

PREPARED BY AND RETURN TO: Zoila Easterling, Esq. Orlando Utilities Commission 100 West Anderson Street Orlando, Florida 32802	Instrument: 802.1 Project: South Service Area/East Service Area 36 inch Water Main (Boggy Creek Road to Lake Nona Blvd.) Tax Parcel ID No.: 22-24-30-0000-00-007
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THIS SPACE RESERVED FOR RECORDER'S USE

NON-EXCLUSIVE UNDERGROUND TRANSMISSION PIPE UTILITY EASEMENT AGREEMENT

THIS NON-EXCLUSIVE UNDERGROUND TRANSMISSION PIPE UTILITY EASEMENT AGREEMENT (“Easement Agreement”) made as of this ____ day of _____, 2016, by and between **ORLANDO UTILITIES COMMISSION**, of the City of Orlando (“OUC”), the **CITY OF ORLANDO**, a municipal corporation (“City”) (OUC and City are collectively referred to herein as “Grantor”), **ORANGE COUNTY FLORIDA**, a Charter County and a political subdivision of the State of Florida (the “Grantee”):

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located in Orange County, Florida (“Property”), recorded in the Official Records of Orange County, Florida, at O.R.B. 3494, Page 2564; and

WHEREAS, OUC has constructed and operates a rail line within the Property; and

WHEREAS, Grantee (except as specifically provided, references to “Grantee” shall in all events mean and refer to Grantee and its successors and assigns) desires to obtain, a non-exclusive underground transmission pipe utility easement under and across the portion of the Property more particularly described on Exhibit “A” attached hereto and made a part hereof (the “Easement Area”) in order to construct, install, operate, use and maintain three utility pipes (as hereinafter defined), each encased within its corresponding casing having an exterior diameter not to exceed 54” (each individual casing hereinafter being referred to as the “Casing” and jointly hereafter referred to as the “Casings”);

WHEREAS, said underground three utility pipes shall consist of: one (1) planned underground potable water line with an interior diameter not to exceed 36”, one (1) planned underground reclaim water line with an interior diameter not to exceed 20” (said planned water lines shall herein after be jointly referred to as the “Planned Water Lines”), and one (1) future

potable water line with an interior diameter not to exceed 36” (the “Future Water Line”) (the Planned Water Lines and the Future Water Line are herein collectively referred to as the “Water Lines”);

WHEREAS, the Water Lines shall each be installed within the corresponding Casing (one water line per Casing and within the Easement Area);

WHEREAS, the Water Lines installed within the Casings shall only be used for the transmission of potable water and reclaimed water by Grantee, as appropriate, and shall be maintained in accordance with this Easement Agreement (the “Permitted Use”); and

WHEREAS, Grantor has agreed to grant such herein stated easement subject to the terms and conditions herein provided.

NOW, THEREFORE, for and in consideration of the foregoing premises, the mutual agreement of the parties hereto, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Recitations**. The above recitations are true and correct, and are incorporated in and made a part of this Easement Agreement.

2. **Grant and Use of Transmission Pipe Utility Easement**. Grantor does hereby give, grant and convey unto Grantee (and its successors and assigns) a non-exclusive water transmission pipe utility easement in perpetuity, or such earlier date as the use thereof as set forth herein is abandoned (this “Easement”) for the Permitted Use, under and across the Easement Area, and in all instances, subject to the terms and conditions of this Easement Agreement. This Easement shall be used by Grantee (and its successors, assigns, employees, contractors and agents) solely for the Permitted Use.

3. **Construction and Maintenance of Easement Area**.

(a) At such time as may be mutually agreed to by Grantee and OUC, Grantee shall, at its sole cost and expense, commence and thereafter diligently and in good faith endeavor to complete all jack and bore work and all necessary installation and construction work associated with the Casings and Planned Water Lines within the Easement Area and thereafter may coordinate with OUC to install the Future Water Line (all said work shall hereinafter be referred to as the “Work”). The Work shall be conducted in accordance with the plans and specifications as may be approved by OUC, in its sole discretion. The plans shall bear the Job Number, name of the project; and state the date and name of the party approving said plans, with the corresponding proper signature of same (the “Plans”), a signed copy of which shall be delivered by Grantee to OUC. The Plans may contain, at OUC’s sole discretion, certain restrictions or prohibitions concerning, but not limited to, the exact placement of the Waterlines or Casings, and the ability to dig pit, holes, or otherwise trench in the Easement Area. The contractors and subcontractors (if any) used by Grantee to perform the Work shall be paid directly by Grantee. Grantee shall not materially change or amend the Plans without the prior written consent of OUC, which consent shall not be unreasonably withheld or delayed and the changed or amended version shall

thereafter automatically replace the prior version. Grantee shall complete (to the extent permitted in light of the work to be performed and the timing thereof) the performance of the work herein envisioned in accordance with a mutually agreed upon construction schedule to be developed prior to the performance of any work by the parties hereunder (the "Construction Schedule"), which Construction Schedule will be formulated in such a manner so as to minimize interference with OUC's scheduled use of the OUC rail line lying within the Easement Area. Subject to train activity on the rail line, Said Construction Schedule shall be agreed upon at least twenty-five (25) days in advance of the commencement of any work to be performed hereunder, unless otherwise mutually agreed to by OUC and Grantee. OUC represents and the Grantee acknowledges and agrees that train activity on the rail line may not be known at the time the Construction Schedule is agreed upon. In the event a train is approaching the Easement Area, the parties hereto agree that no work shall be performed at, under, above or near the rail line. If Grantee fails to complete work as anticipated herein, OUC may, in its sole discretion and after providing the Grantee written notice, complete construction of said work to the extent that OUC determines it needs to in order to maintain the safe operations of its rail. Upon completion of said work by OUC and within thirty (30) days after receipt of a written request therefore, Grantee shall reimburse OUC for its full reasonable cost associated with such work.

(b) Except as provided in section 3(a) above, all improvement to be made and work to be performed by Grantee shall be made and performed at Grantee's sole expense with the obtaining of all appropriate and necessary permits for such improvements and work being obtained by it, and with all permitting, design, bonding and mobilization costs relating to such improvement and work as it makes or performs being its sole responsibility.

(c) With regard to improvements made and work performed by Grantee, its successors and assigns, within the Easement Area, it is agreed that such will be coordinated with OUC so as to assure compatibility with construction efforts, design, planning and scheduling otherwise occurring within the Easement Area and non-interference with the scheduled use of the rail line. Such work shall be performed by Grantee or its contractor(s), and OUC shall have the right to monitor prosecution of the work on-site to assure compatibility and non-interference with use of the rail line.

(d) During the term of this Easement Agreement, OUC shall be solely responsible for and shall pay any and all costs associated with, the maintenance, reconstruction or replacement of the OUC rail line lying within the Easement Area, provided that Grantee shall reimburse OUC for any said work that needs to be performed due to the existence of the Water Lines and/or Casings and that would not otherwise need to have been performed but for the existence of said Water Lines and/or Casings. During the term of this Easement Agreement, Grantee shall be responsible for, and shall pay any and all costs associated with, the maintenance, reconstruction or replacement of any and all Water Lines and Casings installed. In the event that the OUC rail line is impacted or otherwise needs to be improved in order for Grantee to perform any necessary maintenance

of the Water Lines and/or Casings, Grantee shall so notify OUC, and thereafter OUC and the Grantee shall diligently and in good faith develop a construction schedule for work of the OUC rail line and the maintenance of the Water Lines and/or Casings which is mutually agreeable to the Grantee and OUC. Said construction schedule will be formulated in such a manner so as to minimize any interference with OUC's use of the rail line. In the event the OUC rail line needs to be worked in order for Grantee to perform any necessary maintenance of the Water Lines and/or Casings, OUC shall, at Grantee's sole cost and expense, diligently and in good faith endeavor to perform the necessary work of the OUC rail line in order to allow Grantee reasonable opportunity to perform such necessary maintenance to the Water Lines and/or Casings. If either party hereto fails to comply with its maintenance obligations as provided in this Paragraph 3(d), the other party hereto may, after providing written notice to the non-performing party and a reasonable opportunity to cure (not to exceed thirty (30) days), perform such maintenance work, whereupon the non-performing party shall, within thirty (30) days after receipt of a written request therefor, reimburse the performing party for the full, reasonable costs incurred by such party in performing said maintenance work, together with interest thereon accruing from and after the due date thereof until receipt by the performing party of full payment therefor. Notwithstanding any other provision herein to the contrary, Grantee shall not perform any work hereunder without OUC's prior written approval.

(e) Grantee shall not construct any improvements in the Easement Area or perform any maintenance work within the Easement Area without the prior written consent of OUC, which consent shall not be unreasonably withheld or delayed.

(f) In the event Grantee must perform work in response to an emergency situation, such that the prior notice requirements above cannot be met, then Grantee, in accordance with Section 11 hereof, shall notify OUC prior to performing any emergency work. If in OUC's sole discretion, the nature of the emergency work requires resources (such as a flagman, etc.), then OUC will endeavor to have its personnel or contractor arrive at the required location along the OUC track within four (4) hours of notification. Grantee may not initiate repair work until such time as OUC's personnel or contractor is on site. If, in OUC's sole discretion, the nature of the emergency work does not require its resources, then OUC may authorize Grantee to perform the work.

4. Grantor's Reservation of Rights. Subject to the rights created herein, Grantor expressly reserves (to itself, its successors and assigns) the right to use, or to grant to others the right to use by virtue of additional licenses, rights-of-way, reservations or easements, any and all portions of the area upon, above, or under the Easement Area and the Property (in Grantor's reasonable discretion) for any purpose whatsoever not inconsistent with the rights herein granted, including, but not limited to, the right of ingress and egress over and across the Easement Area onto any adjacent or contiguous property; provided, such right does not unreasonably interfere with Grantee's Permitted Use of the Easement Area pursuant to the terms hereof.

5. **Limitation of Rights.** The Easement granted herein creates a non-exclusive Easement, and other than such easement right Grantee does not and shall not (at any time) claim any interest or estate of any kind or extent whatsoever in the Easement Area.

6. **Special Provisions Relating to All Construction Affecting or Potentially Affecting OUC Right of Way and Rail Service to Curtis Stanton Energy Plant.**

a. OUC shall have continuous access to its railroad facilities within the Easement Area throughout the performance of the Work described in this Easement Agreement, including but not limited to uninterrupted use of its railroad tracks and access throughout its Property surrounding the Easement Area.

b. Under no circumstances (other than as otherwise agreed to by OUC) shall Grantee or its agents, employees, contractors or subcontractors cause or allow any person or equipment to come within twenty five (25) feet of each side of the rail line's centerline (the "25 Foot Requirement"). Grantee acknowledges and understands that violation of the 25 Foot Requirement would entitle CSX Railroad ("CSX") to cease rail service to the Stanton Plant, thus leaving OUC without a source of fuel for the Stanton Plant. Grantee acknowledges that the 25 Foot Requirement is mandated by Federal law and that Grantee's adherence to the 25 Foot Requirement is a material inducement for OUC to enter into this Easement Agreement.

c. In the event it is necessary for Grantee or its agents, employees, contractors or subcontractors to have persons or equipment within 25 feet of each side of the rail line's centerline, Grantee shall first seek the approval of OUC (which written approval shall include a specific authorization number to be obtained from the OUC personnel giving the authorization. From time to time, OUC may designate in writing and in accordance with the Notice provision below, other persons (and their phone numbers) from whom the required authorization may be obtained. The OUC representative from whom the Grantee must obtain the written approval required herein is:

Deborah A. Eichen

407-434-3092 (work)

407-304-6947 (mobile)

d. The Grantee shall coordinate all aspects of the work, to be performed pursuant to this Easement Agreement or otherwise work to be performed at or near the OUC rail line, with OUC; in particular such work that will require prior written approval from OUC and the services of a flagman, including but not limited to any and all work that will: (A) require Grantee or its contractor(s) to work inside the 25 Foot Requirement; or (B) require Grantee or its contractor(s) or any equipment to potentially reach within the 25 Foot Requirement. In such event or at any other time when, in OUC's discretion, flagman services may be required, the Grantee shall reimburse OUC for the services of a flagman. Said reimbursement shall be made by the Grantee to OUC within thirty (30) days after receipt of an itemized bill from OUC. Any such flagman may be a contractor of OUC or an employee of OUC, at OUC's sole discretion and in accordance with applicable rules and regulations, including but not limited to those of CSX or Florida Department of Transportation. A flagman shall be required to be present and working at

all times during such pre-approved work: (A) to occur within the 25 Foot Requirement; and (B) where the Grantee or its contractor(s) or any equipment could potentially reach within the 25 Foot Requirement. In the event of any emergency where the 25 Foot Requirement is accidentally violated, the Grantee or its contractors shall follow the emergency notification requirements as detailed in Section 11 hereof

e. Grantee acknowledges that it may use equipment and construction materials in the vicinity of railroad bed at or near the Easement Area. Grantee shall not allow the railroad track or bed to be affected by such activity, and said bed/track areas shall remain free and clear of sand, dirt, debris or other material and railroad bed shall be kept free from obstructions. Grantee shall notify OUC shall there be any said sand, dirt, debris or other material or obstruction on said bed/track areas.

f. Grantee acknowledges that construction of the Water Lines may cause certain settling or subsistence of the railroad track and railroad bed in the vicinity of Easement Area. Grantee further acknowledges that this settling or subsistence may require periodic stabilization of the track and railroad bed for an undetermined period after completion of construction. Grantee shall reimburse OUC for the costs incurred by OUC in order to stabilize or otherwise repair the railroad track and railroad bed, unless Grantee can prove that the construction, maintenance, or existence of the Water Lines did not cause the settling or subsistence.

g. In the event OUC agrees to the performance of any soil testing requested by the Grantee or otherwise required by law, the results of any said testing shall be released to OUC, for OUC's evaluation, prior to releasing same to Grantee or any other third-party (unless otherwise prohibited by law). Grantee agrees that if any soil testing is required, now or in the future, due to the placement of the Casings and/or Water Lines, Grantee shall be responsible for all costs associated with the performance of any said soil testing. Prior to the performance of any soil testing and unless otherwise prohibited by law, OUC, in its sole discretion, may consent to the performance of said testing or decline same. If OUC consents to said soil testing, Grantee and OUC shall coordinate all aspects associated with the performance of the soil testing work.

h. The terms of this Section 6 shall be incorporated by Grantee into each and every contract with contractors (and subcontractors) that will be performing any portion of the Work.

i. Grantee shall not act (or fail to act) in a way which permits any lien to be filed against the Easement Area for any labor or materials in connection with work of any character performed or claimed to have been performed on the Property, including the Easement Area at the direction of sufferance of Grantee or its assigns. If any such lien is filed against the Property/Easement Area, OUC may cause such lien to be released. Grantee shall pay on demand all of OUC's costs in connection therewith, together with the appropriate interest thereon. If Grantee is required by law to secure a payment and performance bond for the Work or any part thereof, prior to commencement of construction of Easement Area, Grantee shall provide OUC with a payment and performance bond in the full amount of the contract for the Work. The bond shall name OUC as an obligee and shall contain such other provisions as are normal and customary for bonded construction projects. In the event that said bonds were to be issued prior to

including OUC as an obligee, as required under this subsection, then Grantee shall cause for said bonds to be amended to include OUC.

7. **Covenants of Grantee.** Grantee (and its successors, assigns, agents, contractors, subcontractors, invitees and employees) shall:

(a) not unreasonably interfere with or prevent the normal use and maintenance by Grantor of the Easement Area, the Property, or Grantor's adjacent properties, if any, nor interfere with the use by Grantor of the Property as a rail line, except as otherwise agreed to in writing by OUC;

(b) not interfere with or prevent the following: (i) the use of any portion of the Easement Area by the general public, if any portion of the Easement Area has been or is hereafter dedicated to the general public, so long as such use does not materially interfere with Grantee's Permitted Use of the Easement Area; and (ii) any development, construction, improvement, or other activity or use by Grantor now or in the future existing on or about the Easement Area and the Property so long as such use does not materially and adversely interfere with Grantee's Permitted Use of the Easement Area;

(c) comply at all times and in all respects with all present and future local, municipal, county, state and federal environmental and all other applicable laws, statutes, governmental constitutions, ordinances, codes, rules, regulations, resolutions, requirements, standards, applications and directives, as well as all decisions, judgments, writs, injunctions, orders, decrees or demands of courts, administrative bodies and other authorities construing any of the foregoing (collectively, the "Laws"). Grantee shall also obtain, maintain and comply with all applicable permits in connection with Grantee's use of the Easement Area. Grantee shall not, by any act or omission, render the Grantor liable for any violation thereof. Grantee shall be solely responsible for any fees or penalties imposed as a result of noncompliance with any permit or permit condition, including any required wetland mitigation, resulting from Grantee's activities. Grantee shall promptly deliver to OUC true and accurate copies of all applicable permits upon issuance and shall pay all costs and expenses incurred with respect to compliance with this subparagraph ;

(d) reimburse OUC for any penalties, fees, or other costs or expenses imposed by CSX as a result of any slowdowns, delays, or stoppages of rail traffic on the OUC right of way (including, without limitation, any requirement that rail traffic on the OUC right of way, when in the vicinity of the OUC railroad tracks, be operated in a "slow track" manner under CSX or the Florida Department of Transportation regulations or guidelines) arising out of or from, or in any way connected to, the construction, installation, maintenance, repair, or existence of the Water Lines and Casings; provided, however, the reimbursement does not extend to any penalties, fees, or other costs or expenses incurred as a result of OUC's own negligent or intentional acts or omissions;

(e) install and construct the Water Lines and Casings, and otherwise perform all Work in compliance with all applicable Laws, permits, and all applicable standards and specifications (including, but not limited to, CSX standards and specifications, and all requirements set forth by the Federal Railroad Administration, hereinafter herein referred to as "FRA"), in an expeditious and good and workmanlike manner, and maintain the appearance of all above-ground improvements and landscaping, if any, in reasonably the same condition as existed upon completion of such initial installation or construction;

(f) operate, maintain, replace and repair the Water Lines and Casings at Grantee's sole cost and expense, and in compliance with all applicable Laws, permits, all applicable standards and specifications (including, but not limited to, CSX standards and specifications), and consistent with the terms of this Easement Agreement, in an expeditious and good and workmanlike manner, and maintain the appearance of all above-ground improvements and landscaping, if any, in reasonably the same condition as existed upon completion of any such maintenance or repair;

(g) after completion of any maintenance, repair or replacement work with respect to the Water Lines and Casings at Grantee's sole cost and expense and in a safe, good and workmanlike manner, remove any temporary improvements and equipment placed on the Easement Area, and restore both the ground surface of the Easement Area and any grass, irrigation lines and equipment, and landscaping in or on the Easement Area, to the original contour, grade and condition which existed immediately prior to the commencement of any such work; and

(h) not act (or fail to act) in a way which permits any lien to be filed against the Easement Area or the Property for any labor or materials in connection with work of any character performed or claimed to have been performed on the Easement Area or the Property at the direction or sufferance of Grantee or its assigns. If any such lien is filed against the Easement Area or the Property and not removed by Grantee (either by payment or transferred bond) within fifteen (15) days after receipt by Grantee of written notice from OUC, OUC shall have the right (but not the obligation) to cause such lien to be released. Grantee shall pay on demand all of OUC's costs in connection therewith, together with interest thereon accruing from and after the date of such expenditure until OUC's receipt of full payment therefor.

8. Condition of Easement Area. Grantee acknowledges that it (i) has physically inspected the Easement Area prior to the performance of the Work by Grantee; and (ii) accepts the Easement Area "as is" and "where is" with full knowledge of the conditions thereof and subject to all the terms, conditions, restrictions and limitations applicable thereto. Grantor makes no representations, statements, warranties or agreements to Grantee in connection with this Easement Agreement or the Easement Area, other than as may be set forth herein.

9. Breach by Grantee/Remedies. If Grantee breaches any provision of this Easement Agreement and fails to cure any such breach within fifteen (15) days after written notice thereof is given by OUC or such additional time as may be reasonably necessary if, within

said fifteen (15) day period Grantee shall have commenced curing the breach and continues to diligently prosecute same, provided such extended cure period shall not exceed forty-five (45) days, in addition to any other right or remedy available to OUC at law or in equity, OUC shall have the right, but not the obligation, to cure any such breach. Grantee shall reimburse OUC for the reasonable cost thereof upon demand, together with interest accruing thereon from and after the date of OUC's expenditure thereof, until OUC's receipt of full payment therefor. OUC shall be entitled to seek any damages in the event OUC's railroad track are blocked or rendered unusable, temporarily or otherwise, and such damages shall include, but not be limited by, any loss or damage suffered by OUC in connection with the Stanton Plant. Nothing in this Section shall affect the right of OUC to seek indemnification remedies as set forth in this Easement Agreement.

10. Termination. OUC may, in its sole discretion, elect to terminate the rights, privilege, rights-of-way, and Easement herein granted if: (i) Grantee or its successors or assigns should abandon the Easement, or any part thereof, and such abandonment shall continue for thirty (30) days after written notice and a reasonable opportunity to cure, or (ii) Grantee has breached any obligation of this Easement Agreement and such breach is not cured within any and all applicable cure periods. In the event Grantee abandons, intends to cease use of the Water Lines and Casings, or ceases to use the Water Lines and Casings for the purposes stated in this Easement Agreement, Grantee shall notify OUC prior to ceasing or abandoning use thereof; and Grantee shall continue to maintain the stability of the OUC rail line. The provisions of this Section 10 shall survive the termination or expiration of this Easement Agreement.

11. Safety and Coordination Requirements for Construction and Maintenance. In the event of an emergency concerning the OUC track, Grantee shall contact OUC in accordance with the procedures set forth in Exhibit "B" attached hereto and made a part hereof. Further, the Grantee agrees that prior to the commencement of any work hereunder, Grantee shall follow and adhere to the procedures set forth in Exhibit "C" attached hereto and made a part hereof.

12. Indemnification and Insurance.

(a) Grantee shall defend, hold harmless, and indemnify OUC from all claims, damages, losses, and/or expenses (including any reasonable attorneys' fees and costs) attributable to Grantee's negligent or intentional acts or omissions, or arising out of or resulting from the negligent performance of Grantee's obligations and operations under this Easement Agreement. Nothing contained in this subsection 12 (a) shall constitute a waiver by either party of any applicable sovereign immunity as described under the provisions of Section 768.28, Florida Statutes. This provision is not intended to and shall not constitute an agreement by either party to assume liability for the acts or omissions of the other.

(b) During any construction, installation, or planned maintenance of the Casings or Water Lines, Grantee or its Contractor, at its sole cost and expense, shall maintain for the mutual benefit of Grantee and Grantor, general commercial liability insurance against claims for bodily injury, death, or property damage occurring in or about the Easement Area, for at least Five Million and No/100 Dollars (\$5,000,000.00) per occurrence and an aggregate limit of Ten Million and No/100 Dollars (\$10,000,000.00).

(c) During any construction, installation, or planned maintenance of the Casings or Water Lines, Grantee or its Contractor, at its sole cost and expense, shall provide and maintain for the mutual benefit of Grantee and Grantor, railroad protective liability insurance for all operations relating to such construction, repair or maintenance. The named insured shall be: Orlando Utilities Commission, 100 West Anderson St., Orlando, FL 32801, Attention: Risk Management. Such insurance shall be written using the ISO Railroad Protective Form CG 00 35, and with a carrier acceptable to OUC with a combined single coverage limit of not less than Five Million and No/100 Dollars (\$5,000,000.00) per occurrence, and an aggregate limit of Ten Million and No/100 Dollars (\$10,000,000.00). The declarations page of the insurance policy must provide the name and address of any applicable contractors, as well as a description of the construction, repair or maintenance work to be performed, including the specific work site address (i.e., mile marker, bridge, intersection) and project description. The insurance policy providing such railroad protective liability insurance must be reviewed by OUC Risk Management prior to the commencement of any such work and must remain in effect for the duration of the same. In addition, Grantee or its Contractor shall carry Contractor's Pollution Liability Coverage with an aggregate limit of Five Million and No/100 Dollars (\$5,000,000).

(d) All insurance provided for in this Section shall be affected under valid and enforceable policies, issued by insurers with an A.M. Best Company's rating of A-VII or better and who are licensed to do business in the State of Florida. Not less than thirty (30) days prior to the expiration dates of the expiring policies theretofore furnished pursuant to this Section, originals of the policies (or, in the case of general public liability insurance, certificates of the insurers) bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to Grantee or OUC, of such payment. Grantee may self-insure its liability under a qualified self-insurance program that OUC shall find acceptable and that is consistent with subsection 12 (c) above.

Nothing in this Section shall prevent Grantee or its Contractor from taking out insurance of the kind and in the amounts provided for under this Section under a blanket insurance policy or policies covering other properties as well as the Easement Area, provided, however, that such amounts so specified shall be sufficient to prevent any one of the insureds from becoming a co-insurer within the terms of the applicable policy or policies, and provided further, however, that any such policy or policies of blanket insurance shall, as to the Easement Area, otherwise comply as to endorsements and coverage with the provisions of this Section.

Each such policy or certificate therefor issued by the insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled without at least ten (10) days prior written notice to OUC.

(e) In performing Grantee's obligations contained in Section 12 of this Easement Agreement, Grantee shall either obtain requisite insurance policies itself, or alternatively shall require its Contractors to obtain the requisite insurance policies. Grantee or Grantee's contractor shall insure Grantor during performance

of the work in accordance with the policies and limits established in this Easement Agreement. The purchase of insurance in accordance with Section 12 of this Easement Agreement, whether by Grantee or its contractors, shall not function as a waiver of Grantee's sovereign immunity.

13. Modifications. This Easement Agreement shall not be modified or amended in any respect except by a written agreement executed by or on behalf of the parties hereto, in the same manner as executed herein.

14. Notices. All notices and other communications given pursuant to these easements to be served, given or delivered upon either party shall be in writing and shall be sent by registered or certified mail, return receipt requested, or by a national overnight receipted delivery service (e.g., Federal Express). Such notices shall be deemed served, given and delivered on the earlier of the following: (i) the date of actual receipt; (ii) the third business day after any registered or certified notice was deposited in a sealed envelope in the United States mail, postage prepaid; (iii) the next business day after any notice was delivered (on a business day) to a receipted overnight delivery service; or (iv) the first attempted delivery date of any notice hereunder (regardless of whether the recipient of said notice accepted same).

All notices shall be addressed as herein below set forth, or to such other address as the City, OUC or Grantee shall hereafter give notice to the other in writing:

If to OUC:	Orlando Utilities Commission Orlando Utilities Commission 100 west Anderson Street Orlando, Florida 32801 Attention: Office of the General Manager & CEO
With a copy to:	Orlando Utilities Commission 100 west Anderson Street Orlando, Florida 32801 Attention: Office of the General Counsel
If to Grantee:	Director Orange County Utilities Department Utilities Administration Building 9150 Curry Ford Road Orlando 32825

15. Counterparts. This Easement Agreement may be executed in counterparts; each of which shall be deemed to be an original and all of which shall together constitute one and the same instrument.

16. Governing Law. This Easement Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Florida.

17. **Waiver of Jury Trial; Jurisdiction.** Any legal proceeding of any nature brought by either party against the other to enforce any right or obligation under this Easement Agreement, or arising out of any matter pertaining to this Easement Agreement, shall be submitted for trial, without jury, before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. If the Circuit Court does not have jurisdiction, the matter shall be submitted to the United States District Court for the Middle District of Florida (Orlando Division). If neither of such courts shall have jurisdiction, then submittal shall be before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto, and expressly waive all rights to trial by jury regarding any such matter.

18. **Binding Obligations.** This Easement Agreement shall be binding upon, and inure to the benefit of, Grantee and its permitted assigns, to OUC and its successors and assigns, and to the City and its successors and assigns.

19. **Construction of Easement Agreement.** This Easement Agreement has been fully reviewed and approved by the parties hereto and their respective counsel. Accordingly, in interpreting this Easement Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provisions being interpreted. Section headings are for convenience only and shall not be deemed a part of this Easement Agreement or considered in construing this Easement Agreement.

20. **No Implied Waiver.** No course of dealing between the parties and no delay in exercising any right, power or remedy conferred hereby or now hereafter existing at Law, in equity, by statute or otherwise shall operate as a waiver of, or otherwise prejudice, any such right, power or remedy. All waivers, if any, of any and all of the foregoing rights, powers or remedies must be in writing.

21. **No Public Rights Created.** Nothing herein shall create or be construed to create any rights in and/or for the benefit of the general public in or to the Easement Area or the Easement granted hereby.

22. **Covenants Running with the Land.** All rights, privileges, benefits, and burdens created herein are perpetual covenants and agreements running with the land as appurtenances thereto and shall be binding upon and inure to the benefit of the owners of the Grantee Property and their respective successors in title during their respective periods of ownership.

23. **Severability.** Each paragraph, subparagraph, part, term, or provision of this Easement Agreement shall be considered severable, and if, for any reason, any paragraph, subparagraph, part, term, or provision herein is determined to be invalid or contrary to or in conflict with any existing or future law or regulation of a court or agency having valid jurisdiction, such determination shall not impair the operation or effect the remaining paragraphs, subparagraphs, parts, terms, and provisions of this Easement Agreement, and the latter will be given full force and effect and will bind the parties hereto, and such invalid paragraph, subparagraph, part, term, or provision shall be deemed not to be a part of this Easement Agreement.

24. **Limitations on Obligations of the City.** Grantee acknowledges and agrees that the City of Orlando's obligations under this Easement Agreement are strictly limited to its conveyance of the Easement, under the terms described herein. Notwithstanding anything herein to the contrary, the City of Orlando does not otherwise assume any contractual obligations described in this Easement Agreement and the Grantee so acknowledges and agrees to the same. The parties further acknowledge that the City of Orlando has no duties, obligations or responsibilities whatsoever with respect to the construction, operation or maintenance of the rail line under this Easement Agreement or otherwise.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their names by their undersigned officers thereunto duly authorized by due and lawful authority, and their corporate and district seals to be affixed as of the day and year first above written.

GRANTOR:

CITY OF ORLANDO

Signed, sealed and delivered
in the presence of:

By: _____
Mayor, Pro-Tem

(sign)
Print Name: _____

Print Name: _____

(sign)
Print Name: _____
As to City of Orlando

Attest:

Interim City Clerk

(MUNICIPAL SEAL)

STATE OF FLORIDA)
: SS
COUNTY OF ORANGE)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared _____ and _____, respectively the Mayor, Pro-Tem and Interim City Clerk of the CITY OF ORLANDO, a municipal corporation under the laws of the State of Florida, to me known to be the individuals and officers described in and who executed the foregoing instrument on behalf of said CITY OF ORLANDO, and severally acknowledged the execution thereof to be their free act and deed as such officers thereunto duly authorized, and that the official seal of said City is duly affixed thereto, and the instrument is the act and deed of said City.

WITNESS my hand and official seal in the county and state last aforesaid this day of _____, 2016.

(Notarial Seal)

Notary Public (sign)
Print Name:
State of Florida
My Commission Expires:

Signed, sealed and delivered
in the presence of:

ORLANDO UTILITIES COMMISSION

(sign)
Print Name: _____

By: _____
KENNETH P. KSIONEK
General Manager & CEO

(sign)
Print Name: _____
As to Orlando Utilities Commission

Attest:

ELIZABETH M. MASON
Assistant Secretary

(COMMISSION SEAL)

**Approved by OUC as to Form
Other than Legal Description**

STATE OF FLORIDA)
 : SS
COUNTY OF ORANGE)

Attorney

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, personally appeared KENNETH P. KSIONEK and ELIZABETH M. MASON respectively, General Manager & CEO and Assistant Secretary of the ORLANDO UTILITIES COMMISSION, a statutory commission under the laws of the State of Florida, to me known to be the individuals and officers described in and who executed the foregoing instrument on behalf of said ORLANDO UTILITIES COMMISSION, and severally acknowledged the execution thereof to be their free act and deed as such officers thereunto duly authorized, and that the official seal of ORLANDO UTILITIES COMMISSION is duly affixed thereto and the instrument is the act and deed of said Commission.

WITNESS my hand and official seal in the county and state last aforesaid this day of _____, 2016.

(Notarial Seal)

Notary Public (sign)
Print Name:
State of Florida
My Commission Expires:

GRANTEE:

Orange County, a Charter County and political subdivision of the State of Florida

GRANTEE:

ORANGE COUNTY, FLORIDA

BY: Board of County Commissioners

Name: _____

By: _____

Print Name: Teresa Jacobs

Title: County Mayor

Name: _____

Date: _____

ATTEST: Martha D. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Printed Name: _____

Exhibit “A”

TO

NON-EXCLUSIVE UNDERGROUND TRANSMISSION PIPE UTILITY EASEMENT AGREEMENT

Easement Area

EXHIBIT "B"

FOR
EMERGENCY NOTIFICATION

EMERGENCY NOTIFICATION PROCEDURE:

In the event of suspected or actual track damage, security situations, or any other situation that could negatively affect safe train operations, Grantee shall call one of the following, in order of priority:

<u>Name:</u>	<u>Phone:</u>
Charles Merritt, OUC Contractor President	(863) 581-6525 (cell) after hours only i.e. After 5:30 pm weekdays, weekends and holidays)
R.W. Summers, OUC contractor	(863) 533-8107 office (business hours only)
Walter Graves	(863) 581-3833 cell
Clint Lalla, OUC Contractor Engineer	(863) 956-7440 cell
Bob Pollack, OUC	(407) 434-4312 office
Bob Pollack, OUC	(407) 274-2340 cell
Lanna Vaughan, OUC	(407) 434-4314 office
Lanna Vaughan, OUC	(321) 332-8186 cell
Mia Torres, OUC	(407) 321-230-6746 cell
Mia Torres, OUC	(407) 434-4313 office
Debbie Eichen, OUC	(407) 434-3092 office
Debbie Eichen, OUC	(407) 304-6947 cell
CSX Police	(800) 232-0144

NOTE: Notification listing is in order of priority. Only one person/company needs to be notified.

EXHIBIT "C"

FOR SAFETY COORDINATION REQUIREMENTS

OUC represents and Grantee hereby acknowledges that OUC's main concern and need driving these requirements or procedures is safety; the safety for Grantee, and its employee, agents, contractors, and equipment. Likewise, OUC is concerned regarding the safety: (i) of the public, (ii) OUC, and its employees, agents, contractors, and equipment; and (iii) of the OUC railroad and engines using said railroad. It is important that the Grantee coordinate construction and any work in advance with OUC so that the parties can ensure proper safety precautions are utilized.

Grantee, its agents, employees, or contractors shall schedule a meeting with OUC at least four (4) business days prior to the commencement of any construction and/or maintenance on or within the Easement Area, at which meeting the parties shall discuss safety issues, including, but not limited to:

- Contractor safety awareness
- 25-foot work safety zone
- Arrival of trains and projected train schedule
- Track safety
- OUC, CSX, and FRA safety rules and policies
- Consequences of violation of OUC, CSX, or FRA safety rules or policies
- Coordination of moving large or unusual equipment across the OUC railroad
- Fouling of the track
- Procedure regarding open pits or holes
- Applicable OSHA requirements, including those related to pit and trench shoring
- Work stoppage and equipment removal from the 25-foot work safety zone prior to trains passing the work zone
- Advising OUC of any schedule changes impacting the use of the temporary construction crossing

Grantee, its agents, employees, and contractors shall adhere to all applicable laws, regulations, rules, standards, and policies, and should note that any violation of any OUC, CSX, or FRA safety rule or policy may result in the suspension of work contemplated hereunder, regardless of whether such rule or policy was discussed in the pre-construction meeting.