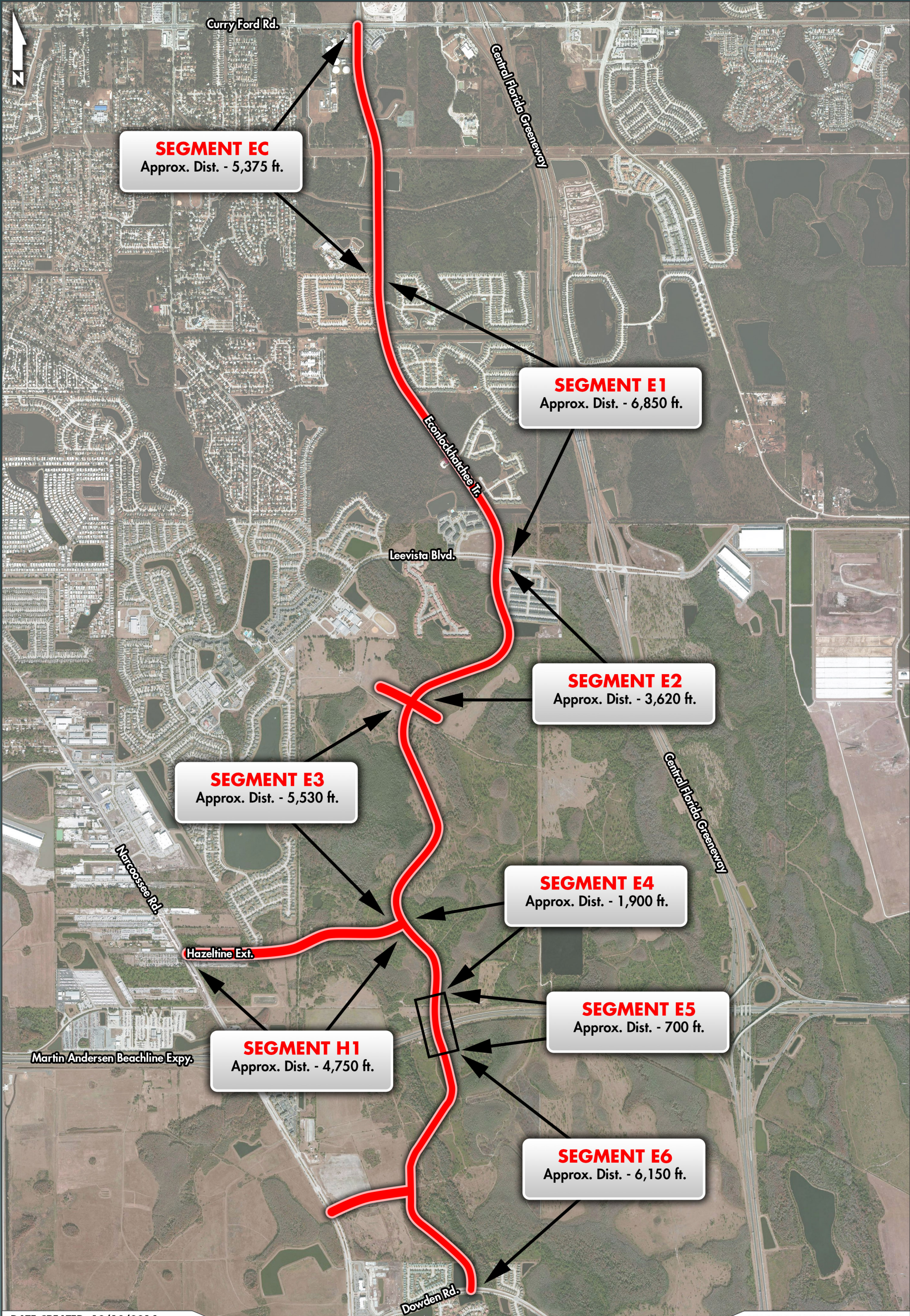
State Road 417, Parcel ID # (19-23-31-0000-00-001)

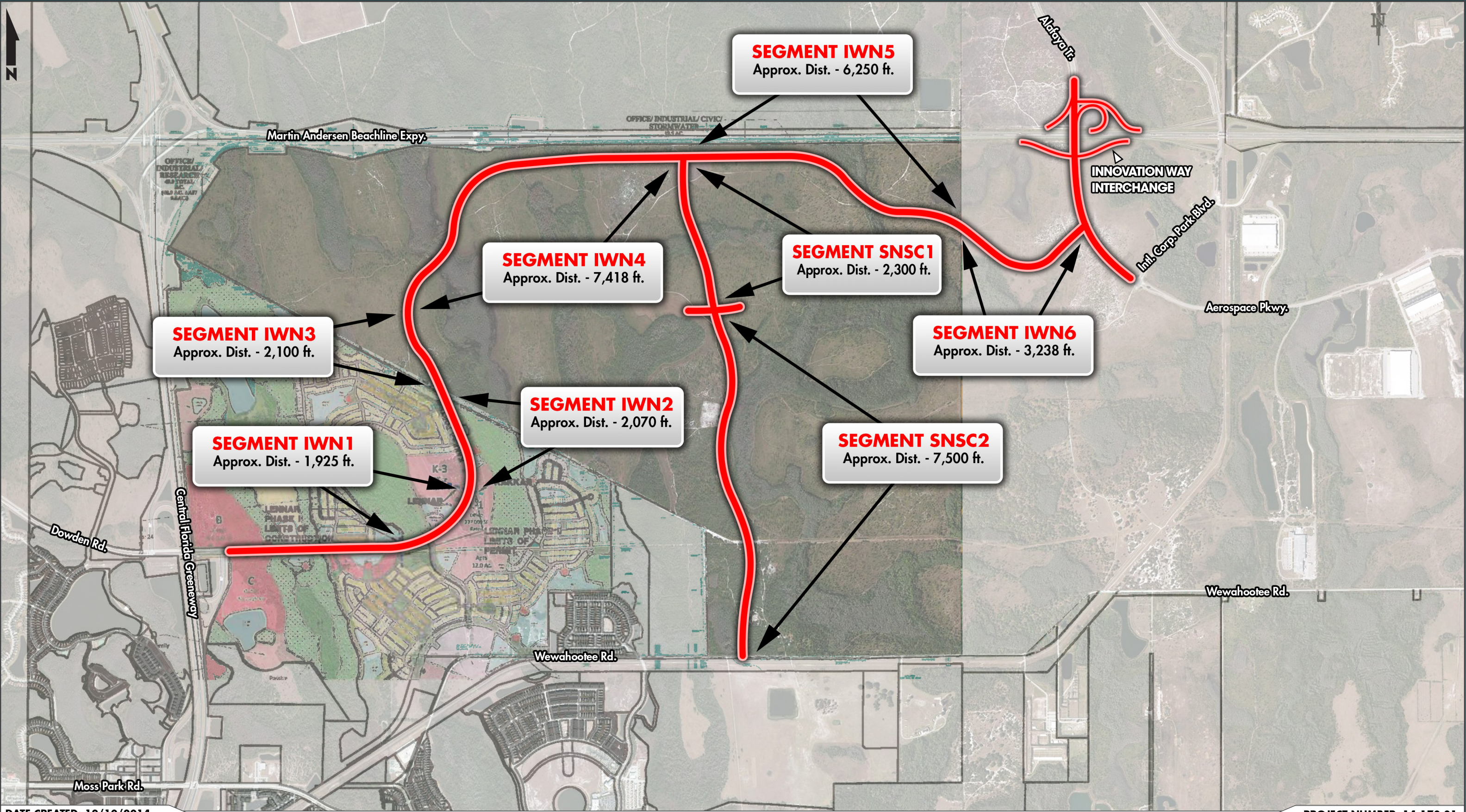
Exhibit "C"



Exhibit "D"







DATE CREATED: 12/10/2014

PROJECT NUMBER: 14-170.01

Exhibit "G"

Allowable Costs

I. PROFESSIONAL & TECHNICAL

A. Legal/Fees/Permits

1. Legal
2. Title Policy
3. Escrow Fees
4. Recording/Govt. Fees
5. Access Fees
6. Connection Fees
7. Inspection/Plan Check Fees
8. Letter of Credit Fees
9. Performance Bond Fees
10. Permit Fees

B. Studies

1. Environmental Studies/Engineering
2. Topographic Studies
3. Geotechnical Studies

C. Surveys

1. Right-of-Way Surveys
2. Pre-Construction Surveys
3. Centerline Control
4. Retention Pond Coordinates
5. Other Surveys

D. Land Planning

1. Land Planning
2. Site Plan
3. Platting

E. Design Engineering

1. Design Engineering
2. Traffic Engineering
3. Engineering Pre-Construction Services
4. Civil Design
5. Structural Design/Engineering/Inspection
6. Soils Engineering
7. Utility Design

8. Geology
9. Archaeological
10. Landscape Architect
11. Graphics/Sign Design
12. Shop Drawings
13. Other Engineering Design

F. Other Professional & Technical

1. Inspections
2. Testing
3. Other Professional & Technical

G. Other Pre-Construction Costs

1. Printing
2. Bid Costs

II. CONSTRUCTION

A. Site Preparation

1. Mobilization
2. Construction Layout
3. Soils Testing
4. Mow & Disc R/W, ESMT, Ponds
5. Clear & Grub R/W, ESMT, Ponds
6. Muck Removal, Stockpile
7. Pond Excavation, Dewatering
8. Pond Liners
9. Fine Grade R/W & ESMT
10. Seed & Mulch R/W & ESMT
11. Sod 4' Back of Curb
12. Sod Outer Backslopes
13. Sod Pond Banks
14. Silt Fence, Turbidity Barriers, Erosion Control
15. Water Monitoring/Turbidity Testing

B. Roadway

1. Curb & Gutter
2. Median Curb
3. Asphalt
4. Soil Cement
5. Stabilized Subbase
6. Stabilize Under Curb
7. Friction Course, Overlay
8. Striping & Signage

9. Concrete Sidewalk
10. Maintenance of Traffic
11. Guardrail
12. Fences & Walls, Retaining Walls
13. Tie to Existing Roadway
14. Sleeves, Conduit
15. Miscellaneous Intersection Improvements
16. Underdrain
17. Materials Testing

C. Bridges (Econ)

D. Storm Drainage

1. Reinforced Concrete Pipe
2. Curb Inlet, Inlet Tops
3. Drainage Control Structures, Skimmers
4. Mitered End Sections, Splash Pads, Riprap, Geofabric
5. Concrete Headwall
6. Manhole, Manhole Tops
7. Tie to Existing Structure
8. Junction Boxes, Tops
9. Other Storm Drainage Pipes
10. Guardrail
11. Dewatering
12. Grates & Chains

E. Landscaping

1. Landscape Grading
2. Irrigation/Sprinklers
3. Planting (Grass, Trees, Plants)
4. Pumps
5. Electrical
6. Other Landscaping

F. Traffic Signalization

G. Street Lighting

1. PVC Conduit
2. Fixture Upgrades
3. Concrete Pads or Bases
4. Other

H. Environmental

1. Wetland Mitigation Costs, including the cost of off-site mitigation credits and the value of on-site conservation easements.
2. Monitoring & Reporting Costs

I. Contingency

J. General & Administrative

1. Engineering Services During Construction
2. Construction Inspection Services
3. Construction Supervision/Management (5%)
4. As-Builts/Certifications
5. Direct Job-Related G&A
6. Other Requirements per Annexation Agreement paragraph 5.7.7
7. Other G&A

Legend

--- Wetland Line

▬ Parcel Line

ORANGE COUNTY BCC

CARLSBAD ORLANDO LLC

Starwood North-South
Connector - Segment 3
(SNSC-3))

Wewahootee Road
(Private, 30' Wide Easement
in ORB 5761/3567)
(Aprox. 28' within Carlsbad
Orlando LLC and 2' within
Lake Hart Partners LTD)

LAKE HART PARTNERS II LTD

Lake Hart Partners II, LTD.
portion of ROW for SNSC-3.

CITY OF ORLANDO
(OUC - Railroad ROW)

City of Orlando/OUC RR
portion of ROW for SNSC-3.

Innovation Way South
(Future, 125' ROW)

Open Space Tract
(OS-3, 40' Wide)

Lennar Homes LLC
portion of ROW for SNSC-3.

LENNAR HOMES LLC