

*Poinciana
Community Development District
Poinciana West
Community Development District
Joint Meeting Agenda Package
September 5, 2018*

AGENDA

Poinciana Community Development District
Poinciana West Community Development District

135 W. Central Blvd., Suite 320, Orlando, Florida 32801
Phone: 407-841-5524 – Fax: 407-839-1526

August 29, 2018

Board of Supervisors
Poinciana Community Development District
Board of Supervisors
Poinciana West Community Development District

Dear Board Members:

A joint meeting of the Boards of Supervisors of Poinciana Community Development District and the Poinciana West Community Development District will be held on **Wednesday, September 5, 2018 at 11:00 AM at the Starlight Ballroom, 384 Village Drive, Poinciana, Florida**. Following is the advance agenda for the meeting:

1. Roll Call
 - A. Poinciana CDD
 - B. Poinciana West CDD
2. Pledge of Allegiance
3. Public Comment Period on Agenda Items
4. Approval of Minutes of the July 9, 2018 Joint Meeting
 - A. Poinciana CDD
 - B. Poinciana West CDD
5. Public Hearing on First Amendment to the Master Methodology Regarding Undeveloped Land in Poinciana CDD
 - A. Presentation of First Amendment to Master Methodology Regarding Undeveloped Land in Poinciana CDD
 - B. Poinciana CDD
 - i. Public Comment and Testimony
 - ii. Consideration of Resolution 2018-16 Adopting the First Amendment to the Master Methodology Regarding Undeveloped Land in Poinciana CDD
 - C. Poinciana West CDD
 - i. Public Comment and Testimony
 - ii. Consideration of Resolution 2018-13 Adopting the First Amendment to the Master Methodology Regarding Undeveloped Land in Poinciana CDD
6. Presentations from Firms Regarding Amenity Real Estate Transaction Legal Services and Retention of Counsel
 - A. Poinciana CDD
 - B. Poinciana West CDD

7. Ratification of Poinciana CDD Thirteenth Amendment to the Asset Sale and Purchase Agreement
 - A. Poinciana CDD
8. Discussion of Q & A for Current Status of Amenity Transaction
 - A. Poinciana CDD
 - B. Poinciana West CDD
9. Consideration of Maintenance Agreements
 - A. Poinciana CDD
 - i. Aquatic Pond Maintenance Services - Clarke Environmental
 - ii. Aquatic Midge Control Services - Clarke Environmental
 - iii. Landscape Maintenance - Floralawn
 - B. Poinciana West CDD
 - i. Aquatic Pond Maintenance Services - Clarke Environmental
 - ii. Aquatic Midge Control Services - Clarke Environmental
10. Supervisor's Requests
 - A. Poinciana CDD
 - B. Poinciana West CDD
11. General Audience Comments
12. Other Business
 - A. Poinciana CDD
 - B. Poinciana West CDD
13. Staff Reports
 - A. Attorney
 - B. Engineer
 - C. District Manager
 - D. Field Manager
14. Next Meeting Date - October 17, 2018
15. Adjournment
 - A. Poinciana CDD
 - B. Poinciana West CDD

The second order of business is the reciting of the Pledge of Allegiance.

The third order of business is the Public Comment Period where the public has an opportunity to be heard on propositions coming before the Board as reflected on the agenda, and any other items.

The fourth order of business is the approval of minutes of the July 9, 2018 joint meeting. The minutes are enclosed for your review.

The fifth order of business opens the public hearing. Section A is the presentation of the First Amendment to the Master Methodology regarding undeveloped land in Poinciana CDD. A copy of the report is enclosed for your review. Poinciana CDD Sub-Section 1 is the public comment and testimony and Sub-Section 2 is the consideration of Resolution 2018-16 adopting

the First Amendment to the Master Methodology regarding undeveloped land in Poinciana CDD. Poinciana West CDD Sub-Section 1 is the public comment and testimony and Sub-Section 2 is the consideration of Resolution 2018-13 adopting the First Amendment to the Master Methodology regarding undeveloped land in Poinciana CDD. Copies of the Resolutions are enclosed for your review.

The sixth order of business are the presentations from firms regarding amenity real estate transaction legal services and the retention of counsel. Back-up material will be provided separately.

The seventh order of business is the ratification of the Poinciana CDD thirteenth amendment to the Asset Sale and Purchase Agreement. A copy of the amendment is enclosed for your review.

The eighth order of business is the discussion of the Q & A for current status of amenity transaction. A copy of the Q & A document is enclosed for your review.

The ninth order of business is the consideration of maintenance agreements. The agreements for Poinciana CDD are enclosed under Sub-Sections 1 - 3 and the agreements for Poinciana West CDD are enclosed under Sub-Sections 1 - 2.

The balance of the agenda will be discussed at the meeting. In the meantime, if you have any questions, please contact me.

Sincerely,



George S. Flint
District Manager

CC: Michael Eckert, District Counsel
Kathleen Leo, District Engineer
Alan Scheerer, Field Manager
Darrin Mossing, GMS

Enclosures

MINUTES

MINUTES OF THE JOINT MEETING
OF THE POINCIANA & POINCIANA WEST
COMMUNITY DEVELOPMENT DISTRICTS

The joint meeting of the Boards of Supervisors of the Poinciana Community Development District and Poinciana West Community Development District was held on Monday, July 9, 2018 at 2:30 p.m. in the Starlite Ballroom, 384 Village Drive, Poinciana, Florida.

Present and constituting a quorum of the Poinciana CDD Board were:

Robert Zimbardi	Chairman
LeRue "Skip" Stellfox	Vice Chairman
Lita Epstein	Assistant Secretary
David Lane	Assistant Secretary
William Land	Assistant Secretary

Present and constituting a quorum of the Poinciana West CDD Board were:

Leonard Vento	Vice Chairman
Shirley Bzdewka	Assistant Secretary
Bill Brown	Assistant Secretary
Joseph Gecewicz	Assistant Secretary

Also present were:

George Flint	District Manager
Michael Eckert	District Counsel
John Weiss	Special Counsel
Anthony Iorio	Avatar Properties
Pete Deglomine	Clarke Environmental
Residents	

The following is a summary of the discussions and actions taken at the July 9, 2018 Joint Meeting of the Poinciana CDD and the Poinciana West CDD Board of Supervisors.

FIRST ORDER OF BUSINESS

Roll Call

A. Poinciana CDD

Mr. Zimbardi called the Poinciana CDD meeting to order. Board Members introduced themselves and a quorum was established.

B. Poinciana West CDD

Mr. Vento called the Poinciana West CDD meeting to order. Board Members introduced themselves and a quorum was established.

SECOND ORDER OF BUSINESS

Pledge of Allegiance

The Pledge of Allegiance was recited.

THIRD ORDER OF BUSINESS

Public Comment Period on Agenda Items

Mr. Norm Gundel, a resident of 419 Fountain Valley Lane, requested that Poinciana and Poinciana West CDDs not sign the Conflict of Interest Waiver on today's agenda due to:

- Poinciana West CDD being governed by the Funding Agreement.
- Being erroneously told that the Districts have no exposure to any transaction costs, no matter whether or not the transaction occurs.
- Poinciana CDD will have to increase resident assessments to pay its debt service, because AV Homes was reimbursing Poinciana for transaction costs. In less than three years, AV Homes could stop paying Poinciana assessments.
- The \$1.5 million that AV reimbursed under the Funding Agreement will be \$1.5 million in unpaid Poinciana assessments. The Funding Agreement gets AV out of paying Poinciana CDD assessments, but AV continues to pay the Poinciana West CDD assessments.
- Both Districts signed a Conflict of Interest Waiver in January 2016, waiving any Conflict of Interest in representing both Poinciana and Poinciana West.

Mr. Shaun Thornton, a resident of 165 Marabella Loop, addressed the Taylor-Morrison acquisition of AV Homes. If Taylor Morrison paid \$73.7 million, they would take over assets and liabilities of AV Homes. Decisions must be made now and if the residents did not make a decision, AV Homes would make the decision for the residents.

Dr. Martin Kessler, a resident of 759 Largo Pass, did not see a conflict in Hopping Green representing the Districts.

Mr. Anthony Reed, a resident of 217 Torino Lane, and a candidate for Seat 1 on the Poinciana CDD Board, requested that the Districts not sign the waiver due to:

- The Attorney having to give the client reasonable time to raise questions and concerns about the document, under Rule 4-1.7 of Professional Conduct of Florida Bar. Giving the Board less than 24 hours' notice was unreasonable. In addition, the lawyer must obtain consent from the client verbally and in writing and the document was not sufficient to allow informed consent.
- Once signed, the Conflict of Interest Waiver was a legal document, relieving the attorney of any legal responsibility for decisions that were not in the best interest of the residents of Solivita.

Mr. Gecewicz recommended signing the waiver due to:

- Mr. Eckert providing a valuable service to the Districts and any risk was no different than before the proposed AV/TM deal. If they seek new counsel now, they would have to start over, meaning additional time and money.
- The attorney, John Weiss, who had 30 years' experience in law and ethics, recommended that the Districts execute the waiver, as Mr. Eckert followed the letter and spirit of the law.
- Taylor Morrison already signing the waiver
- Under the current Funding Agreement, AV funds the Districts legal costs, even if the deal fell through.

Mr. Zimbardi agreed with Mr. Gecewicz, to not sit back and wait as suggested by Mr. Gundel, but felt that it was a delayed tactic. Mr. Gundel's suggestion to purchase the amenities sounded great, but Mr. Gundel did not say that there would be a separate payment over and above the existing club fee. The District did not own the land and would have to purchase it from AV Homes, and have bonds so that the District could build on it. Winning the Class Action Suit was like winning the lottery.

Ms. Epstein opposed signing the Client Disclosure and Consent Waiver and proceeding with the bond validation, due to:

- The Board not knowing the risks by signing the waiver.
- The District would obligate themselves to two lawyers handling the situation, by signing the waiver, which was costly.

- The contract aspects of the sale would continue at the same time as the bond validation.
- There were still issues to be decided on the Class Action and as a Governing document, the Club expenses could only be for actual operating expenses. It could not include a membership fee.
- There was still great potential that the income stream on which the price was based for these amenities was zero, if the judge rules that it was an illegal fee.

Ms. Epstein recommended waiting to see how the judge ruled on the Class Action suit and what Taylor Morrison wanted to do about the sale of the amenities, before proceeding with the \$250,000 bond validation trial. Mr. Lane asked if Ms. Epstein meant that if the bond validation proceeded, it would cost \$250,000 before they heard what Taylor Morrison wanted. Ms. Epstein stated that it depended on whether the bond validation takes place. Mr. Eckert confirmed that nothing was set on the bond validation case and believed that Fall of 2018 was the earliest that a potential bond validation trial could occur.

Discussion occurred on what functions Mr. Eckert could perform. Mr. Eckert stated that, at the last meeting, the Boards allowed him to undertake Item 1, "*Perform Legal Services Related to Agreements or Interactions Between the District and Avatar, or in the future Taylor Morrison, Not Related to the Amenities.*" Items not related to the bond validation, bond financing and assessment process and negotiations with AV on the purchase contract, were continued to today's meeting. Discussion ensued regarding Client Disclosure and Consent Waiver.

Mr. Gecewicz felt that the attorney, John Weiss, had phenomenal experience in law and ethics, noting that Items 1, 2 and 3 were not a problem for Mr. Eckert's firm to continue; however, it was Mr. Weiss' option that Item 4, asking the Boards to waive potential conflicts was proper and it would be appropriate for the Boards to approve the waiver, which made sense. Since Mr. Weiss provided an opinion, as the Board requested, Mr. Gecewicz felt that it was important for the Boards to make a decision today, as the Districts could not go without legal representation.

Mr. Land suggested finding an attorney that would represent the Districts on Item 4, as Mr. Eckert was not interested in pursuing Item 4 and would not represent the Board. Mr. Stellfox felt that Mr. Eckert was an ethical and moral lawyer and supported engaging Mr. Eckert,

signing the Client Disclosure and Consent Waiver and finding an attorney to handle Item 4. Ms. Bzdewka agreed.

On MOTION by Mr. Vento, seconded by Ms. Bzdewka, with all in favor, on behalf of the Poinciana West CDD, taking the Fifth Order of Business out of order, was approved.

On MOTION by Mr. Zimbardi, seconded by Mr. Stellfox, with all in favor, on behalf of the Poinciana CDD, taking the Fifth Order of Business out of order, was approved.

- **Consideration of Client Disclosure and Consent**

Discussion ensued regarding Item 4 of the Client Disclosure and Consent Waiver. Mr. Flint explained that Item 4 would disclose a potential conflict and allow Mr. Eckert to have limited ability to convey the documents and information to the attorney representing the District.

- A. **Poinciana CDD**

On MOTION by Mr. Stellfox, seconded by Mr. Land, with Mr. Zimbardi, Mr. Lane, Mr. Land and Mr. Stellfox in favor and Ms. Epstein dissenting, on behalf of the Poinciana CDD, the Client Disclosure and Consent Waiver was approved for execution. (Motion Passed 4-1)

- B. **Poinciana West CDD**

On MOTION by Ms. Bzdewka, seconded by Mr. Brown, with all in favor, on behalf of the Poinciana West CDD, the Client Disclosure and Consent Waiver was approved for execution.

Mr. Weiss left the meeting.

The Board thanked Mr. Weiss for his opinion and Board Members asked the following:

- *Clarification on Mr. Gundel's question of the purpose of the Bond Financing Team Funding Agreement between the Poinciana CDD and AV Homes.*
 - Mr. Eckert stated that the agreement related to the cost of the bond financing and assessment process. It protected the District, because if the

District did not issue bonds, the District was forgiven from any obligation, as the monies advanced were deemed paid in lieu of taxes and assessments that the CDD could not have levied.

- *Was the District giving up their rights?*
 - Mr. Eckert stated that he had an obligation to act on the District's best interest. He was not changing his duties, and simply provided a disclosure. The District must decide whether or not they were comfortable moving forward in the limited capacity described in the waiver.
- *What was the practicality of moving forward on the bond validation matter regarding benefits to the residents?*
 - Mr. Eckert explained that bond validation case was the final judgement from the court saying that bonds could be issued in the future for this project, but did not obligate the Board to issue bonds.
- *Is it beneficial to the residents because of timing issues, no matter what happens with Taylor Morrison and AV?*
 - Mr. Eckert stated that it gave the flexibility to issue bonds for the project that was under the validation judgement, but did not obligate the District.
- *Would the costs of the bond validation be less if the opposition goes away?*
 - On the CDD side, the costs were covered under the Financing Team Funding Agreement and AV reimburses the District, but the District had an obligation when and if it issued bonds to repay AV.

Mr. Vento appreciated Mr. Eckert and his firm for their efforts, and requested that there be discussion with Mr. Weiss about what happened if Taylor Morrison built homes on the golf course. Mr. Eckert recommended including this in the agreement, but if another home was developed within the boundaries of the CDD, they must pay debt and operation and maintenance (O&M) assessments.

Mr. Lane believed that the Purchase and Sale Agreement (PSA) was not a priority to Taylor Morrison and the District could be waiting a year until Taylor Morrison decided what to do, and that the Districts needed to engage an attorney to handle Item 4.

On MOTION by Mr. Lane, seconded by Mr. Stellfox, with all in favor, on behalf of the Poinciana CDD, engaging an Attorney to handle Item 4 of the Client Disclosure and Consent Waiver, was approved.

On MOTION by Ms. Bzdewka, seconded by Mr. Brown, with all in favor, on behalf of Poinciana West CDD, engaging an Attorney to handle Item 4 of the Client Disclosure and Consent Waiver, was approved.

Mr. Flint would obtain company profiles and Letters of Interest from three attorneys and provide to the Boards in advance of the August meeting. An internal conflict check would have to be performed to ensure no conflict of interest issues. Mr. Eckert advised that the inspection period was extended until August 1; however, the Board authorized staff to keep extending the inspection period. The Board discussed Mr. Eckert’s fees to bring the new attorney up to date. Mr. Eckert would charge his time under the Funding Agreement.

FOURTH ORDER OF BUSINESS

Ratification of Poinciana CDD Eleventh & Twelfth Amendments to the Asset Sale and Purchase Agreement

On MOTION by Mr. Stellfox, seconded by Mr. Lane, with all in favor, on behalf of the Poinciana CDD, the Poinciana CDD Eleventh & Twelfth Amendments to the Asset Sale and Purchase Agreement, were approved.

On MOTION by Mr. Gecewicz, seconded by Mr. Brown, with all in favor, on behalf of the Poinciana West CDD, the Poinciana CDD Eleventh & Twelfth Amendments to the Asset Sale and Purchase Agreement, were approved.

FIFTH ORDER OF BUSINESS

Consideration of Client Disclosure and Consent

- A. Poinciana CDD**
- B. Poinciana West CDD**

This item was discussed earlier in the meeting.

SIXTH ORDER OF BUSINESS

Supervisors Requests

A. Poinciana CDD

B. Poinciana West CDD

Mr. Vento requested an update on the ponds. Mr. Flint reported that in Poinciana West CDD, Clarke took over treating the ponds on July 1st. They were completing deferred maintenance from American Ecosystems. In the Poinciana CDD, there were midge problems on Pond E-3. Mr. Vento requested that Clarke email the Boards. Mr. Flint would forward the email he received from Clarke to the Board. Clarke recommended waiting to introduce the fish until the fall, as the fish were coming from ponds with cooler temperatures into a pond with a warmer temperature. The aerators were designed to be solar and alternatives were being discussed to retrofit the aerators with battery backup. Additional tubing that was ordered to extend the aerators, should arrive in a week. Mr. Flint was asked to post the pond updates on the website. Mr. Deglomine spoke with AV regarding golf course pond bank erosion issues on Palm Tree Drive. When they lowered water levels, it caused erosion. Mr. Flint met onsite with Jason Good regarding the erosion issue on the driving range pond, which was owned by the CDD. The water was lowered significantly during dewatering. AV agreed to re-grade the ponds at AV's cost.

A Board Member reported that Floralawn was mowing pond embankments short. The pond embankments were supposed to be the same as the grass at the top. Mr. Flint confirmed that the height should be the same, but the frequency of mowing was different and would speak to Floralawn. Mr. Vento heard from residents that the Boards were not transparent. In his opinion, residents should utilize the websites, versus others opinion. Ms. Epstein suggested having a separate folder for critical documents. Mr. Stellfox was tired of hearing the negative opinions of Board Members.

SEVENTH ORDER OF BUSINESS

General Audience Comments

Mr. Chuck Poplar, a resident, asked if the body of water between the 10th Green on Oaks and the dog park was part of the pond system or wetlands. Mr. Deglomine stated that it was part of the wetland system.

Dr. Kessler, suggested posting a clear and concise summary of all significant events that the Board agreed to today and updating the website. Minutes should be posted immediately and

not 60 days later. Mr. Gundel noted that he would continue to be persistent with the bond validation, until the Boards agreed to a fair value to purchase the amenities. There would be no appeal, if the bonds were validated.

Due to a technical issue with the audio, the remaining audience comments were not audible.

EIGHTH ORDER OF BUSINESS

Other Business

- A. Poinciana CDD**
- B. Poinciana West CDD**

There being none, the next item followed.

NINTH ORDER OF BUSINESS

Staff Reports

- A. Attorney**

Mr. Eckert stated that the amendment process was starting, but the Boards were not putting the amendment into effect. Those who could not attend, would have another opportunity to voice their opinion. Mr. Eckert asked Mr. Flint to schedule a joint meeting for July 18, 2018 at 4:00 p.m., if it could be noticed in time, and would meet with him after the meeting.

- B. Engineer**

There being none, the next item followed.

- C. District Manager – report on funding agreements**

Mr. Flint received a check from AV Homes on Friday for \$226,990, which represents the February and May direct debt and O&M assessments. All funding requests were funded with the exception of the most recent one, which was about \$13,000.

- D. Field Manager**

There being none, the next item followed.

TENTH ORDER OF BUSINESS

Next Meeting Date

Mr. Eckert and Mr. Flint would coordinate a joint meeting for July 18, 2018 at 4:00 p.m.

ELEVENTH ORDER OF BUSINESS

Adjournment

- A. Poinciana CDD**

On MOTION by Mr. Zimbardi, seconded by Lane, with all in favor on behalf of Poinciana CDD, the meeting was adjourned.

B. Poinciana West CDD

On MOTION by Mr. Brown, seconded by Ms. Bzdewka, with all in favor on behalf of Poinciana West CDD, the meeting was adjourned.

Poinciana CDD

Secretary / Assistant Secretary

Chairman / Vice Chairman

Poinciana West CDD

Secretary / Assistant Secretary

Chairman / Vice Chairman

SECTION V

SECTION A



**FIRST AMENDMENT TO MASTER
ASSESSMENT METHODOLOGY
POINCIANA COMMUNITY
DEVELOPMENT DISTRICT
AND POINCIANA WEST COMMUNITY
DEVELOPMENT DISTRICT RECREATION
FACILITIES CONSTRUCTION &
ACQUISITION REGARDING
UNDEVELOPED LAND IN POINCIANA
COMMUNITY DEVELOPMENT DISTRICT**

September 5, 2018

**Prepared for:
Members of the Boards of Supervisors,
Poinciana Community Development District
Poinciana West Community Development District**

**Prepared by:
Fishkind & Associates, Inc.
12051 Corporate Boulevard
Orlando, Florida 32817**

**FIRST AMENDMENT TO MASTER ASSESSMENT METHODOLOGY
POINCIANA COMMUNITY DEVELOPMENT DISTRICT
AND POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT
RECREATION FACILITIES CONSTRUCTION & ACQUISITION
REGARDING UNDEVELOPED LAND IN THE POINCIANA COMMUNITY DEVELOPMENT
DISTRICT**

September 5, 2018

A. Purpose

This First Amendment to the Master Assessment Methodology (“First Amendment”) dated September 5, 2018 amends and updates the “Master Assessment Methodology” dated December 13, 2017 (“Master Methodology”) which provides a system for the allocation of non-ad valorem special assessments securing the repayment of bond debt planned to be issued by the Poinciana Community Development District (“PCDD”) to fund the Recreational Facilities Construction and Acquisition (“RFA”) for the PCDD and Poinciana West Community Development District (“PWCDD,” and collectively the “Districts”). The assessments previously levied on the lands within the PWCDD are unaffected by this First Amendment. The assessments previously levied on the platted and developed lots within the PCDD are unaffected by this First Amendment. This First Amendment is intended to address two issues, both of which relate solely to the assessments levied on undeveloped lands within the PCDD. First, it has been brought to the District’s attention that some of the parcel identification numbers for the undeveloped land included in the Master Methodology were outdated or incorrect. Second, 122 lots previously designated in the Master Methodology as unplatted have been platted. Consequently, this First Amendment provides updates with respect to the identity, acreage and unit counts of the undeveloped parcels and recognizes the platting of 122 lots.

B. Amended and Restated Section 3.3, including Tables 5 and 6

Section 3.3, including Tables 5 and 6, of the Master Methodology is hereby amended and restated, and replaced in its entirety with the following:

3.3 True-Up Mechanism

In order to assure that the assessment debt will not build up on the unplatted land within the PCDD, the PCDD shall conduct the following true-up test at the time of the approval of each plat and/or site plan. No true-up obligation is applicable to PWCCD because it is completely platted. The test is that the debt per acre remaining on the undeveloped, developable land is never allowed to increase above the initial maximum debt per acre level. Initially, the maximum level of debt per acre is calculated as the par amount of the bonds issued divided by the total number of planned units within the Districts, which is \$17,072.39 per unit. Phase 5A has now been platted into 122 lots, thereby reducing the number of unplatted units from 833 in the Master Methodology to 711. The principal per unit was then multiplied by the remaining 711 units planned for the 147-remaining net developable unplatted acres, which results in a principal assessment per remaining unplatted developable acre of \$82,843.

The allocation of the 147-remaining net developable unplatted acres among the parcels listed in Table 5 is based upon the best information available at this time and is subject to change over time as development proceeds within the PCDD. However, the true-up calculation is always based on the total 147-remaining net developable unplatted acres. As outlined in Table 5, there are 711 planned units remaining to be developed within these 147 acres. This produces a remaining unit per net developable unplatted acre count of 4.85 and an initial principal assessment per remaining net developable unplatted acre of \$82,843.

Table 5. True-Up Threshold

Unassigned Units	711
Total Net Unplatted Acres	146.52
Units/Net Acre	4.85
Maximum Bonds Principal/Net Acre	\$82,843.14

The developable property that currently remains unplatted will be the subject of a true-up analysis for the principal assessment assignment. An examination of the remaining net developable unplatted acres with anticipated lot counts and net acreages is found in Table 6.

Table 6. Parcels Within District – Initial Net Developable Acreage Assessments*

Phase Name	Anticipated Lot Count	Parcel ID	Parcel ID Net Acreage*	% of Undev. Acres	Bond Principal Assessment per Parcel(s)
5B	129	282715933579001260			
5C & D	242	282715933579001260	88.94	60.7%	\$7,368,400
5E(S)	66	282715933579001260			
5E(W)	77	282714933541004170	20.07	13.7%	\$1,662,579
5H	165	282714933530001000	33.43	22.8%	\$2,769,488
<u>1G</u>	<u>32</u>	<u>282714933541004050</u>	<u>4.08</u>	<u>2.8%</u>	<u>\$338,000</u>
Total Unplatted Lots	711	Total Unplatted Lots	146.52	100.0%	\$12,138,466

*Vacant lands are located only in the PCDD (net acreages are estimates); PWCDD has fulfilled the platting of all its residential units

Thus, each net developable unplatted acre is assigned a principal assessment of \$82,843 at the time of the adoption of this First Amendment. As outlined above, the assignment of Series 2017 Bonds assessments to the 147 unplatted developable acres within the PCDD will convert from an acreage to an ERU basis when some or all the acreage has been included in a plat or approved site plan. Units assigned an assessment by the PCDD to a parcel pursuant to one of these two steps will be subtracted proportionately from the remaining unplatted developable acreage.

Future plats and site plans for the remaining 147 net developable unplatted acres must absorb at least 4.85 units per acre. Plats or site plans which reduce the unit density on the remaining net developable unplatted acreage below 4.85 units per acre shall trigger a true-up payment. However, a true-up payment may be suspended at the PCDD's sole discretion if the property owner can demonstrate to the PCDD, and the PCDD finds in its sole discretion, that all necessary land use approvals, including applicable zoning, can reasonably and economically support a density lower than 4.85 units per remaining net developable unplatted acre based on the totality of the remaining development program.

If additional land, not currently subject to the debt assessments, is developed in such a manner as to receive special benefit from the Districts' RFA, it is contemplated that the Methodology will be re-applied to include such new parcels. The additional land, as a result of applying the Methodology, will be allocated an appropriate share of the special assessments, while all then-assessed parcels will receive a relative adjustment in their assessment levels.

C. Amended and Restated Assessment Roll

Based on the modifications discussed above, Exhibit A to the Master Methodology is amended and replaced with "Exhibit "A" attached hereto.

D. Reference

All references to "Methodology" in the "Master Methodology" shall mean the Master Methodology, as amended by this First Amendment.

EXHIBIT "A"
Amended and Restated Assessment Roll

4

COMMUNITY	PARCEL ID	PROJ. DESCR.	Units	Net Acres (est.)	Phase	Series 2017 RFA Bond Principal Per Unit	RFA Debt Assessment (net)	RFA Debt Assessment (gross)
Ponciana	282727934160003870	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 1	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003880	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 2	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003890	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 3	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003900	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 4	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003910	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 5	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003920	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 6	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003930	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 7	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003940	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 8	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003950	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 9	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003960	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 10	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003970	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 11	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003980	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 12	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160003990	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 13	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004000	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 14	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004010	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 15	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004020	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 16	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004030	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 17	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004040	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 18	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004050	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 19	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004060	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 20	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004070	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 21	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004080	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 22	1		4C&D	\$17,072.39	\$946.91	\$1,018.18
Ponciana	282727934160004090	SOLVITA-PHASE IVC SECTION 2 PB 124 PGS 33-38 LOT 23	1		4C&D	\$17,072.39	\$946.91	\$1,018.18

COMMUNITY	PARCEL ID	PROP DESCR1	Units	Net Acres (est.)	Phase	Series 2017 RFA Bond Principal Per Unit	RFA Debt Assessment (net)	RFA Debt Assessment (gross)
Ponciana West	282722833916000770	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000760	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000750	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000600	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000610	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000620	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000630	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000640	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000650	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000660	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000670	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000680	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000690	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000700	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000710	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000720	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000730	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000740	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000750	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000760	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
Ponciana West	282722833916000770	SOLMITA PHASE 7G - UNIT 1 PB 153 PG 36-39	1		7G Unit 1	\$17,072.39	\$946.91	\$1,018.18
			5,285	146.52	TOTAL	\$95,520,000.00	\$4,297,862.50	\$5,686,733.87

SECTION B

SECTION 2

RESOLUTION 2018-16

A RESOLUTION OF THE POINCIANA COMMUNITY DEVELOPMENT DISTRICT CONFIRMING THE AUTHORIZATION OF DISTRICT PROJECTS FOR THE ACQUISITION, CONSTRUCTION, AND/OR RECONSTRUCTION OF CERTAIN AMENITIES AND RELATED INFRASTRUCTURE IMPROVEMENTS AND THE COST THEREOF; REALLOCATING SPECIAL ASSESSMENTS ON UNDEVELOPED PROPERTY WITHIN THE DISTRICT; EQUALIZING, APPROVING, CONFIRMING, AND LEVYING SPECIAL ASSESSMENTS, AS REALLOCATED, ON PROPERTY WITHIN THE DISTRICT THAT IS SPECIALLY BENEFITED BY SUCH PROJECTS TO PAY THE COST OF SUCH IMPROVEMENTS; PROVIDING FOR THE RECORDING OF AN ASSESSMENT NOTICE; PROVIDING FOR SEVERABILITY, CONFLICTS, INCORPORATING CERTAIN TERMS OF RESOLUTION 2018-07, AND AN EFFECTIVE DATE.

RECITALS

WHEREAS, on December 13, 2017, the Board of Supervisors (the “Board”) of the Poinciana Community Development District (the “District”) adopted Resolution 2018-07 in which it determined to undertake, install, plan, establish, construct or reconstruct, enlarge or extend, equip, acquire, operate, and/or maintain the infrastructure improvements (the “Amenity Improvements”) described in the *Amenity Facility Engineering Report* dated December 13, 2017 (the “Improvement Plan”), attached hereto as **Exhibit A**; and

WHEREAS, the Board, by the adoption of Resolution 2018-07, additionally levied special assessments to secure its proportionate share of the bonds anticipated to be issued to fund the Improvement Plan (the “PCDD Amenity Assessments”) in accordance with the adopted *Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition* dated December 13, 2017 (the “Master Methodology”), attached hereto as **Exhibit B**; and

WHEREAS, the Board of Supervisors (the “PWCDD Board”) of the Poinciana West Community Development District (“PWCDD”), pursuant to its Resolution 2018-05 also adopted on December 13, 2017, similarly determined to undertake the Improvement Plan and levied special assessments to secure its proportionate share of the bonds anticipated to be issued to fund the Improvement Plan (the “PWCDD Amenity Assessments, and together with the PCDD Amenity Assessments, the “Amenity Assessments”); and

WHEREAS, it has been brought to the District’s attention that certain of the parcel identification numbers for undeveloped land listed solely as owned by Avatar Properties, Inc. (“Avatar”) in the Master Methodology are outdated or incorrect, and that 122 residential lots have been platted by Avatar in Phase 5A which is not reflected in the Master Methodology; and

WHEREAS, Avatar has requested the District adopt an amendment to the Master Methodology to correct the parcel identification numbers and to incorporate the platting of the 122 lots in Phase 5A, and thus reallocate the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within the District (the “Reallocated Amenity Assessments”); and

WHEREAS, in furtherance thereof, the District’s assessment consultant has prepared a *First Amendment to Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition Regarding Undeveloped Land in Poinciana Community Development District*, dated September 5, 2018 (the “First Amendment,” and together with the Master Methodology, the “Methodology”), attached hereto as **Exhibit C**; and

WHEREAS, the First Amendment: i) corrects the parcel identification numbers of the undeveloped land owned by Avatar Properties, Inc. by adding parcel identification number 28-27-15-933579-001260 to Table 6 and the assessment roll and by removing parcel identification numbers 28-27-14-933530-042000 and 28-27-14-933543-001730 from Table 6 and the assessment roll; ii) adjusts the acreage and initial principal debt assessments per acre for the undeveloped lands based on current information; iii) sets forth the amounts of the Reallocated Amenity Assessments; and iv) recognizes the platting of the 122 lots in Phase 5A; and

WHEREAS, the First Amendment does not: i) alter the methodology for assessment allocation, imposition of assessments, or true-up payments contained in the Master Methodology; ii) change the PCDD Amenity Assessments levied by the District pursuant to its Resolution 2018-07 against *platted lots* within the District; or iii) change the PWCDD Amenity Assessments levied by PWCDD pursuant to its Resolution 2018-05 against *any property within PWCDD*; and

WHEREAS, in order to effectuate the proposed reallocation of a portion of the PCDD Amenity Assessments, the District subsequently adopted: i) Resolution 2018-11 declaring its intent to adopt an amendment to its Master Methodology and to reallocate the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within the District, and ii) Resolution 2018-12 setting a public hearing thereupon; and

WHEREAS, the PWCDD Board, pursuant to its Resolution 2018-09, has declared its intent to acknowledge and consent to the District’s proposed reallocation of the PCDD Amenity Assessments levied on the undeveloped lands within the District; and

WHEREAS, the District’s Board has noticed and conducted a public hearing pursuant to Chapters 170, 190 and 197, *Florida Statutes*, relating to the reallocation of the PCDD Amenity Assessments relative to the undeveloped lands within the District, and to the imposition, levy,

collection and enforcement of the PCDD Amenity Assessments, as reallocated; and

WHEREAS, the District will not certify the Amenity Assessments, as reallocated, for collection unless and until closing on the acquisition of the Amenity Improvements has occurred.

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

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapters 170, 190 and 197, *Florida Statutes*, including without limitation, Section 170.08, *Florida Statutes*.

SECTION 2. FINDINGS. The Board hereby finds and determines as follows:

(a) The District is a local unit of special-purpose government organized and existing under and pursuant to Chapter 190, *Florida Statutes*, as amended.

(b) The District is authorized by Resolution 2016-066 of the Polk County Board of County Commissioners to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural and educational uses in accordance with Section 190.012(2)(a), *Florida Statutes*.

(c) The District is authorized by Chapter 190, *Florida Statutes*, to levy and impose special assessments to pay all, or any part of, the cost of infrastructure projects and services and to issue special assessment revenue bonds payable from such special assessments as provided in Chapters 170, 190 and 197, *Florida Statutes*.

(d) It continues to be necessary to the public health, safety and welfare and in the best interests of the District that: i) the District provide for the acquisition, construction and/or reconstruction of the Amenity Improvements, the nature and location of which were initially described in Resolutions 2018-07 and 2018-11, and are shown in the *Amenity Facility Engineering Report*, dated December 13, 2017, and the plans and specifications on file at the District office at 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 and at 395 Village Drive, Suite C, Poinciana, Florida 34759; ii) the cost of the Amenity Improvements be assessed against the lands specially benefited by such improvements; and iii) the District issue bonds to provide funds for such purposes pending the receipt of such special assessments.

(e) The provision of the acquisition, construction, and/or reconstruction of the Amenity Improvements, the levying of the Amenity Assessments, as reallocated, and the sale and issuance of the Amenity Bonds (hereinafter defined) continues to serve a proper, essential, and valid public purpose and is in the best interests of the District, its landowners and residents.

(f) In order to provide funds with which to pay its proportionate share of the costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements which are to be

assessed against the benefited properties within the District and PWCDD, pending the collection of such special assessments, it is necessary for the District from time to time to sell and issue special assessment revenue bonds, in one or more series (hereinafter, the "Amenity Bonds").

(g) By Resolution 2018-07 and pursuant to Florida law, the District levied the PCDD Amenity Assessments in accordance with the Master Methodology, which assessments are to be utilized to defray a portion of the District's proportionate share of the costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements financed with the Amenity Bonds.

(h) By Resolution 2018-11, the Board thereafter determined to adopt the First Amendment and to reallocate the PCDD Amenity Assessments levied on certain undeveloped lands located within the District. Resolution 2018-11 was adopted in compliance with the requirements of Section 170.03, *Florida Statutes*, and prior to the time it was adopted, the requirements of Section 170.04, *Florida Statutes*, had been met.

(i) As directed by Resolution 2018-11, said resolution was published as required by Section 170.05, *Florida Statutes*, and a copy of the publisher's affidavit of publication is on file with the Secretary of the Board.

(j) As directed by Resolution 2018-11, a preliminary assessment roll relative to the Reallocated Amenity Assessments was adopted and filed with the Board as required by Section 170.06, *Florida Statutes*.

(k) As required by Section 170.07, *Florida Statutes*, upon completion of the preliminary assessment roll, the Board adopted Resolution 2018-12, fixing the time and place of a public hearing at which owners of the property to be assessed and other persons interested therein may appear before the Board and be heard as to: i) the propriety and advisability of reallocating the PCDD Amenity Assessments relative to the undeveloped lands within the District or the making of the Amenity Improvements; ii) the cost thereof; iii) the manner of payment therefore; iv) the amount thereof to be assessed against each property as improved; and v) the adoption of the First Amendment, and provided for publication of notice of such public hearing and individual mailed notice in accordance with Chapters 170, 190 and 197, *Florida Statutes*.

(l) Notice of such public hearing was given by publication and also by mail as required by Section 170.07, *Florida Statutes*. Affidavits as to such publications and mailings are on file in the office of the Secretary of the Board.

(m) On September 5, 2018, at the time and place specified in the resolution and notice referred to in paragraphs (k) and (l) above, the Board met as an Equalization Board and heard and considered all complaints and testimony as to the matters described in paragraph (k) above. The Board has made such modifications to the preliminary assessment roll relative to the Reallocated Amenity Assessments as it deems necessary, just and right in the making of the final assessment roll for such assessments.

(n) Having considered the estimated costs of the acquisition, construction and/or

reconstruction of the Amenity Improvements, estimates of financing costs and all complaints and evidence presented at such public hearing, the Board of Supervisors of the District further finds and determines:

(i) the estimated costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements continues to be as specified in the *Amenity Facility Engineering Report*, dated December 13, 2017 and attached hereto as **Exhibit A**, which report was originally adopted by the District pursuant to Resolution 2018-07; and

(ii) the District's proportionate share of the cost of acquiring, constructing, and/or reconstructing the Amenity Improvements continues to be assessed against the properties within the District specially benefited thereby using the method determined by the Board set forth in the *Master Assessment Methodology Report*, dated December 13, 2017 and attached hereto as **Exhibit B**, subject to the revisions to such methodology made by the First Amendment as addressed below, which report was originally adopted by the District pursuant to Resolution 2018-07; and

(iii) it is reasonable, proper, just, and right to adopt the First Amendment and to reallocate the PCDD Amenity Assessments imposed by Resolution 2018-07 levied on the undeveloped lands within the District in accordance with the *First Amendment to Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition Regarding Undeveloped Land in Poinciana Community Development District*, dated September 5, 2018, attached hereto as **Exhibit C** and incorporated herein by this reference; and

(iv) the reallocation of the PCDD Amenity Assessments relative to the undeveloped land within the District in the manner set forth in the First Amendment results in the allocation of the Amenity Assessments, as reallocated, shown on the final assessment roll attached to **Exhibit C** (hereinafter, the "Final Assessment Roll"); and

(v) the acquisition, construction, and/or reconstruction of the Amenity Improvements continues to constitute a special benefit to the parcels of real property within the District listed on said Final Assessment Roll, and the benefit, in the case of each such parcel, remains equal to or in excess of the PCDD Amenity Assessments levied thereon when reallocated as set forth in **Exhibit C**; and

(vi) it is in the best interests of the District that the portion of the Amenity Assessments shown on the Final Assessment Roll allocable to the lands within the District be paid and collected as herein provided.

SECTION 3. CONFIRMATION OF AUTHORIZATION OF AMENITY

IMPROVEMENTS. The authorization and approval of the acquisition, construction, and/or reconstruction of the Amenity Improvements by Resolution 2018-07, as such improvements are specifically identified and described in **Exhibit A** attached hereto, remains in full force and effect, and the proper officers, employees and/or agents of the District continue to be authorized and directed to take such further action as may be necessary or desirable to cause the same to be made.

SECTION 4. ESTIMATED COST OF IMPROVEMENTS. The total estimated costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements adopted pursuant to Resolution 2018-07 remains unchanged at \$84,085,543, as more particularly set forth in **Exhibit A** hereto. The costs to be paid by the Amenity Assessments, as reallocated, are set forth in **Exhibits B and C** hereto.

SECTION 5. ADOPTION OF THE FIRST AMENDMENT. REALLOCATION OF CERTAIN SPECIAL ASSESSMENTS; EQUALIZATION, APPROVAL, CONFIRMATION, AND LEVY OF SPECIAL ASSESSMENTS, AS REALLOCATED.

- A.** The First Amendment is hereby adopted. The PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within the District, which are specially benefited by the acquisition, construction, and/or reconstruction of the Amenity Improvements, are hereby reallocated, and the PCDD Amenity Assessments, as reallocated pursuant to this Resolution, are hereby equalized, approved, confirmed and levied as set forth in the Final Assessment Roll set forth in **Exhibit C** hereto.
- B.** Immediately following the adoption of this Resolution, the lien of the PCDD Amenity Assessments, as reallocated and reflected in **Exhibit C** attached hereto, shall be recorded by the Secretary of the Board of the District in a special book, to be known as the "Improvement Lien Book."

SECTION 6. ASSESSMENT NOTICE. The District's Secretary is hereby directed to record a general Notice of Reallocated Amenity Assessments in the Official Records of Polk County, Florida, which shall be updated from time to time in a manner consistent with changes in the boundaries of the District.

SECTION 7. SEVERABILITY. If any section or part of a section of this Resolution be declared invalid or unconstitutional, the validity, force and effect of any other section or part of a section of this Resolution shall not thereby be affected or impaired unless it clearly appears that such other section or part of a section of this Resolution is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.

SECTION 8. CONFLICTS; INCORPORATION OF CERTAIN TERMS OF RESOLUTION 2018-07. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed. For the avoidance of doubt, all portions of Resolution 2018-07 that are not in direct conflict with this Resolution, including but not limited to the provisions set forth in Sections 5 through 9, remain in full force and effect and remain applicable

to the Reallocated Amenity Assessments as shown on the Final Assessment Roll to the same extent as they are applicable to the PCDD Amenity Assessments as originally levied by Resolution 2018-07. The terms of such provisions are accordingly incorporated into this Resolution by this reference.

SECTION 9. EFFECTIVE DATE. This Resolution shall become effective upon its adoption; provided, however, that no portion of the Amenity Assessments, as reallocated, shall be certified for collection unless and until closing on the acquisition of the Amenity Improvements has occurred.

APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2018.

ATTEST:

**BOARD OF SUPERVISORS OF THE
POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**

Secretary

Chairman

- Exhibit A:** *Amenity Facility Engineering Report*, dated December 13, 2017
Exhibit B: *Master Assessment Methodology Report*, dated December 13, 2017
Exhibit C: *First Amendment to Master Methodology Report*, dated September 5, 2018

EXHIBIT A

Engineer's Report

EXHIBIT B

Master Assessment Methodology Report

EXHIBIT C

First Amendment to Master Methodology Report

SECTION C

SECTION 2

RESOLUTION 2018-13

A RESOLUTION OF THE POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT CONFIRMING THE AUTHORIZATION OF DISTRICT PROJECTS FOR THE ACQUISITION, CONSTRUCTION, AND/OR RECONSTRUCTION OF CERTAIN AMENITIES AND RELATED INFRASTRUCTURE IMPROVEMENTS AND THE COST THEREOF; ADOPTING THE FIRST AMENDMENT; ACKNOWLEDGING AND CONSENTING TO THE REALLOCATION OF SPECIAL ASSESSMENTS ON UNDEVELOPED PROPERTY WITHIN THE POINCIANA COMMUNITY DEVELOPMENT DISTRICT; ACKNOWLEDGING AND CONSENTING TO THE EQUALIZING, APPROVING, CONFIRMING, AND LEVYING OF SPECIAL ASSESSMENTS, AS REALLOCATED, ON PROPERTY WITHIN THE POINCIANA COMMUNITY DEVELOPMENT DISTRICT THAT IS SPECIALLY BENEFITED BY SUCH PROJECTS TO PAY THE COST OF SUCH IMPROVEMENTS; PROVIDING FOR THE RECORDING OF AN ASSESSMENT NOTICE; PROVIDING FOR SEVERABILITY, CONFLICTS, INCORPORATING CERTAIN TERMS OF RESOLUTION 2018-05, AND AN EFFECTIVE DATE.

RECITALS

WHEREAS, on December 13, 2017, the Board of Supervisors (the “Board”) of the Poinciana West Community Development District (the “District”) adopted Resolution 2018-05 in which it determined to undertake, install, plan, establish, construct or reconstruct, enlarge or extend, equip, acquire, operate, and/or maintain the infrastructure improvements (the “Amenity Improvements”) described in the *Amenity Facility Engineering Report* dated December 13, 2017 (the “Improvement Plan”), attached hereto as **Exhibit A**; and

WHEREAS, the Board, by the adoption of Resolution 2018-05, additionally levied special assessments to secure its proportionate share of the bonds anticipated to be issued to fund the Improvement Plan (the “PWCDD Amenity Assessments”) in accordance with the adopted *Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition* dated December 13, 2017 (the “Master Methodology”), attached hereto as **Exhibit B**; and

WHEREAS, the Board of Supervisors (the “PCDD Board”) of the Poinciana Community Development District (“PCDD”), pursuant to its Resolution 2018-07 also adopted on December 13, 2017, similarly determined to undertake the Improvement Plan and levied special

assessments to secure its proportionate share of the bonds anticipated to be issued to fund the Improvement Plan (the “PCDD Amenity Assessments, and together with the PWCCD Amenity Assessments, the “Amenity Assessments”); and

WHEREAS, it has been brought to the District’s attention that certain of the parcel identification numbers for undeveloped land located entirely within PCDD listed solely as owned by Avatar Properties, Inc. (“Avatar”) in the Master Methodology are outdated or incorrect, and that 122 residential lots have been platted by Avatar in Phase 5A of PCDD which is not reflected in the Master Methodology; and

WHEREAS, Avatar has requested that PCDD adopt an amendment to the Master Methodology to correct the parcel identification numbers and to incorporate the platting of the 122 lots in Phase 5A of PCDD, and thus reallocate the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within PCDD (the “Reallocated Amenity Assessments”); and

WHEREAS, in furtherance thereof, the District’s assessment consultant has prepared a *First Amendment to Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition Regarding Undeveloped Land in Poinciana Community Development District*, dated September 5, 2018 (the “First Amendment,” and together with the Master Methodology, the “Methodology”), attached hereto as **Exhibit C**; and

WHEREAS, the First Amendment: i) corrects the parcel identification numbers of the undeveloped land in PCDD owned by Avatar Properties, Inc. by adding parcel identification number 28-27-15-933579-001260 to Table 6 and the assessment roll and by removing parcel identification numbers 28-27-14-933530-042000 and 28-27-14-933543-001730 from Table 6 and the assessment roll; ii) adjusts the acreage and initial principal debt assessments per acre for the undeveloped lands in PCDD based on current information; iii) sets forth the amounts of the Reallocated Amenity Assessments; and iv) recognizes the platting of the 122 lots in Phase 5A of PCDD; and

WHEREAS, the First Amendment does not: i) alter the methodology for assessment allocation, imposition of assessments, or true-up payments contained in the Master Methodology; ii) change the PCDD Amenity Assessments levied by PCDD pursuant to its Resolution 2018-07 against *platted lots* within PCDD; or iii) change the PWCCD Amenity Assessments levied by the District pursuant to its Resolution 2018-05 against *any property* within the District; and

WHEREAS, in order to effectuate the proposed reallocation of a portion of the PCDD Amenity Assessments, the District subsequently adopted: i) Resolution 2018-09 declaring its intent to acknowledge and consent to PCDD’s adoption of an amendment to its Master Methodology and reallocation of the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within PCDD, and ii) Resolution 2018-10 setting a public hearing thereupon; and

WHEREAS, the PCDD Board, pursuant to its Resolution 2018-11, has declared its intent to adopt an amendment to the Master Methodology and to reallocate the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within PCDD; and

WHEREAS, the District's Board has noticed and conducted a public hearing pursuant to Chapters 170, 190 and 197, *Florida Statutes*, relating to the District's acknowledgment and consent to the reallocation of the PCDD Amenity Assessments relative to the undeveloped lands within PCDD, and to the imposition, levy, collection and enforcement of the PCDD Amenity Assessments, as reallocated; and

WHEREAS, the District will not certify the Amenity Assessments, as reallocated, for collection unless and until closing on the acquisition of the Amenity Improvements has occurred.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT AS FOLLOWS:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to Chapters 170, 190 and 197, *Florida Statutes*, including without limitation, Section 170.08, *Florida Statutes*.

SECTION 2. FINDINGS. The Board hereby finds and determines as follows:

(a) The District is a local unit of special-purpose government organized and existing under and pursuant to Chapter 190, *Florida Statutes*, as amended.

(b) The District is authorized by Ordinance No. 2016-034 of the Polk County Board of County Commissioners to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate and maintain additional systems and facilities for parks and facilities for indoor and outdoor recreational, cultural and educational uses in accordance with Section 190.012(2)(a), *Florida Statutes*.

(c) The District is authorized by Chapter 190, *Florida Statutes*, to levy and impose special assessments to pay all, or any part of, the cost of infrastructure projects and services and to issue special assessment revenue bonds payable from such special assessments as provided in Chapters 170, 190 and 197, *Florida Statutes*.

(d) It continues to be necessary to the public health, safety and welfare and in the best interests of the District that: i) PCDD provide for the acquisition, construction and/or reconstruction of the Amenity Improvements, the nature and location of which were initially described in Resolutions 2018-05 and 2018-09, and are shown in the *Amenity Facility Engineering Report*, dated December 13, 2017, and the plans and specifications on file at the District office at 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 and at 395 Village Drive, Suite C, Poinciana, Florida 34759; ii) the cost of the Amenity Improvements be assessed against the lands specially benefited by such improvements; and iii) PCDD issue bonds

to provide funds for such purposes pending the receipt of such special assessments.

(e) The provision of the acquisition, construction, and/or reconstruction of the Amenity Improvements by PCDD, the levying of the Amenity Assessments, as reallocated, and the sale and issuance of the Amenity Bonds (hereinafter defined) continues to serve a proper, essential, and valid public purpose and is in the best interests of the District, its landowners and residents.

(f) In order to provide funds with which to pay its proportionate share of the costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements which are to be assessed against the benefited properties within the District and PCDD, pending the collection of such special assessments, it is necessary for PCDD from time to time to sell and issue special assessment revenue bonds, in one or more series (hereinafter, the "Amenity Bonds").

(g) By Resolution 2018-05 and pursuant to Florida law, the District levied the PWCCD Amenity Assessments in accordance with the Master Methodology, which assessments are to be utilized to defray a portion of the District's proportionate share of the costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements financed with the Amenity Bonds to be issued by PCDD.

(h) By Resolution 2018-09, the Board thereafter determined to acknowledge and consent to the reallocation of the PCDD Amenity Assessments levied on certain undeveloped lands located within PCDD in accordance with manner set forth in the First Amendment. Resolution 2018-09 was adopted in compliance with the requirements of Section 170.03, *Florida Statutes*, and prior to the time it was adopted, the requirements of Section 170.04, *Florida Statutes*, had been met.

(i) As directed by Resolution 2018-09, said resolution was published as required by Section 170.05, *Florida Statutes*, and a copy of the publisher's affidavit of publication is on file with the Secretary of the Board.

(j) As directed by Resolution 2018-09, a preliminary assessment roll relative to the Reallocated Amenity Assessments was adopted and filed with the Board as required by Section 170.06, *Florida Statutes*.

(k) As required by Section 170.07, *Florida Statutes*, upon completion of the preliminary assessment roll, the Board adopted Resolution 2018-10, fixing the time and place of a public hearing at which owners of the property to be assessed and other persons interested therein may appear before the Board and be heard as to: i) the propriety and advisability of the District's consent and acknowledgment to PCDD's reallocation of the PCDD Amenity Assessments relative to the undeveloped lands within PCDD or the making of the Amenity Improvements; ii) the cost thereof; iii) the manner of payment therefore; iv) the amount thereof to be assessed against each property as improved; and v) the adoption of the First Amendment, and provided for publication of notice of such public hearing and individual mailed notice in accordance with Chapters 170, 190 and 197, *Florida Statutes*.

(l) Notice of such public hearing was given by publication and also by mail as required

by Section 170.07, *Florida Statutes*. Affidavits as to such publications and mailings are on file in the office of the Secretary of the Board.

(m) On September 5, 2018, at the time and place specified in the resolution and notice referred to in paragraphs (k) and (l) above, the Board met as an Equalization Board and heard and considered all complaints and testimony as to the matters described in paragraph (k) above. The Board has made such modifications to the preliminary assessment roll relative to the Reallocated Amenity Assessments as it deems necessary, just, and right in the making of the final assessment roll for such assessments.

(n) Having considered the estimated costs of the acquisition, construction and/or reconstruction of the Amenity Improvements, estimates of financing costs and all complaints and evidence presented at such public hearing, the Board of Supervisors of the District further finds and determines:

(i) the estimated costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements continues to be as specified in the *Amenity Facility Engineering Report*, dated December 13, 2017 and attached hereto as **Exhibit A**, which report was originally adopted by the District pursuant to Resolution 2018-05; and

(ii) the District's proportionate share of the cost of acquiring, constructing, and/or reconstructing the Amenity Improvements continues to be assessed against the properties within the District specially benefited thereby using the method determined by the Board set forth in the *Master Assessment Methodology Report*, dated December 13, 2017 and attached hereto as **Exhibit B**, subject to the revisions to such methodology relative to the undeveloped lands within PCDD made by the First Amendment as addressed below, which report was originally adopted by the District pursuant to Resolution 2018-05; and

(iii) it is reasonable, proper, just, and right to adopt the First Amendment and to acknowledge and consent to the reallocation of the PCDD Amenity Assessments imposed by PCDD Resolution 2018-07 levied on the undeveloped lands within PCDD in accordance with the *First Amendment to Master Assessment Methodology Poinciana Community Development District and Poinciana West Community Development District Recreation Facilities Construction and Acquisition Regarding Undeveloped Land in Poinciana Community Development District*, dated September 5, 2018, attached hereto as **Exhibit C** and incorporated herein by this reference; and

(iv) the reallocation of the PCDD Amenity Assessments relative to the undeveloped land within PCDD in the manner set forth in the First Amendment results in the allocation of the Amenity Assessments, as reallocated, shown on the final assessment roll attached to **Exhibit C** (hereinafter, the "Final Assessment Roll"); and

(v) the acquisition, construction, and/or reconstruction of the Amenity Improvements continues to constitute a special benefit to the parcels of real property within the District listed on said Final Assessment Roll, and the benefit, in the case of each such parcel, remains equal to or in excess of the PWCDD Amenity Assessments levied thereon taking into account the reallocation of the PCDD Amenity Assessments as set forth in **Exhibit C**; and

(vi) it is in the best interests of the District that the portion of the Amenity Assessments shown on the Final Assessment Roll allocable to the lands within the District be paid and collected as herein provided.

SECTION 3. CONFIRMATION OF AUTHORIZATION OF AMENITY IMPROVEMENTS. The authorization and approval of the acquisition, construction, and/or reconstruction of the Amenity Improvements by Resolution 2018-05, as such improvements are specifically identified and described in **Exhibit A** attached hereto, remains in full force and effect, and the proper officers, employees and/or agents of the District continue to be authorized and directed to take such further action as may be necessary or desirable to cause the same to be made.

SECTION 4. ESTIMATED COST OF IMPROVEMENTS. The total estimated costs of the acquisition, construction, and/or reconstruction of the Amenity Improvements adopted pursuant to Resolution 2018-05 remains unchanged at \$84,085,543, as more particularly set forth in **Exhibit A** hereto. The costs to be paid by the Amenity Assessments, as reallocated, are set forth in **Exhibits B and C** hereto.

SECTION 5. ADOPTION OF FIRST AMENDMENT; ACKNOWLEDGMENT AND CONSENT TO PCDD'S REALLOCATION OF CERTAIN SPECIAL ASSESSMENTS; ACKNOWLEDGMENT AND CONSENT TO PCDD'S EQUALIZATION, APPROVAL, CONFIRMATION, AND LEVY OF SPECIAL ASSESSMENTS, AS REALLOCATED.

- A.** The First Amendment is hereby adopted, and the District hereby acknowledges and consents to the reallocation of the PCDD Amenity Assessments identified in the Master Methodology as levied against undeveloped lands within PCDD, which are specially benefited by the acquisition, construction, and/or reconstruction of the Amenity Improvements. Further, the District hereby acknowledges and consents to PCDD's equalization, approval, confirmation, and levy of the PCDD Amenity Assessments, as reallocated, on the undeveloped lands within PCDD in the manner set forth in the Final Assessment Roll set forth in **Exhibit C** hereto. Notwithstanding the foregoing, nothing herein changes the allocation of the portion of the Amenity Assessments originally levied on the lands within the District by Resolution 2018-05.
- B.** Immediately following the adoption of this Resolution, the lien of the PWCDD Amenity Assessments, as reflected in **Exhibit C** attached hereto, shall be recorded by the Secretary of the Board of the District in a special book, to be known as the "Improvement Lien Book."

SECTION 6. ASSESSMENT NOTICE. The District's Secretary is hereby directed to record a general Notice of Reallocated PCDD Amenity Assessments in the Official Records of Polk County, Florida, which shall be updated from time to time in a manner consistent with changes in the boundaries of the District.

SECTION 7. SEVERABILITY. If any section or part of a section of this Resolution be declared invalid or unconstitutional, the validity, force and effect of any other section or part of a section of this Resolution shall not thereby be affected or impaired unless it clearly appears that such other section or part of a section of this Resolution is wholly or necessarily dependent upon the section or part of a section so held to be invalid or unconstitutional.

SECTION 8. CONFLICTS; INCORPORATION OF CERTAIN TERMS OF RESOLUTION 2018-05. All resolutions or parts thereof in conflict herewith are, to the extent of such conflict, superseded and repealed. For the avoidance of doubt, all portions of Resolution 2018-05 that are not in direct conflict with this Resolution, including but not limited to the provisions set forth in Sections 5 through 9, remain in full force and effect and remain applicable to the PWCDD Amenity Assessments as shown on the Final Assessment Roll to the same extent as they were applicable to such assessments as originally levied by Resolution 2018-05. The terms of such provisions are accordingly incorporated into this Resolution by this reference.

SECTION 9. EFFECTIVE DATE. This Resolution shall become effective upon its adoption; provided, however, that no portion of the Amenity Assessments, as reallocated, shall be certified for collection unless and until closing on the acquisition of the Amenity Improvements has occurred.

APPROVED AND ADOPTED THIS 5th DAY OF SEPTEMBER, 2018.

ATTEST:

**BOARD OF SUPERVISORS OF THE
POINCIANA WEST COMMUNITY
DEVELOPMENT DISTRICT**

Secretary

Chairman

- Exhibit A:** *Amenity Facility Engineering Report*, dated December 13, 2017
Exhibit B: *Master Assessment Methodology Report*, dated December 13, 2017
Exhibit C: *First Amendment to Master Methodology Report*, dated September 5, 2018

EXHIBIT A

Engineer's Report

EXHIBIT B

Master Assessment Methodology Report

EXHIBIT C

First Amendment to Master Methodology Report

SECTION VII

SECTION A

**THIRTEENTH AMENDMENT
TO ASSET SALE AND PURCHASE AGREEMENT**

This Thirteenth Amendment to Asset Sale and Purchase Agreement ("Amendment") is entered into as of July 20, 2018 (the "Amendment Effective Date"), by and between AVATAR PROPERTIES INC., a Florida corporation ("Seller") and POINCIANA COMMUNITY DEVELOPMENT DISTRICT, a special purpose unit of local government established under Chapter 190, Florida Statutes ("Buyer").

RECITALS

A. Seller and Buyer entered into that certain *Asset Sale and Purchase Agreement* (the "Original Agreement") with an Effective Date of December 5, 2016, as amended by that certain *First Amendment to Asset Sale and Purchase Agreement* with an effective date of February 24, 2017, that certain *Second Amendment to Asset Sale and Purchase Agreement* with an effective date of March 15, 2017, that certain *Third Amendment to Asset Sale and Purchase Agreement* with an effective date of April 19, 2017, that certain *Fourth Amendment to Asset Sale and Purchase Agreement* with an effective date of May 17, 2017, that certain *Fifth Amendment to Asset Sale and Purchase Agreement* with an effective date of June 21, 2017, that certain *Sixth Amendment to Asset Sale and Purchase Agreement* with an effective date of July 26, 2017, that certain *Seventh Amendment to Asset Sale and Purchase Agreement* with an effective date of September 20, 2017, that certain *Eighth Amendment to Asset Sale and Purchase Agreement* with an effective date of October 18, 2017, that certain *Ninth Amendment to Asset Sale and Purchase Agreement* with an effective date of January 29, 2018, that certain *Tenth Amendment to Asset Sale and Purchase Agreement* with an effective date of March 21, 2018, that certain *Eleventh Amendment to Asset Sale and Purchase Agreement* with an effective date of April 29, 2018, and that certain *Twelfth Amendment to Asset Sale and Purchase Agreement* with an effective date of June 13, 2018 (collectively, the "Agreement"), with respect to the sale of the Purchased Assets, as defined in the Agreement from Seller to Buyer.

B. Seller and Buyer wish to amend the Agreement as provided in this Amendment.

NOW, THEREFORE, for and in consideration of the foregoing, the promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Buyer agree as follows:

1. Inspection Completion Date. The definition of Inspection Completion Date in Section 1.1(xlix) of the Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

““Inspection Completion Date” means 5:00 p.m., Eastern time on October 1, 2018.”

2. Bond Validation Date. Simultaneously with the Amendment Effective Date, Seller hereby elects to extend the Validation Date to October 1, 2018.

3. Ratification. Except as modified hereby, all terms and conditions of the Agreement are hereby ratified and confirmed and remain in full force and effect. In the event of any conflict between any term set forth in the Agreement and this Amendment, the terms of this Amendment shall control.

4. Counterparts/ Facsimile. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same document. Execution and delivery of this Amendment may be accomplished via electronic transmission.

IN WITNESS WHEREOF, Seller and Buyer have each caused this Amendment to be duly executed on their respective behalves by their respective duly authorized officers.

SELLER:

AVATAR PROPERTIES INC.,
a Florida corporation

By: 

Name: S. GARY SHULLARD


Title: VP & GENERAL COUNSEL


[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

BUYER:

**POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**, a
special purpose unit of local government
established pursuant to Chapter 190,
Florida Statutes

Attest:


Secretary

By: 
Printed Name: Robert Zimbardi
Title: Commissioner - PCDD

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SECTION VIII

Q & A for Current Status of Amenity Transaction as of September 5, 2018

Prepared by Poinciana Community Development District and
Poinciana West Community Development District (the "Districts")

This document supersedes the prior *Q & A for Current Status of Amenity Transaction* documents dated March 8, 2017 and November 15, 2017, which no longer reflect the current status. This document is intended to answer commonly asked questions about the current status and framework of the proposed acquisition and renovation of the existing Solivita Recreation Amenities and construction of a new Performing Arts Center and new Wellness Center ("New Amenities") by the Districts. The Districts encourage residents to review this document to obtain accurate information. Any document referenced below is a public record capable of inspection by any member of the public.

For purposes of this document, the following definitions apply:

"Club Membership Fee" means the monthly fee currently paid to Avatar by owners of property within Solivita by virtue of the Club.

"Club Operations Fee" means the monthly fee currently paid to Avatar by owners of property within Solivita for operation and maintenance (O&M) of the Solivita Recreation Amenities by virtue of the Club Plan.

"Club Fees" means the combination of Club Membership Fees and Club Operations Fees.

"Club Plan" means that Amended and Restated Club Plan binding on all residential property in Solivita.

"CDD Debt Assessment" means the non ad-valorem special assessment proposed to be levied by the Districts on each developed and undeveloped residential lot within Solivita 1) to acquire the Solivita Recreation Amenities, 2) to construct the New Amenities, and/or 3) to reconstruct and renovate certain of the Solivita Recreation Amenities. The CDD Debt Assessment will replace the Club Membership Fee.

"CDD O&M Assessment" means the non ad-valorem special assessment proposed to be levied by the Districts each year on each developed and undeveloped residential lot within Solivita to fund the operation, maintenance, repair and replacement of the existing Solivita Recreation Amenities and the New Amenities. The CDD O&M Assessment will replace the Club Operations Fee.

Current Solivita Club Plan Facts

Question ***Does the current Club Plan require Avatar to pay Club Membership Fees on its undeveloped lots?***

Answer No.

Question ***Does the current Club Plan require Avatar to pay Club Operation Fees on its undeveloped lots?***

Answer No.

Question ***Does the current Club Plan provide for a periodic increase of Club Membership Fees?***

Answer Yes. Monthly Club Membership fees are permitted to be increased \$1 plus tax each month, for a total of \$12 plus tax per year, per home. (As more fully set forth below, and pursuant to the Asset Purchase and Sale Agreement, the amount of the annual CDD Debt Assessment will be capped at an amount lower than existing Club Membership Fees rather than increasing on an annual basis like the Club Membership Fee.)

Question ***Under the current Club Plan, how long must a resident pay Club Membership Fees?***

Answer In perpetuity.

Question ***Does the current Club Plan restrict use of the Solivita Recreation Amenities to only residents of Solivita?***

Answer No.

Question ***Does the current Club Plan restrict the number of Club memberships Avatar can issue to future residents of Solivita Grande?***

Answer No.

Question ***Does the current Club Plan restrict use of the Solivita Recreation Amenities to persons over 55 years of age?***

Answer No.

Question *Does the current Club Plan budget set aside monies for a capital reserve?*

Answer Historically, no. However, the proposed 2018 Club Plan does include an amount for reserves for the first time, but at a number lower than what the Districts have included in draft budgets.

Question *In the event that Avatar mortgaged the Solivita Recreation Amenities and failed to pay the mortgage on the Solivita Recreation Amenities, would such amenities be subject to foreclosure and sale?*

Answer Yes.

Question *Do the residents, the HOA or the Districts currently have any control over the Solivita Recreation Amenities?*

Answer No. The Solivita Recreation Amenities are completely controlled by Avatar.

Question *Why did the Districts enter into negotiations to purchase the Solivita Recreation Amenities?*

Answer The Boards of Supervisors of the Districts (collectively, the "Boards") believe that it is in the best interests of the residents that the Districts own and control the Solivita Recreation Amenities in perpetuity to preserve the lifestyle in Solivita and protect home values. Development within Solivita will be completed at some point in the future and Avatar may not own the Solivita Recreation Amenities after that point in time. District ownership is preferred compared to a third party purchasing and controlling the Solivita Recreation Amenities in perpetuity. The Boards also desire to capitalize on the opportunity to prevent the annual increase in Club Membership Fees that residents pay by replacing the Club Membership Fees with fixed CDD Debt Assessments, as well as on the opportunity to have such fees terminate after 30 years which, in the long term, will save the residents money. Finally, the Boards believe this is the best opportunity to obtain New Amenities for Solivita.

Asset and Purchase Sale Agreement

Question ***Have the Districts signed a contract to purchase the amenities?***

Answer Yes, an Asset Purchase and Sale Agreement (“PSA”) was signed and became effective on December 5, 2016.

Question ***What Solivita Recreation Amenities are included in the PSA?***

Answer Riviera Spa and Fitness Center / Indoor Pool & Track; Waterfront Galleries/Café; Mosaics Building and Starlite Ballroom; Bell Tower; Freedom Park; Palms Amenity Complex; Rainbow Lakes #1 Community Pool & Cabana; Rainbow Lakes #2 Community Pool & Cabana; Candlewood Community Pool & Cabana; Capri Community Pool & Cabana; Terra Vista #1 Community Pool & Cabana; Terra Vista #2 Community Pool & Cabana; Flora Vista #1 Community Pool & Cabana; Flora Vista #2 Community Pool & Cabana; Lago Vista Community Pool & Cabana; Venezia Facility / Two (2) Tennis Courts, Community Pool & Cabana; Bella Viana Pool & Cabana; vacant land for new Performing Arts Center; vacant land for new Wellness Center.

Question ***What is the purchase price in the PSA, as amended?***

Answer The purchase price has been reduced from \$73.7 million to \$72.9 million.

Question ***Are there any adjustments to, or reductions from, the purchase price that are anticipated?***

Answer Yes. It is anticipated there would be a reduction of the purchase price due to any increase in bond interest rates. This reduction may be several million dollars, depending on interest rates at the time the bonds are offered for sale. In addition, the District is currently in the inspection period under the PSA. To the extent items of concern are discovered during the inspection period, additional adjustments to the purchase price may occur.

Question ***What other significant amounts are allocated to be paid or provided by either the District or Avatar under the PSA, or are otherwise being undertaken by Avatar?***

Answer Avatar is responsible for paying all closing costs on the transaction contemplated by the PSA. This amount is estimated at a minimum of \$600,000, and reduces Avatar’s net recovery from this transaction.

This transaction may also result in capital gains or other taxes for Avatar, which will further reduce Avatar's net recovery from the sale of the Solivita Recreational Amenities.

The Solivita Recreational Amenities are currently privately owned. As a result they were assessed Series 2012 Bond Debt Assessments by the Poinciana CDD and Series 2017 Bond Debt Assessments by the Poinciana West CDD. Under the PSA, Avatar is obligated to pay off the existing Series 2012 Bond Debt Assessments and the existing Series 2017 Bond Debt Assessments on the Solivita Recreation Amenities at closing. This amount is over \$400,000, and reduces Avatar's net recovery from this transaction.

Avatar is obligated to pay both CDD Debt Assessments and CDD O&M Assessments on the platted and unplatted lots it owns starting from the date of closing on the Solivita Recreational Amenities. For illustration purposes only, assume the transaction closed on October 1, 2017, the beginning of Fiscal Year 2017-2018. Based on 1,400 unsold lots, CDD Debt Assessments paid by Avatar would be projected at \$1,682,480 and CDD O&M Assessments would be projected at \$1,655,640. For as long as Avatar owns such lots, Avatar will be responsible to pay CDD Debt Assessments and CDD O&M Assessments. Assuming a sales pace of 200 homes per year, at buildout Avatar will have paid approximately \$6,730,000 in CDD Debt Assessments and \$6,622,000 in CDD O&M Assessments. In this illustration, the cost to Avatar of paying CDD Debt Assessments and CDD O&M Assessments in the approximate amount of \$13,352,000 reduces Avatar's net recovery from this transaction.

Avatar is obligated to pay its CDD O&M Assessments early and on October 1 of each year thereby giving the District funds to operate at the very beginning of each year while the District waits for the tax receipts to be received from the Tax Collector relative to the CDD O&M Assessments levied on property owned by residents.

Avatar is obligated to pay its CDD Debt Assessments early to the extent necessary to ensure the District pays its debt service payments on time in the year of closing.

Avatar is responsible for paying whatever amounts are necessary to bring the Solivita Amenity Facilities in compliance with the Americans with Disabilities Act ("ADA"). This will likely be a substantial cost, and work is ongoing. The cost to

Avatar of providing these renovations reduces Avatar's net recovery from this transaction.

Avatar is obligated to convey all personal property and inventory within the Solivita Recreation Amenities to the District.

Avatar is required to sell the Sales Center and Administration Building to the Districts at a later date for a purchase price of zero dollars.

Avatar has committed to repair the items in disrepair that are identified in the commercial inspection report commissioned by the Districts. The cost to Avatar of providing these repairs reduces Avatar's net recovery from this transaction.

Avatar has agreed to provide a letter of credit or other security to the District equal to eighteen (18) months of operations and maintenance expenses for the District to access in the event that Avatar fails to pay its CDD O&M Assessments. Based on 1,400 unsold lots, this equates to approximately \$2.5 million of additional protection for the Districts. The cost to Avatar of providing this security reduces Avatar's net recovery from this transaction.

The Districts believe that Avatar's involvement in the construction process will help ensure consistency of the new buildings with the existing buildings. In addition, Avatar's familiarity with the project and lessons learned from experience in the community for the last 18 years will assist the Districts to provide the best new amenities possible. The Districts have agreed to lease one or more employees from Avatar to assist with the construction of the New Amenities and reconstruction/remodeling of existing Solivita Recreation Amenities. The cost of this will not exceed \$50,000. This personnel leasing arrangement replaces the construction management concept which required a fee estimated at \$550,000. The net result of this contract change is an additional \$500,000 for the District to use towards the construction of the New Amenities and the reconstruction/remodeling of existing Solivita Recreation Amenities.

The Districts have agreed to provide 1,000 annual household passes to Avatar to be used for future Solivita Grande homeowners. Each pass lasts only one year and entitles the holder to two cards. At least ninety percent (90%) of these annual household passes must be issued to a household with a member fifty-five (55) years or older. All annual passes expire five years after the first annual household pass is activated. Unissued annual passes remaining after five years cannot be used. The value of these passes is far outweighed by Avatar's

commitment to pay CDD O&M Assessments on the land it owns, which is the basis for the Districts' negotiated position on this issue.

Question ***Does the PSA contemplate the construction of the New Amenities or the reconstruction/renovation of existing Solivita Recreation Amenities?***

Answer Yes. The PSA contemplates that approximately \$11.2 million will be available from the issuance of bonds to construct the New Amenities and reconstruct/renovate existing Solivita Recreation Amenities. The Boards have yet to determine the exact scope of the new and/or renovated facilities, but have generally discussed the construction of a new Performing Arts Center and Wellness Center, along with the reconstruction/remodeling of existing Solivita Recreation Amenities such as the Ballroom, Mosaics Restaurant and the Waterfront Café.

Question **How soon do the Districts anticipate constructing the New Amenities and/or reconstructing/renovating the existing Solivita Recreation Amenities?**

Answer Upon determining the scope of the New Amenities to be constructed and existing Solivita Recreation Amenities to be reconstructed/renovated and resolution of current litigation, the Districts intend to commence the construction and reconstruction/renovation as soon as practical after closing on the bonds, and plan to complete the construction of the New Amenities and the reconstruction/renovation of the existing Solivita Recreation Facilities within three (3) years of the issuance of the bonds.

Future Operation and Funding of the Solivita Recreation Amenities

Question *If the Districts purchase the Solivita Recreation Amenities, will Avatar or the District continue to collect Club Membership Fees and Club Operation Fees?*

Answer The PSA requires the Club Plan to be terminated and no further new Club Membership Fees or new Club Operation Fees will be invoiced after closing. Instead of paying Club Membership Fees to Avatar, residents will pay CDD Debt Assessments to the Districts. Instead of paying Club Operation Fees to Avatar, residents will pay CDD O&M Assessments to the Districts.

Question *How will I pay the CDD Debt Assessments and CDD O&M Assessments after closing?*

Answer It is impossible to know a closing date with any certainty, but please consider this example. If a closing occurs in December of 2018, on January 1, 2019, residents will receive a bill from the Districts for the monthly prorated amount of the CDD Debt Assessments and CDD O&M Assessments outstanding through the end of the Districts' fiscal year, or through September 30, 2019. This amount will be similar to their monthly Club Membership Fee and Club Operation Fee and will replace such fees. Residents will continue to be billed monthly for the CDD Debt Assessments and CDD O&M Assessments through September, 2019.

On November 1, 2019, the CDD Debt Assessments and CDD O&M Assessments for the entire fiscal year of the Districts (i.e. October 1 through September 30), will be included on the resident's tax bill distributed by the Polk County Tax Collector. The resident will pay the CDD Debt Assessments and CDD O&M Assessments at the same time and in the same manner as his/her county property tax bill.

Once the CDD Debt Assessments and CDD O&M Assessments are on the county tax bill, residents will no longer receive monthly bills from the Districts. Accordingly, residents will need to budget for payment of CDD Debt Assessments and CDD O&M Assessments similar to how they budget for the payment of their property taxes. To that end, residents are encouraged to contact their mortgage lenders at the appropriate time to determine what the lender will require in terms of an escrow payment and the timing of such payment so that they can properly budget for this change in the collection mechanism.

In the event that a resident intends to sell a home after the closing on the amenities, the resident is encouraged to speak with their realtor and/or financial

advisor prior to executing a home sale contract to ensure the resident understands how responsibility for payment of the CDD Debt Assessments and CDD O&M Assessments is allocated between buyer and seller in the proposed contract.

Question ***What is the amount of the projected CDD Debt Assessment that will replace the Club Membership Fees?***

Answer The District’s current debt assessment methodology treats all residential units the same and each is allocated the same maximum principal debt assessment. The maximum, net annual assessment payment is \$946.91 a year, which breaks down to approximately \$78.91 on a monthly basis. This is the amount of the CDD Debt Assessment for the time period when it is directly collected by the District.

Once the CDD Debt Assessment begins to be collected on the County tax bill, the District must pay the County Tax Collector and Property Appraiser 3% of the assessment levy and the District must also allow for the 4% discount for early payment of taxes required by Florida law. Consequently, the maximum annual CDD Debt Assessment appearing on the County tax bill is projected to be \$1,018.18. If a resident pays their County tax bill in November, December, January or February, they will pay less than \$1,018.18. The earlier you pay, the less you pay.

Question **What happened to the assessment equalization payment concept that was included in the last assessment methodology?**

Answer In the first validation case, the circuit court expressed a concern about the Districts implementing the assessment equalization payment concept into the assessment methodology. The Districts have removed that concept from the assessment methodology and the PSA.

Question **What about the developer’s representation that it did not want the transaction to result in any residential lot paying more for CDD amenity assessments than they were paying for Club Fees?**

Answer Avatar Properties, Inc. has announced to the Board and provided written notification to the affected residents that Avatar is recording a document which commits Avatar to pay down the amenity debt assessment principal of lots with lower Club Membership Fees. Avatar has stated this payment is required to be paid before or simultaneously with the closing on the amenity transaction.

Avatar is handling this issue privately with the affected residents and outside of the District’s assessment levy proceedings. Questions regarding the specific amount to be paid down on a specific lot should be directed to Avatar.

Question *Will the projected CDD Debt Assessments increase on an annual basis like the current Club Membership Fees?*

Answer No. This is a savings to the current and future residents because the annual CDD Debt Assessment will be a fixed amount.

Question *Will the CDD Debt Assessment be payable in perpetuity like the Club Membership Fees?*

Answer No. The CDD Debt Assessment will secure bonds which mature in 30 years. When those bonds mature, the CDD Debt Assessments securing those bonds will cease to be collected. This is an additional significant savings for the future owners of property in Solivita.

Question *What is the amount of the projected CDD O&M Assessment that will replace the Club Operations Fees?*

Answer Based on the last proposed budget, the CDD O&M Assessment is estimated at \$98.55 per month, or \$1,182.60 per year for each residential lot. This proposed CDD O&M Budget is on file with the District. See Chart below. Please note that the proposed CDD O&M Budget has not been adjusted to reflect the fact that the District is not subject to state sales tax. Once the Districts have accumulated historical data on the actual amount of sales tax savings, reductions in future CDD O&M Budgets are anticipated to account for such savings.

Annual Breakdown

<u>Proposed 2018 Club Operations Fee*</u>	<u>Proposed CDD O&M Assessment*</u>	<u>Decrease</u>
\$1,182.96	\$1182.60	\$0.36

Monthly Breakdown

<u>Proposed 2018 Club Operations Fee*</u>	<u>Proposed CDD O&M Assessment*</u>	<u>Decrease</u>
\$98.58	\$98.55	\$0.03

* The Proposed 2018 Club Operations Fee includes 7% sales tax. The proposed CDD O&M Assessment includes 3% County collection costs and assumes full payment in November of each year. If a resident does not pay their County tax bill in November and thus take advantage of the 4% early payment discount, the amount to be paid will be higher in accordance with Florida law.

Question *What is the net monthly and annual financial impact on residents of the CDD Debt Assessment and CDD O&M Assessment replacing the Club Membership Fees and the Club Operations Fees, respectively?*

Answer Based on current estimates of CDD Assessments, projected 2018 Club Fees, and Avatar’s private commitment to pay down assessment levels, there will be a reduction.

Question *Is there a draft CDD O&M Budget that residents can review?*

Answer Yes. There is a draft CDD O&M Budget for Fiscal Year 2017-2018 located on the Districts’ websites at www.poincianacdd.org and www.poincianawestcdd.org.

Question *Are the CDD O&M Budgets set in stone yet?*

Answer No. The Districts have not yet adopted the operations and maintenance budget, but District staff does not expect it to increase, and it may in fact decrease slightly.

Question *Do the CDD O&M Budgets assume the sales tax savings the Districts will enjoy?*

Answer No. The impact of the sales tax savings is presently unknown and therefore has not been budgeted. These are conservative budgets and the sales tax savings will either be used to reduce CDD O&M Assessments and/or will be put into a reserve fund.

Question *What major items are included in the draft CDD O&M Budget for the protection of the residents that were not included in previous Club budgets?*

Answer The District is establishing a capital reserve fund to plan for major repairs and replacements at levels recommended by the District’s valuation consultant. (The 2018 Proposed Club Budget for the first time includes reserve funding, but at an amount less than the Districts have budgeted.) The District is establishing an operating reserve fund to make sure the District has sufficient funds to meet its payment obligations. The District is budgeting to replace numerous older maintenance vehicles in the first two years of its ownership of the Solivita Recreational Amenities. These additions to the CDD budget protect the residents. Even with these protections included in the CDD budget, there is a projected savings to the residents through the CDD structure compared to what residents are expected to pay in 2018 Club Membership Fees and Club Operations Fees.

Question ***Do lots and unplatted lands owned by Avatar currently pay Club Membership Fees and Club Operations Fees?***

Answer No.

Question ***If the Districts purchase the amenities, will the lots and unplatted lands owned by Avatar pay CDD Debt Assessments and CDD O&M Assessments?***

Answer Yes, that is required by the PSA.

Question ***How much is an undeveloped lot owned by Avatar required to pay under the PSA?***

Answer For CDD Debt Assessments, the amount paid by an undeveloped lot will be equal to the highest CDD Debt Assessment to be paid by a current resident. For CDD O&M Assessments, the amount paid by an undeveloped lot will be equal to the CDD O&M Assessment to be paid by a current resident.

Question ***Will the Districts close on the PSA if the amount to be paid by residents in CDD assessments is projected to be materially higher than what residents currently pay in Club Fees for the same facilities?***

Answer No. The Districts will not sell the bonds if the total amount in annual CDD Debt Assessments and CDD O&M Assessments is projected to be materially in excess of what residents currently pay to Avatar for Club Membership Fees and Club Operations Fees.

Question ***Under the current Club Plan, if the Amenities are damaged by a catastrophic event not covered by insurance, can the Club Owner assess the cost of repairing the damage against the residents? Would there be any difference if the Districts own the Amenities?***

Answer Both the Club Owner and the Districts could assess the residents the costs of such repair. The Club Plan does provide that the Club Owner cannot assess the cost to repair the building shells but can assess the costs of roof repair and replacement. However, the Club Owner currently insures the building shells and the Districts plan to insure the building shells after acquisition. Therefore, there is really not much of a difference to the residents for this particular issue.

Inspection of Solivita Recreation Amenities

Question ***What efforts have the Districts made to inspect the Solivita Recreation Amenities?***

Answer The Districts are conducting extensive inspections of the Solivita Recreation Amenities. These efforts are being overseen by the Districts' Engineer and are ongoing. These efforts include i) financial feasibility and valuation analyses prepared by Environmental Financial Group, ii) commercial property inspection by Delta Engineering, with a follow up inspection to be completed before closing, iii) two different ADA inspections and reports, iv) Phase 1 environmental inspection, v) mold inspection, vi) termite inspection, vii) food and beverage operations analysis, and others to be determined. In addition, matters related to title and other real property matters are under extensive review.

Question ***Have the Districts agreed to purchase facilities that are not compliant with the ADA?***

Answer No. The PSA requires Avatar to deliver the facilities in a condition that fully complies with the ADA.

Sales Center and Administration Building

Question ***What is the future of the Sales Center and Administration Building?***

Answer The PSA, and a separate Option Agreement that has been approved by the Districts and Avatar and which will be executed at or prior to closing on the Solivita Recreation Amenities, require Avatar to deed the Sales Center and Administration Building to the Districts in the future for a set purchase price of zero dollars.

Current Litigation Status

Question **What is the status of the Districts’ efforts to validate the bonds necessary to close on the PSA?**

Answer The Districts attempted to validate bonds this summer. The Circuit Court declined to validate the special assessments securing the bonds as proposed by the Districts. The final judgment only took issue with one of the five questions in the bond validation case, specifically the apportionment of the assessments. While the Districts continue to believe the initial methodology was efficient and proper, the Districts recently voted not to appeal the final judgment in the bond validation case. Instead, the Districts have adopted a new, simpler assessment methodology to address the concerns noted by the trial court. The trial court’s stated concern with the assessment methodology is easily remedied through such a revision.

Subsequently, the parties contesting the validation made statements that they prevailed in the bond validation case yet appealed the final judgment to the Florida Supreme Court. The Florida Supreme Court then dismissed the appeals.

The Districts have filed a second bond validation case based on a new, simpler assessment methodology. That case is currently pending and the Districts are diligently working to bring that case to a conclusion. After the bonds are successfully validated, the Districts will have the legal authority to issue the bonds.

Question **Are the Districts involved in the class action that has been filed by Brenda Taylor, Bill Mann and Norm Gundel against Avatar?**

Answer The Districts are not a party to the class action.

Question **What impact does the class action have on the Districts’ ability to build the New Amenities, and purchase the Solivita Recreation Amenities?**

Answer The Districts have been informed by the underwriter that the Districts cannot market the bonds while claims regarding the validity of the Club Plan remain pending in the class action. Therefore, the class action will significantly delay or prevent the construction of the New Amenities and the renovation of the existing Solivita Recreation Amenities.

Summary of Significant Benefits of District Ownership versus Avatar or Third Party Ownership

<u>District Ownership</u>	<u>Avatar/Third Party Club Ownership</u>
New Performing Arts Center <u>without</u> increasing capital amounts paid	No new Performing Arts Center
New Wellness Center <u>without</u> Increasing capital amounts paid	No new Wellness Center
Amenities Resident owned through CDD Structure	No resident ownership
Programming controlled by resident Board	Programming Controlled by for-profit corporation in accordance with the Club Plan
Lifestyle controlled by resident Board	Lifestyle controlled by for-profit corporation in accordance with the Club Plan
Policies, Rules and Rates established by resident Board	Policies, rules and rates controlled by for-profit corporation in accordance with the Club Plan
Non-resident use controlled by User Rates adopted by resident Board	Non-resident use controlled by for-profit corporation in accordance with the Club Plan
Sovereign immunity limits on liability	No limits on liability, and liabilities not covered by insurance the responsibility of residents under the Club Plan
CDD Debt Assessments capped for 30 years	Club Membership Fees increase every year in accordance with the Club Plan
CDD Debt Assessments terminate after 30 years	Club Membership Fees collected in perpetuity
Resident Board approves CDD O&M Assessment rates	No resident control over annual Club Operations Fees
Amenity Manager selected and accountable to resident Board	No resident control over selection or performance of amenity manager
Ability to access public bond market in the future	Facility expansion controlled by for-profit corporation in accordance with the Club Plan
Avatar pays a portion of the CDD Debt Assessments	Club Owner collects Club Membership Fees as profit; Club Owner not required to pay Club Membership Fees

Avatar pays a portion of the CDD O&M Assessments

Club Owner not required to pay Club Operations Fees

New Avatar development currently referred to as Solivita Grande will have passes limited in number and duration

Solivita Grande use of Solivita amenities is unlimited and controlled by free market principles

Amenities not subject to foreclosure

Amenities subject to foreclosure if mortgaged and failure to pay by Avatar

Sales Center and Administration Building eventually owned and controlled by resident Board

Residents have no control over future ownership and use of Sales Center and Administration Building

Sales tax savings (relative to both (i) 7% sales tax paid on fees remitted to Avatar pursuant to Club Plan and (ii) 7% sales tax paid on purchases of supplies, materials, etc. by the Club)

No sales tax savings

NOTE: THIS Q&A FOR CURRENT STATUS OF AMENITY TRANSACTION HAS NOT BEEN PREPARED OR APPROVED BY AVATAR PROPERTIES, INC.

Q & A for Current Status of Amenity Transaction as of ~~November 15, 2017~~September 5, 2018

Prepared by Poinciana Community Development District and
Poinciana West Community Development District (the "Districts")

This document supersedes the prior *Q & A for Current Status of Amenity Transaction documents* dated March 8, 2017 and November 15, 2017, which no longer ~~reflects~~reflect the current status. This document is intended to answer commonly asked questions about the current status and framework of the proposed acquisition and renovation of the existing Solivita Recreation Amenities and construction of a new Performing Arts Center and new Wellness Center ("New Amenities") by the Districts. The Districts encourage residents to review this document to obtain accurate information. Any document referenced below is a public record capable of inspection by any member of the public.

For purposes of this document, the following definitions apply:

"Club Membership Fee" means the monthly fee currently paid to Avatar by owners of property within Solivita by virtue of the Club.

"Club Operations Fee" means the monthly fee currently paid to Avatar by owners of property within Solivita for operation and maintenance (O&M) of the Solivita Recreation Amenities by virtue of the Club Plan.

"Club Fees" means the combination of Club Membership Fees and Club Operations Fees.

"Club Plan" means that Amended and Restated Club Plan binding on all residential property in Solivita.

"CDD Debt Assessment" means the non ad-valorem special assessment proposed to be levied by the Districts on each developed and undeveloped residential lot within Solivita 1) to acquire the Solivita Recreation Amenities, 2) to construct the New Amenities, and/or 3) to reconstruct and renovate certain of the Solivita Recreation Amenities. The CDD Debt Assessment will replace the Club Membership Fee.

"CDD O&M Assessment" means the non ad-valorem special assessment proposed to be levied by the Districts each year on each developed and undeveloped residential lot within Solivita to fund the operation, maintenance, repair and replacement of the existing Solivita Recreation Amenities and the New Amenities. The CDD O&M Assessment will replace the Club Operations Fee.

Current Solivita Club Plan Facts

Question ***Does the current Club Plan require Avatar to pay Club Membership Fees on its undeveloped lots?***

Answer No.

Question ***Does the current Club Plan require Avatar to pay Club Operation Fees on its undeveloped lots?***

Answer No.

Question ***Does the current Club Plan provide for a periodic increase of Club Membership Fees?***

Answer Yes. Monthly Club Membership fees are permitted to be increased \$1 plus tax each month, for a total of \$12 plus tax per year, per home. (As more fully set forth below, and pursuant to the Asset Purchase and Sale Agreement, the amount of the annual CDD Debt Assessment will be capped at an amount lower than existing Club Membership Fees rather than increasing on an annual basis like the Club Membership Fee.)

Question ***Under the current Club Plan, how long must a resident pay Club Membership Fees?***

Answer In perpetuity.

Question ***Does the current Club Plan restrict use of the Solivita Recreation Amenities to only residents of Solivita?***

Answer No.

Question ***Does the current Club Plan restrict the number of Club memberships Avatar can issue to future residents of Solivita Grande?***

Answer No.

Question ***Does the current Club Plan restrict use of the Solivita Recreation Amenities to persons over 55 years of age?***

Answer No.

Question *Does the current Club Plan budget set aside monies for a capital reserve?*

Answer Historically, no. However, the proposed 2018 Club Plan does include an amount for reserves for the first time, but at a number lower than what the Districts have included in draft budgets.

Question *In the event that Avatar mortgaged the Solivita Recreation Amenities and failed to pay the mortgage on the Solivita Recreation Amenities, would such amenities be subject to foreclosure and sale?*

Answer Yes.

Question *Do the residents, the HOA or the Districts currently have any control over the Solivita Recreation Amenities?*

Answer No. The Solivita Recreation Amenities are completely controlled by Avatar.

Question *Why did the Districts enter into negotiations to purchase the Solivita Recreation Amenities?*

Answer The Boards of Supervisors of the Districts (collectively, the "Boards") believe that it is in the best interests of the residents that the Districts own and control the Solivita Recreation Amenities in perpetuity to preserve the lifestyle in Solivita and protect home values. Development within Solivita will be completed at some point in the future and Avatar may not own the Solivita Recreation Amenities after that point in time. District ownership is preferred compared to a third party purchasing and controlling the Solivita Recreation Amenities in perpetuity. The Boards also desire to capitalize on the opportunity to prevent the annual increase in Club Membership Fees that residents pay by replacing the Club Membership Fees with fixed CDD Debt Assessments, as well as on the opportunity to have such fees terminate after 30 years which, in the long term, will save the residents money. Finally, the Boards believe this is the best opportunity to obtain New Amenities for Solivita.

Asset and Purchase Sale Agreement

Question ***Have the Districts signed a contract to purchase the amenities?***

Answer Yes, an Asset Purchase and Sale Agreement (“PSA”) was signed and became effective on December 5, 2016.

Question ***What Solivita Recreation Amenities are included in the PSA?***

Answer Riviera Spa and Fitness Center / Indoor Pool & Track; Waterfront Galleries/Café; Mosaics Building and Starlite Ballroom; Bell Tower; Freedom Park; Palms Amenity Complex; Rainbow Lakes #1 Community Pool & Cabana; Rainbow Lakes #2 Community Pool & Cabana; Candlewood Community Pool & Cabana; Capri Community Pool & Cabana; Terra Vista #1 Community Pool & Cabana; Terra Vista #2 Community Pool & Cabana; Flora Vista #1 Community Pool & Cabana; Flora Vista #2 Community Pool & Cabana; Lago Vista Community Pool & Cabana; Venezia Facility / Two (2) Tennis Courts, Community Pool & Cabana; Bella Viana Pool & Cabana; vacant land for new Performing Arts Center; vacant land for new Wellness Center.

Question ***What is the purchase price in the PSA, as amended?***

Answer The purchase price has been reduced from \$73.7 million to \$72.9 million.

Question ***Are there any adjustments to, or reductions from, the purchase price that are anticipated?***

Answer Yes. It is anticipated there would be a reduction of the purchase price due to any increase in bond interest rates. This reduction may be several million dollars, depending on interest rates at the time the bonds are offered for sale. In addition, the District is currently in the inspection period under the PSA. To the extent items of concern are discovered during the inspection period, additional adjustments to the purchase price may occur.

Question ***What other significant amounts are allocated to be paid or provided by either the District or Avatar under the PSA, or are otherwise being undertaken by Avatar?***

Answer Avatar is responsible for paying all closing costs on the transaction contemplated by the PSA. This amount is estimated at a minimum of \$600,000, and reduces Avatar’s net recovery from this transaction.

This transaction may also result in capital gains or other taxes for Avatar, which will further reduce Avatar's net recovery from the sale of the Solivita Recreational Amenities.

The Solivita Recreational Amenities are currently privately owned. As a result they were assessed Series 2012 Bond Debt Assessments by the Poinciana CDD and Series 2017 Bond Debt Assessments by the Poinciana West CDD. Under the PSA, Avatar is obligated to pay off the existing Series 2012 Bond Debt Assessments and the existing Series 2017 Bond Debt Assessments on the Solivita Recreation Amenities at closing. This amount is over \$400,000, and reduces Avatar's net recovery from this transaction.

Avatar is obligated to pay both CDD Debt Assessments and CDD O&M Assessments on the platted and unplatted lots it owns starting from the date of closing on the Solivita Recreational Amenities. For illustration purposes only, assume the transaction closed on October 1, 2017, the beginning of Fiscal Year 2017-2018. Based on 1,400 unsold lots, CDD Debt Assessments paid by Avatar would be projected at \$1,682,480 and CDD O&M Assessments would be projected at \$1,655,640. For as long as Avatar owns such lots, Avatar will be responsible to pay CDD Debt Assessments and CDD O&M Assessments. Assuming a sales pace of 200 homes per year, at buildout Avatar will have paid approximately \$6,730,000 in CDD Debt Assessments and \$6,622,000 in CDD O&M Assessments. In this illustration, the cost to Avatar of paying CDD Debt Assessments and CDD O&M Assessments in the approximate amount of \$13,352,000 reduces Avatar's net recovery from this transaction.

Avatar is obligated to pay its CDD O&M Assessments early and on October 1 of each year thereby giving the District funds to operate at the very beginning of each year while the District waits for the tax receipts to be received from the Tax Collector relative to the CDD O&M Assessments levied on property owned by residents.

Avatar is obligated to pay its CDD Debt Assessments early to the extent necessary to ensure the District pays its debt service payments on time in the year of closing.

Avatar is responsible for paying whatever amounts are necessary to bring the Solivita Amenity Facilities in compliance with the Americans with Disabilities Act ("ADA"). This will likely be a substantial cost, and work is ongoing. The cost to

Avatar of providing these renovations reduces Avatar's net recovery from this transaction.

Avatar is obligated to convey all personal property and inventory within the Solivita Recreation Amenities to the District.

Avatar is required to sell the Sales Center and Administration Building to the Districts at a later date for a purchase price of zero dollars.

Avatar has committed to repair the items in disrepair that are identified in the commercial inspection report commissioned by the Districts. The cost to Avatar of providing these repairs reduces Avatar's net recovery from this transaction.

Avatar has agreed to provide a letter of credit or other security to the District equal to eighteen (18) months of operations and maintenance expenses for the District to access in the event that Avatar fails to pay its CDD O&M Assessments. Based on 1,400 unsold lots, this equates to approximately \$2.5 million of additional protection for the Districts. The cost to Avatar of providing this security reduces Avatar's net recovery from this transaction.

The Districts believe that Avatar's involvement in the construction process will help ensure consistency of the new buildings with the existing buildings. In addition, Avatar's familiarity with the project and lessons learned from experience in the community for the last 18 years will assist the Districts to provide the best new amenities possible. The Districts have agreed to lease one or more employees from Avatar to assist with the construction of the New Amenities and reconstruction/remodeling of existing Solivita Recreation Amenities. The cost of this will not exceed \$50,000. This personnel leasing arrangement replaces the construction management concept which required a fee estimated at \$550,000. The net result of this contract change is an additional \$500,000 for the District to use towards the construction of the New Amenities and the reconstruction/remodeling of existing Solivita Recreation Amenities.

The Districts have agreed to provide 1,000 annual household passes to Avatar to be used for future Solivita Grande homeowners. Each pass lasts only one year and entitles the holder to two cards. At least ninety percent (90%) of these annual household passes must be issued to a household with a member fifty-five (55) years or older. All annual passes expire five years after the first annual household pass is activated. Unissued annual passes remaining after five years cannot be used. The value of these passes is far outweighed by Avatar's

commitment to pay CDD O&M Assessments on the land it owns, which is the basis for the Districts' negotiated position on this issue.

Question *Does the PSA contemplate the construction of the New Amenities or the reconstruction/renovation of existing Solivita Recreation Amenities?*

Answer Yes. The PSA contemplates that approximately \$11.2 million will be available from the issuance of bonds to construct the New Amenities and reconstruct/renovate existing Solivita Recreation Amenities. The Boards have yet to determine the exact scope of the new and/or renovated facilities, but have generally discussed the construction of a new Performing Arts Center and Wellness Center, along with the reconstruction/remodeling of existing Solivita Recreation Amenities such as the Ballroom, Mosaics Restaurant and the Waterfront Café.

Question *How soon do the Districts anticipate constructing the New Amenities and/or reconstructing/renovating the existing Solivita Recreation Amenities?*

Answer Upon determining the scope of the New Amenities to be constructed and existing Solivita Recreation Amenities to be reconstructed/renovated and resolution of current litigation, the Districts intend to commence the construction and reconstruction/renovation as soon as practical after closing on the bonds, and plan to complete the construction of the New Amenities and the reconstruction/renovation of the existing Solivita Recreation Facilities within three (3) years of the issuance of the bonds.

Future Operation and Funding of the Solivita Recreation Amenities

Question *If the Districts purchase the Solivita Recreation Amenities, will Avatar or the District continue to collect Club Membership Fees and Club Operation Fees?*

Answer The PSA requires the Club Plan to be terminated and no further new Club Membership Fees or new Club Operation Fees will be invoiced after closing. Instead of paying Club Membership Fees to Avatar, residents will pay CDD Debt Assessments to the Districts. Instead of paying Club Operation Fees to Avatar, residents will pay CDD O&M Assessments to the Districts.

Question *How will I pay the CDD Debt Assessments and CDD O&M Assessments after closing?*

Answer Assuming that it is impossible to know a closing date with any certainty, but please consider this example. If a closing occurs in April/December of 2018, on May/January 1, 2018/2019, residents will receive a bill from the Districts for the monthly prorated amount of the CDD Debt Assessments and CDD O&M Assessments outstanding through the end of the Districts' fiscal year, or through September 30, 2018/2019. This amount will be similar to their monthly Club Membership Fee and Club Operation Fee and will replace such fees. Residents will continue to be billed monthly for the CDD Debt Assessments and CDD O&M Assessments through September, 2018/2019.

On November 1, 2018/2019, the CDD Debt Assessments and CDD O&M Assessments for the entire fiscal year of the Districts (i.e. October 1 through September 30), will be included on the resident's tax bill distributed by the Polk County Tax Collector. The resident will pay the CDD Debt Assessments and CDD O&M Assessments at the same time and in the same manner as his/her county property tax bill.

Once the CDD Debt Assessments and CDD O&M Assessments are on the county tax bill, residents will no longer receive monthly bills from the Districts. Accordingly, residents will need to budget for payment of CDD Debt Assessments and CDD O&M Assessments similar to how they budget for the payment of their property taxes. To that end, residents are encouraged to contact their mortgage lenders at the appropriate time to determine what the lender will require in terms of an escrow payment and the timing of such payment so that they can properly budget for this change in the collection mechanism.

In the event that a resident intends to sell a home after the closing on the amenities, the resident is encouraged to speak with their realtor and/or financial advisor prior to executing a home sale contract to ensure the resident understands how responsibility for payment of the CDD Debt Assessments and CDD O&M Assessments is allocated between buyer and seller in the proposed contract.

Question ***What is the amount of the projected CDD Debt Assessment that will replace the Club Membership Fees?***

Answer The District's current debt assessment methodology treats all residential units the same and each is allocated the same maximum principal debt assessment. The maximum, net annual assessment payment is ~~\$976,209~~46.91 a year, which breaks down to ~~\$81.35~~approximately \$78.91 on a monthly basis. ~~The proposed This is the amount of the CDD Debt Assessment stated above includes 3% County collection costs and assumes full payment in November of each year. If a resident does not pay their County tax bill in November and thus take advantage of the 4% early payment discount, the amount to be paid will be higher in accordance with Florida law for the time period when it is directly collected by the District.~~

Once the CDD Debt Assessment begins to be collected on the County tax bill, the District must pay the County Tax Collector and Property Appraiser 3% of the assessment levy and the District must also allow for the 4% discount for early payment of taxes required by Florida law. Consequently, the maximum annual CDD Debt Assessment appearing on the County tax bill is projected to be \$1,018.18. If a resident pays their County tax bill in November, December, January or February, they will pay less than \$1,018.18. The earlier you pay, the less you pay.

Question ***What happened to the assessment equalization payment concept that was included in the last assessment methodology?***

Answer In the first validation case, the circuit court expressed a concern about the Districts implementing the assessment equalization payment concept into the assessment methodology. The Districts have removed that concept from the assessment methodology and the PSA.

Question ***What about the developer's representation that it did not want the transaction to result in any residential lot paying more for CDD amenity assessments than they were paying for Club Fees?***

Answer Avatar Properties, Inc. has announced to the Board and provided written notification to the affected residents that Avatar is recording a document which commits Avatar to pay down the amenity debt assessment principal of lots with lower Club Membership Fees. Avatar has stated this payment is required to be paid before or simultaneously with the closing on the amenity transaction. Avatar is handling this issue privately with the affected residents and outside of the District’s assessment levy proceedings. Questions regarding the specific amount to be paid down on a specific lot should be directed to Avatar.

Question *Will the projected CDD Debt Assessments increase on an annual basis like the current Club Membership Fees?*

Answer No. This is a savings to the current and future residents because the annual CDD Debt Assessment will be a fixed amount.

Question *Will the CDD Debt Assessment be payable in perpetuity like the Club Membership Fees?*

Answer No. The CDD Debt Assessment will secure bonds which mature in 30 years. When those bonds mature, the CDD Debt Assessments securing those bonds will cease to be collected. This is an additional significant savings for the future owners of property in Solivita.

Question *What is the amount of the projected CDD O&M Assessment that will replace the Club Operations Fees?*

Answer Based on the last proposed budget, the CDD O&M Assessment is estimated at \$98.55 per month, or \$1,182.60 per year for each residential lot. This proposed CDD O&M Budget is on file with the District. See Chart below. Please note that the proposed CDD O&M Budget has not been adjusted to reflect the fact that the District is not subject to state sales tax. Once the Districts have accumulated historical data on the actual amount of sales tax savings, reductions in future CDD O&M Budgets are anticipated to account for such savings.

Annual Breakdown

<u>Proposed 2018 Club Operations Fee*</u>	<u>Proposed CDD O&M Assessment*</u>	<u>Decrease</u>
\$1,182.96	\$1182.60	\$0.36

Monthly Breakdown

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\$98.55

\$0.03

* The Proposed 2018 Club Operations Fee includes 7% sales tax. The proposed CDD O&M Assessment includes 3% County collection costs and assumes full payment in November of each year. If a resident does not pay their County tax bill in November and thus take advantage of the 4% early payment discount, the amount to be paid will be higher in accordance with Florida law.

Question *What is the net monthly and annual financial impact on residents of the CDD Debt Assessment and CDD O&M Assessment replacing the Club Membership Fees and the Club Operations Fees, respectively?*

Answer Based on current estimates of CDD Assessments, projected 2018 Club Fees, and Avatar's private commitment to pay down assessment levels, there will be a reduction.

Question *Is there a draft CDD O&M Budget that residents can review?*

Answer Yes. There is a draft CDD O&M Budget for Fiscal Year 2017-2018 located on the Districts' websites at www.poincianacdd.org and www.poincianawestcdd.org.

Question *Are the CDD O&M Budgets set in stone yet?*

Answer No. The Districts have not yet adopted the operations and maintenance budget, but District staff does not expect it to increase, and it may in fact decrease slightly.

Question *Do the CDD O&M Budgets assume the sales tax savings the Districts will enjoy?*

Answer No. The impact of the sales tax savings is presently unknown and therefore has not been budgeted. These are conservative budgets and the sales tax savings will either be used to reduce CDD O&M Assessments and/or will be put into a reserve fund.

Question *What major items are included in the draft CDD O&M Budget for the protection of the residents that were not included in previous Club budgets?*

Answer The District is establishing a capital reserve fund to plan for major repairs and replacements at levels recommended by the District's valuation consultant. (The 2018 Proposed Club Budget for the first time includes reserve funding, but at an amount less than the Districts have budgeted.) The District is establishing an operating reserve fund to make sure the District has sufficient funds to meet its payment obligations. The District is budgeting to replace numerous older maintenance vehicles in the first two years of its ownership of the Solivita

Recreational Amenities. These additions to the CDD budget protect the residents. Even with these protections included in the CDD budget, there is a projected savings to the residents through the CDD structure compared to what residents are expected to pay in 2018 Club Membership Fees and Club Operations Fees.

Question *Do lots and unplatted lands owned by Avatar currently pay Club Membership Fees and Club Operations Fees?*

Answer No.

Question *If the Districts purchase the amenities, will the lots and unplatted lands owned by Avatar pay CDD Debt Assessments and CDD O&M Assessments?*

Answer Yes, that is required by the PSA.

Question *How much is an undeveloped lot owned by Avatar required to pay under the PSA?*

Answer For CDD Debt Assessments, the amount paid by an undeveloped lot will be equal to the highest CDD Debt Assessment to be paid by a current resident. For CDD O&M Assessments, the amount paid by an undeveloped lot will be equal to the CDD O&M Assessment to be paid by a current resident.

Question *Will the Districts close on the PSA if the amount to be paid by residents in CDD assessments is projected to be materially higher than what residents currently pay in Club Fees for the same facilities?*

Answer No. The Districts will not sell the bonds if the total amount in annual CDD Debt Assessments and CDD O&M Assessments is projected to be materially in excess of what residents currently pay to Avatar for Club Membership Fees and Club Operations Fees.

Question *Under the current Club Plan, if the Amenities are damaged by a catastrophic event not covered by insurance, can the Club Owner assess the cost of repairing the damage against the residents? Would there be any difference if the Districts own the Amenities?*

Answer Both the Club Owner and the Districts could assess the residents the costs of such repair. The Club Plan does provide that the Club Owner cannot assess the cost to repair the building shells but can assess the costs of roof repair and replacement. However, the Club Owner currently insures the building shells and

the Districts plan to insure the building shells after acquisition. Therefore, there is really not much of a difference to the residents for this particular issue.

|

Inspection of Solivita Recreation Amenities

Question ***What efforts have the Districts made to inspect the Solivita Recreation Amenities?***

Answer The Districts are conducting extensive inspections of the Solivita Recreation Amenities. These efforts are being overseen by the Districts' Engineer and are ongoing. These efforts include i) financial feasibility and valuation analyses prepared by Environmental Financial Group, ii) commercial property inspection by Delta Engineering, with a follow up inspection to be completed before closing, iii) two different ADA inspections and reports, iv) Phase 1 environmental inspection, v) mold inspection, vi) termite inspection, vii) food and beverage operations analysis, and others to be determined. In addition, matters related to title and other real property matters are under extensive review.

Question ***Have the Districts agreed to purchase facilities that are not compliant with the ADA?***

Answer No. The PSA requires Avatar to deliver the facilities in a condition that fully complies with the ADA.

Sales Center and Administration Building

Question ***What is the future of the Sales Center and Administration Building?***

Answer The PSA, and a separate Option Agreement that has been approved by the Districts and Avatar and which will be executed at or prior to closing on the Solivita Recreation Amenities, require Avatar to deed the Sales Center and Administration Building to the Districts in the future for a set purchase price of zero dollars.

Current Litigation Status

Question **What is the status of the Districts' efforts to validate the bonds necessary to close on the PSA?**

Answer The Districts attempted to validate bonds this summer. The Circuit Court declined to validate the special assessments securing the bonds as proposed by the Districts. The final judgment only took issue with one of the five questions in the bond validation case, specifically the apportionment of the assessments. While the Districts continue to believe the initial methodology was efficient and proper, the Districts recently voted not to appeal the final judgment in the bond validation case. Instead, the Districts have adopted a new, simpler assessment methodology to address the concerns noted by the trial court. The trial court's stated concern with the assessment methodology is easily remedied through such a revision.

~~Curiously~~Subsequently, the parties contesting the validation ~~have~~ made statements that they prevailed in the bond validation case yet ~~have~~ appealed the final judgment to the Florida Supreme Court. The ~~Districts disagree with Florida Supreme Court then dismissed the anticipated arguments of the defendants and are actively engaged in the appellate process.~~appeals.

~~In addition, the~~ The Districts have filed a second bond validation case based on a new, simpler assessment methodology. That case is currently pending and the Districts are diligently working to bring that case to a conclusion. After the bonds are successfully validated, the Districts will have the legal authority to issue the bonds.

Question **Are the Districts involved in the class action that has been filed by Brenda Taylor, Bill Mann and Norm Gundel against Avatar?**

Answer The Districts are not a party to the class action.

Question **What impact does the class action have on the Districts' ability to build the New Amenities, and purchase the Solivita Recreation Amenities?**

Answer The Districts have been informed by the underwriter that the Districts cannot market the bonds while claims regarding the validity of the Club Plan remain pending in the class action. Therefore, the class action will significantly delay or prevent the construction of the New Amenities and the renovation of the existing Solivita Recreation Amenities.

Summary of Significant Benefits of District Ownership versus Avatar or Third Party Ownership

District Ownership

Avatar/Third Party Club Ownership

New Performing Arts Center without increasing capital amounts paid

No new Performing Arts Center

New Wellness Center without Increasing capital amounts paid

No new Wellness Center

Amenities Resident owned through CDD Structure

No resident ownership

Programming controlled by resident Board

Programming Controlled by for-profit corporation in accordance with the Club Plan

Lifestyle controlled by resident Board

Lifestyle controlled by for-profit corporation in accordance with the Club Plan

Policies, Rules and Rates established by resident Board

Policies, rules and rates controlled by for-profit corporation in accordance with the Club Plan

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Non-resident use controlled by User Rates adopted by resident BeardsBoard

Non-resident use controlled by for-profit corporation in accordance with the Club Plan

Sovereign immunity limits on liability

No limits on liability, and liabilities not covered by insurance the responsibility of residents under the Club Plan

CDD Debt Assessments capped for 30 years

Club Membership Fees increase every year in accordance with the Club Plan

CDD Debt Assessments terminate after 30 years

Club Membership Fees collected in perpetuity

Resident Board approves CDD O&M Assessment rates

No resident control over annual Club Operations Fees

Amenity Manager selected and accountable to resident Board

No resident control over selection or performance of amenity manager

Ability to access public bond market in the future

Facility expansion controlled by for-profit corporation in accordance with the Club Plan

Avatar pays a portion of the CDD Debt Assessments

Club Owner collects Club Membership Fees as profit; Club Owner not required to pay Club Membership Fees

Avatar pays a portion of the CDD O&M Assessments

Club Owner not required to pay Club Operations Fees

New Avatar development currently referred to as Solivita Grande will have passes limited in number and duration

Solivita Grande use of Solivita amenities is unlimited and controlled by free market principles

Amenities not subject to foreclosure

Amenities subject to foreclosure if mortgaged and failure to pay by Avatar

Sales Center and Administration Building eventually owned and controlled by resident Board

Residents have no control over future ownership and use of Sales Center and Administration Building

Sales tax savings (relative to both (i) 7% sales tax paid on fees remitted to Avatar pursuant to Club Plan and (ii) 7% sales tax paid on purchases of supplies, materials, etc. by the Club)

No sales tax savings

NOTE: THIS Q&A FOR CURRENT STATUS OF AMENITY TRANSACTION HAS NOT BEEN PREPARED OR APPROVED BY AVATAR PROPERTIES, INC.

SECTION IX

SECTION A

SECTION 1

**AGREEMENT BETWEEN POINCIANA COMMUNITY DEVELOPMENT DISTRICT
AND CLARKE AQUATIC SERVICES, INC. FOR THE PROVISION OF AQUATIC
MAINTENANCE SERVICES**

This Agreement (the "Agreement") is made and entered into as of the 1st day of October, 2018, by and between:

Poinciana Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in Polk County, Florida, and whose mailing address is 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 (the "District"); and

Clarke Aquatic Services, Inc. an Illinois corporation, whose local address is 3036 Michigan Avenue, Kissimmee, Florida 34744 (the "Contractor," and together with the District, the "Parties").

RECITALS

WHEREAS, the District was established to plan, construct, install, acquire, finance, manage, and operate public improvements and community facilities pursuant to Chapter 190, *Florida Statutes*.; and

WHEREAS, the District has a need to retain an independent contractor to provide aquatic maintenance services for the stormwater management ponds within the District; and

WHEREAS, the Contractor submitted a price quotation and represents that it is qualified to serve as an aquatic maintenance contractor and provide such services to the District.

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

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

SECTION 2. MANNER OF CONTRACTOR'S PERFORMANCE.

- A.** The Contractor shall provide the specific aquatic maintenance services as shown in **Exhibit A**, attached and incorporated herein (the "Services") within the stormwater management ponds within the District identified in **Exhibit B**, attached and incorporated herein.
- B.** Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services including the Florida Friendly green

industry standards of the Florida Department of Environmental Protection. Any additional compensation for additional services shall be paid only as negotiated between the parties and upon the written authorization of the District.

1. At no time shall the Contractor utilize any products, compounds, or materials that contain copper in any form in any of the water bodies within the project area unless such products, compounds, or materials are specifically approved for usage in water bodies by both the U.S. Environmental Protection Agency and the State of Florida. Usage of such products, compounds, or materials must also be in compliance with applicable Southwest Florida Water Management District ("SWFWMD") rules and any and all SWFWMD permits issued to the District.
 2. Contractor shall ensure that employees who work with registered and restricted-use herbicides are certified as to qualifications for handling and applying material safely and correctly in accordance with the Florida Pesticide Law administered by the Florida Department of Agriculture and Consumer Services. Due to the presence of wetlands, such employees shall possess a Florida Aquatic Pesticide License and other applicable certifications. The Contractor shall also be familiar with the Fish and Wildlife Conservation Commission's Chapter 68F-20: Aquatic Plant Management Permits. Prior to the utilization of herbicides on site, the Contractor will furnish to the District, copies of all required licenses and applicable permits for treatment and/or removal of aquatic plants in waters of the State. The Contractor shall at all times abide by each herbicide label.
- C. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- D. The Contractor shall report directly to the District's Designee who shall be the District Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth in **Exhibit A**. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

SECTION 3. COMPENSATION; TERM.

- A. As compensation for the Services described in this Agreement and **Exhibit A**, the District shall pay Contractor Eight Thousand Six Hundred Sixteen Dollars and Sixty-Six Cents (\$8,616.66) per month, which amount includes all tools, labor, and materials necessary to complete the Services. The term of this Agreement shall be from October 1, 2018 through September 30, 2019, unless terminated earlier in accordance with the terms of this Agreement.

- B. If the District should desire additional work or services not provided in **Exhibit A**, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement as set forth in Section 4 herein.

- C. The District may require, as a condition precedent to making any payment to the Contractor that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.

- D. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render an invoice to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. This invoice is due and payable within forty-five (45) days of receipt by the District, or in accordance with Florida's Prompt Payment Act, whichever is sooner. The invoice shall include such supporting information as the District may reasonably require the Contractor to provide.

SECTION 4. CHANGE ORDERS. Contractor understands that the Services may be reduced, enlarged or otherwise modified in scope. If any additional Services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event the service represents a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in the Agreement. In the event the service is not represented by a lump sum or unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.

SECTION 5. INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of the Services under this Agreement, with limits of liability not less than the following:

Workers Compensation

statutory

General Liability	
<i>Bodily Injury (including contractual)</i>	\$1,000,000
<i>Property Damage (including contractual)</i>	\$1,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000
Pollution Liability	\$1,000,000
Herbicide/Pesticide Applicators Coverage	\$1,000,000

Contractor shall provide the District with a certificate naming the District, its officers, agents and employees as an additional insured. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 6. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) Withhold FICA (Social Security) from Contractor's payments; ii) Make state or federal unemployment insurance contributions on Contractor's behalf; iii) Withhold state or federal income tax from payment to Contractor; iv) Make disability insurance contributions on behalf of Contractor; or v) Obtain workers' compensation insurance on behalf of Contractor.

SECTION 7. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order,

request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

SECTION 8. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 9. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the substantially prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorney's fees, paralegal fees, expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 12. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to District: Poinciana Community Development District
135 West Central Boulevard, Suite 320
Orlando, Florida 32801
Attn: District Manager

With a copy to: Hopping Green & Sams PA
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: Michael C. Eckert

B. If to Contractor: Clarke Aquatic Services, Inc.
3036 Michigan Avenue
Kissimmee, Florida 34744
Attn: Pete Deglomine

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 13. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 14. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 15. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement or any monies to become due hereunder without the prior written approval of the other.

SECTION 16. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Venue shall be in Polk County, Florida.

SECTION 17. INDEMNIFICATION.

- A. Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement

proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 768.28, *Florida Statutes*, or other statute.

- B.** Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

SECTION 18. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 19. TERMINATION. The District agrees that the Contractor may terminate this Agreement for cause by providing thirty (30) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all Services rendered up until the effective termination of this Agreement, subject to whatever claims or offsets the District may have against the Contractor as the sole means of recovery for termination.

SECTION 20. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 21. COMPLIANCE WITH PUBLIC RECORDS LAWS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **George Flint** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain

public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GMS-CENTRAL FLORIDA, LLC, AT (407) 841-5524, GFLINT@GMSCFL.COM, OR 135 WEST CENTRAL BOULEVARD, SUITE 320, ORLANDO, FLORIDA 32801.

SECTION 22. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 23. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 24. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

**POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**

Witness

Chairman, Board of Supervisors

CLARKE AQUATIC SERVICES, INC.

Witness

By: _____
Its: _____

Exhibit A: Scope of Services
Exhibit B: Identification of Ponds

Exhibit A

Scope of Services

Poinciana CDD
Aquatic Plant Maintenance

Scope of Services
September 2013

Scope of Services

1. PROJECT SCOPE

The Contractor shall perform maintenance services of the Poinciana CDD Ponds shown on the map in Exhibit D. Maintenance services of the areas shown in the Contract Drawings will include, but are not limited to, treatment removal and offsite disposal of "nuisance vegetation" and algae treatment. The removal or treatment of nuisance species shall occur at a frequency that prohibits flower or seed production. The maintenance services will comply with the requirements set forth within this Scope of Services. The following is a Project overview describing the various entities within the Poinciana CDD and the limits of service.

1.1 General Overview

Solivita, located in Polk County south of Pleasant Hill Road, is a planned residential community.

1.2 Community Development District (CDD)

The Poinciana Community Development District ("District" or "CDD") is a special-purpose government which was created pursuant to Chapter 190, Florida Statutes and established on the property via an ordinance enacted, ordered and approved by Polk County.

The CDD areas to be included in this aquatic plant maintenance Scope of Services include CDD-managed stormwater management ponds, outfalls and related improvements. These areas are numbered on the attached map.

1.3 Pond Management Program Objectives

The Poinciana CDD desires to manage its stormwater ponds in a way that directs the ponds toward a natural balance that reduces the need for chemical control of aquatic plants utilizing "Florida Friendly™ Landscaping" practices, "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries," Florida DEP, 2008 edition <http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/gm-ind-bmp-en-12-2008.pdf> and other resources setting forth best practices for the protection of waterfronts. Accordingly, the following objectives for this program are identified:

- To provide responsible environmental ecological management of the lakes and stormwater facilities under the management jurisdiction of the Poinciana CDD.
- To eliminate or bring under control all exotic invasive and problematic native aquatic plants in the CDD's lakes and stormwater facilities.
- To ensure that the lakes and stormwater facilities are maintained to create an environmentally sound and aesthetically appealing aquatic community.
- To use Integrated Pest Management (IPM) practices in meeting these objectives.

Integrated Pest Management is a method of conducting proper aquatic vegetation management with minimum impact on human health, the environment, and non-target organisms. IPM is not a single chemical approach or strategy but a decision-making process that involves a combination of practices to control problems. Control tactics can include cultural or biological measures. For example, reduction of lakeshore fertilizing activities, installation of shoreline plants, stocking triploid carp, pond aeration and/or increased education of the public on IPM practices and potential effects of pesticides on health and the environment might be considered for reaching the desired natural balance. IPM requires more information, thought and team planning than ordinary, single approach management strategies, but the

outcome is a healthier community and environment, and lower management costs. Therefore, the primary service desired from the Aquatic Maintenance Contractor ("Contractor") is the contractor's knowledge about aquatic systems and plant management, and not the Contractor's ability to apply pesticides.

1.4 Contractor Adherence to the Scope of Services

The Contractor shall recognize and perform in accordance with the contract terms, written specifications, and/or drawings contained or referenced herein.

1.5 Access to Jobsite

The District shall furnish access to all areas of the jobsite where the Contractor is required to perform under the terms of this Scope of Services.

2. General Requirements and Procedures

The Contractor shall meet the requirements and follow the procedures associated with all items set forth in the Contract Documents including, but not limited to, the following:

2.1 Operation Procedures

The Contractor shall perform the basic services outlined within the Scope of Services between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday unless specified otherwise or directed by the District through its District Manager. The Contractor may submit a request for additional operation time, in response to poor weather conditions, to be reviewed for approval by the District Manager or its Designee. The District Manager or its Designee will designate where Contractor's crew will take breaks, lunches, and use restroom facilities. Employee personnel vehicles will be parked only in areas designated by the District. The Contractor shall be responsible for security of the maintenance areas during working hours and for locking all gates (if applicable) each day.

2.2 Key Personnel

2.2.1 All Services shall be managed and/or directed by key personnel identified by the Contractor in the proposal. Any changes in the assigned key personnel shall be subject to approval by the District Manager. Where applicable, the Contractor shall require that certifications, training, etc., be secured and updated for all employees for the maintenance and technical services performed under this contract.

2.2.2 Contractor shall provide one (1) Project Manager who is knowledgeable of the Contractor's daily activities when performed at this site. This Manager shall serve as the point of contact between the District Manager and Contractor. The Project Manager shall be responsible for coordinating all scheduled services with the District Manager and for the timely scheduling of unscheduled maintenance services.

2.2.3 Contractor will provide the name and résumé of the onsite foreman that will be responsible for supervising and/or completing all field services. The résumé shall list the firms who have employed the foreman for work similar to that to be performed under the Contract. Contractor must demonstrate that the onsite foreman can identify all the plant species that are included as nuisance vegetation on this project.

2.2.4 The Contractor shall ensure that all employees who use or are in contact with registered and restricted-use herbicides are certified as required by the appropriate regulatory agencies and are knowledgeable as to qualifications for handling material safely and correctly in accordance with the

Federal Environmental Pesticide Control Act of 1972 (PL92-516, FIFRA). Such employees shall also possess, or be under the direct supervision of an employee who possesses the Florida Department of Agriculture's Public Applicator Certification for use of restricted pesticides.

2.3 Personnel Dress Code

The Contractor shall ensure that employees working on the Project shall wear uniforms or professional attire at all times. Clothing that expresses or implies obscene language or graphics, degrading or demeaning connotations, or in the opinion of the District Manager is unsightly of any reason, shall be strictly prohibited. The Contractor personnel shall wear shirts at all times and shall wear footwear that conforms to safe work practices. Applicators must use at least minimum personal protective equipment (PPE) required by the label of the materials being handled.

2.4 Personnel Conduct

The Contractor shall enforce strict discipline and good order among its employees on the Project site. The Contractor shall ensure that its employees that communicate and interact with the Solivita community and the Poinciana CDD are knowledgeable of the Project and the Services the Contractor is performing.

2.5 Safety Program

The Contractor shall develop, implement, and maintain a safety program for its operations on the Project. That safety program shall include, at a minimum, a safety policy, safety rules and procedures, safety training, procedures for reinforcing and monitoring safety programs, procedures for accident investigations, providing and maintaining equipment safety features, and safety record keeping.

The Contractor shall comply with all State of Florida and Federal and local regulations, rules and orders, as they pertain to occupational safety and health, the safe operation and security of the facilities.

The Contractor shall provide, at the Contractor's expense, all safety equipment and materials necessary for and related to the work performed by its employees. Such equipment will include, but is not limited to items necessary to protect its employees and the general public, if applicable.

2.6 Facility Location

The District shall not provide a facility on the Project Site for the Contractor as part of this Scope of Services. No fuels, oils or chemicals are permitted to be stored on site.

2.7 Subcontractors

If the Contractor, as a part of the performance of its Services, elects to employ Subcontractors, the following shall apply:

- The Contractor shall reserve the right to hire qualified Subcontractors to perform specialized functions or work including specialized equipment as may be required, at Contractor's expense.
- The Contractor shall be responsible for, and coordinate with, the services of any of its Subcontractors.
- The Contractor shall require all of its Subcontractors, as a condition of employment, to agree to the applicable terms and conditions identified in the Contract Documents.

2.8 Consultants

If the Contractor, as a part of the performance of its Services, elects to employ consultants, the following shall apply:

- The Contractor shall reserve the right to hire qualified consultants to perform specialized functions or work including specialized equipment as may be required, at Contractor's expense
- The Contractor shall be responsible for, and coordinate with, the services of any of its consultants.
- The Contractor shall require all consultants, as a condition of employment, to agree to the applicable terms and conditions identified in the Contract Documents.

2.9 Document Control and Data Management

2.9.1 Document Control

The Contractor shall keep accurate records of documents received and, if applicable, issued by this Contractor. A document log shall be maintained during the work of this Contractor to provide records on the information available to or from this Contractor. The log shall outline document titles and dates, the originator, received dates, and to/from information. This log shall be updated monthly and submitted to the District Manager when requested.

2.9.2 Data Maintenance

The Contractor shall, after review with the District Manager, establish a systematic process for the insertion of revised sets and the integration of that data into the overall Project plan after verification for compatibility and consistency of the information received with existing information.

2.9.3 Data Dispersal

Should the Contractor distribute data to others, the Contractor shall document the distribution of data by completing a letter of transmittal. All distribution of data shall be accompanied by a letter of transmittal with a copy provided to the District identifying:

- Party to whom the data is being transferred
- Origination of the request for transfer
- Name of data being transferred
- Type(s) of data being transferred
- Date of transfer
- Purpose of transfer, or use of information
- Further action necessary

The Contractor shall propose a format for, and keep a log of, all data transfers for updates to the District Manager.

2.10 Verification of Data

All data provided to the Contractor shall be examined for consistency with its records and work efforts. Any obvious inconsistency shall be reported to the District Manager verbally and in writing, upon discovery.

2.11 Ownership of Data

It is to be understood that all data transmitted, and material/equipment purchased under this contract by the Contractor or provided to the Contractor, either by the District or third parties, are the sole properties of the District. The Contractor shall have temporary charge of the data while performing contracted services for the Project. All data shall be returned to the District through the District Manager at the conclusion of the Project, after which no copies of the data may be kept by the Contractor without the express written permission of the District.

The District shall retain the right to require that the Contractor transfer all Project data, material, or equipment to the District immediately upon fourteen (14) days' written notice, for any reason. The same procedures shall apply should it become necessary for the Contractor to voluntarily return all Project data to the District.

2.12 Quality Control

The District will have the right, at any stage of the operation, to reject any or all of the Contractor's services and materials, which in the District's opinion does not meet the requirements of these specifications.

If requested by the District Manager, the Contractor will make weekly walk-through reviews of the entire site related to visual observations and the Contractor's performance. The Contractor will make repairs and adjustments, as directed by the District Manager, during these site visits. A monthly Maintenance Report shall be generated by the Contractor and submitted to the District Manager outlining potential problem areas and the Contractor's proposed corrective action, upcoming work approval request, coordination, scheduling, etc. The Contractor shall provide the District Manager with a weekly updated maintenance log addressing all activities occurring in that week.

2.13 Insurance

As more fully described in the agreement for services, the Contractor will provide Worker's Compensation, Unemployment Insurance, and any other insurance required by law. In addition, the Contractor will carry Public Liability and Automobile Insurance to the limits required by the District.

2.14 Materials

All materials shall conform to bid specifications. The Contractor will meet all agricultural licensing and reporting requirements.

2.15 Licensing and Permits

Contractor shall maintain any applicable license and permit requirements of Polk County, the State of Florida, the Federal Government as well as all other requirements of the law.

2.16 Liability

Throughout the entire project, Contractor shall be liable for any damage of any kind whatsoever that is caused by the negligence of the Contractor, its agents or employees. Throughout the entire work area, the Contractor shall replace or reimburse the District for the cost of replacement and/or repairs, at the Contractor's own expense, any turf and ornamental plants killed or damaged by herbicide application or mechanical equipment. The Contractor shall be completely responsible for any environmental cleanup resulting from chemical or fuel spills that occur in the course of business.

2.17 Contractor Responsibilities

- 2.17.1 The Contractor shall have demonstrated experience in total pond system management. Contractor personnel applying herbicides for the management of aquatic plants shall be certified/licensed by the Florida Department of Agriculture and Consumer Services (FDACS) for Aquatic Pest Control.
- 2.17.2 At a minimum, the job supervisor and ideally all on site personnel shall have been trained in Integrated Pest Management, Florida Friendly management practices or similar best management practices. Evidence of such training will be provided.
- 2.17.3 No pest management treatments are to be conducted unless the problem has been identified and scouted. Integrated Pest Management (IPM) is a decision-making approach to managing invasive and undesirable vegetation. Monitoring and identification of the problem is one of the most important components of IPM.
- 2.17.4 The Contractor will use the least toxic herbicides only when other control methods would not be effective or practical in maintaining the established level of service.
- 2.17.5 The Contractor will avoid disruption of natural enemies by becoming familiar with beneficial organisms. The Contractor will use available charts and literature to evaluate impact of control strategies and their toxicity to specific natural enemies.
- 2.17.6 Pesticide efficacy can vary from one area to another, one location to another, and even from one year to the next in the same location. It is essential when pesticides have to be used to select the correct materials based upon their least toxic impact and efficacy. Record keeping will be used to support selections.
- 2.17.7 Regular monitoring of pest and beneficial populations will determine the optimal times for applying pesticides or other practices and to enhance their effectiveness. The Contractor will control undesirable vegetation during the most vulnerable point in their life cycle or growth period. Young, actively growing weeds are usually the easiest to control or remove. The Contractor will control weeds before they produce seeds.
- 2.17.8 The Contractor will follow the label to determine the rate and method of application. The control action chosen must focus on the site of the problem so that only the areas that need to be treated are targeted. Proper application will maximize effectiveness and minimize effects on beneficial organisms. The goal is to use the most environmentally responsible and effective pesticide.
- 2.17.9 Liquid sprays must not be applied when winds exceed 10 mph to minimize any undesirable drift.
- 2.17.10 Personnel assigned to this contract shall use at least minimum personal protective equipment (PPE) required by the label of materials being handled.
- 2.17.11 The Contractor will establish action thresholds for undesirable plant levels to determine when numbers or situations pose a problem. The Contractor will maintain records of numbers or kinds of problems to track occurrence and to evaluate actions taken
- 2.17.12 The Contractor will adhere to the following pesticide procedures:
- Proper application techniques
 - Knowledge and actions to follow in the event of a pesticide spill

- Proper pesticide transporting and handling procedures
 - Cleaning and calibration of equipment procedures
 - Storage and disposal of pesticide containers
 - Scouting and record keeping – summary reports of pond observations and management strategies are to be routinely filed with the District Manager
 - Strict compliance with each EPA label's PPE requirements
 - Maintenance of up-to-date records of pesticides applied, by treatment area.
- 2.17.13 Use of any product being phased out or banned by State or Federal agencies is prohibited under this contract.
- 2.17.14 The Contractor shall provide at his own risk and cost, all labor, materials, tools, equipment, transportation, hauling, biological controls, pesticides, chemicals and other items needed to perform the aquatic plant management work under this contract.
- 2.17.15 All work shall be performed on weekdays during normal business hours unless other arrangements are made on a case-by-case basis.
- 2.17.16 Access to pond work sites can sometimes be limited; therefore, ATV use rather than truck is preferred. Pond banks, littoral shelves and other portions of the work site shall not be rutted or otherwise damaged. Electric-powered vehicles are preferred where practical, but muffled gas engines may also be used. If needed, each pond is accessible for boat launching from a small truck.
- 2.17.17 Paper, cans, trash, and other debris shall be removed from the surface of storm water retention ponds when the Contractor is using a watercraft as part of his operations.

COORDINATION

The Contractor shall provide coordination with the District for all items associated with the requirements of this Agreement.

3.1 General Coordination

The Contractor shall provide coordination with the District Manager for all items associated with the requirements of this Agreement.

The Contractor shall be available to meet with the District Manager as appropriate, on a monthly basis for an inspection and walk-through during normal business hours. The inspection shall be scheduled with the District Manager's and the Contractor's representatives with a resulting punch list of problem areas and corrective actions to be reviewed each month or as time allows. The Contractor shall be responsible for immediately notifying the District Manager of any and all issues, damage, and/or decline directly related to the Contractor's scope of work.

Those inspection meetings shall also serve as a forum for the exchange of information, identification of pertinent and critical issues, determination of an action plan and schedule for resolving those issues, review of schedule and budget status, and other issues deemed appropriate by the District Manager or the Contractor. The Contractor shall record and distribute notes of each meeting to all attendees within five (5) business days, as well as other parties with a need-to-know. The District Manager shall set the meeting time and location.

In addition, Contractor shall provide a representative to attend the monthly meeting of the Poinciana CDD Board of Supervisors if requested to do so by the District Manager. This representative shall be knowledgeable of this Project Scope and Scope of Services and shall be able to respond to any questions the District Board of Supervisors may have as to the day to day activities at the Project site pursuant to this Agreement.

Coordination of the construction, operation, and general maintenance is considered one of the many critical activities of the Contractor. Further, coordination of those efforts with all parties involved, or those with a need-to-know, is crucial to the success of the Project. While all parties involved with the Poinciana CDD Project cannot be identified at this time, a partial list is provided as follows:

- CDD District Manager
- CDD District Engineer
- AV Homes, Inc.
- Toho Water Authority
- Polk County and its various departments
- Florida Department of Transportation
- Adjacent property Owners, as directed by the District

3.2 Permitting Consideration

Poinciana CDD was permitted through the South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP).

3.3 Contractor's Project Manager

The Contractor shall designate an on-site representative with experience in aquatic plant management who will be responsible for overall supervision of the Contractor's work force on the Project and shall act as the single point of contact, on a daily basis, between the District Manager and the Contractor. This individual shall maintain at all times a means of being contacted by the District Manager and shall respond to such calls within a reasonable amount of time. This individual shall be responsible for maintaining the Contractor's schedule of activities and notifying the District Manager of this daily schedule for quality control of the Contractor's service and for arranging and supervising unscheduled service requests by the District Manager.

3.4 District Awareness

The Maintenance Contractor shall be responsible for notifying the District:

- Of any accidents involving the Contractor personnel or others on the Project
- Of any recommended cultural practices that could be taken by the community, property owners or other contractors to support the objectives of the aquatic plant management program,
- Of any desirable plants that have died or are showing significant damage, whether or not they are believed to be as a result of plant management activities

4. SCHEDULED OPERATIONS AND MAINTENANCE

The Contractor shall perform all services necessary to control and remove nuisance vegetation for those areas of the Project Scope that are to be maintained on a regularly scheduled basis, with a minimum of monthly. Control shall be defined as the evidence of treatment, of a minimum of seventy percent (70%) noxious and exotic species coverage, of target species to be treated. Noxious and exotic vegetation to be targeted for treatment are listed in Section 4.6, below. Maintenance within these areas should be conducted to ensure the control of the targeted

plant species and to prevent re-infestation for the purpose of aquatic system health and aesthetics. The Contractor shall make a complete site inspection of the CDD, specifically the areas of CDD maintenance. Exhibit D includes a plan identifying the general limits of CDD maintenance by area. Services are generally described below.

4.1 General Scope and Practices

4.1.1 Water Bodies Included in the Scope

Exhibit D describes the water bodies included in this scope and their dimensions. The scope generally consists of two parts:

- 1) Maintenance of water bodies shown on Exhibit D to consist of open water areas, shorelines and outfalls of the ponds. The perimeter and surface area of each pond is included in an accompanying table.
- 2) Maintenance of developed littoral shelves in selected ponds for their water-cleansing qualities and habitat values.

4.1.2 Natural Balance of Ponds

The Contractor shall assess the condition of the ponds at the beginning of the contract period and develop a plan directed toward achieving a more balanced condition. The Contractor will routinely appraise the condition of ponds for progress toward such a natural balance. While it is recognized that such a balance might not be reached during the contract period, recommended strategies and maintenance activities will be directed toward that goal and not toward keeping the ponds in a "new pond" condition.

4.1.3 Noxious Weeds

The Contractor shall control submerged, emergent, and floating noxious aquatic weeds growing in the waterways with the use of EPA-approved chemicals in strict accordance of label specifications.

4.1.4 Grass Carp

Sterile grass carp may have already been distributed in the stormwater ponds. The Contractor will be responsible for maintaining outfall barriers per stocking permit requirements and for adding additional fish if that is part of the plan.

4.1.5 Invasive Exotic Weeds

The Contractor shall control submerged, emergent, and floating invasive exotic weeds growing in the ponds and pond banks, including any forested edges, littoral shelves and outfall areas. Specifically, the Contractor shall target and remove all species designated as nuisance and invasive exotic Class I or Class II plant species, as defined by the Florida Exotic Pest Plant Council (FEPPC) 2011 Edition, or as listed below in Section 4.6, within each wetland maintenance area. Such control shall be conducted on an as-needed basis.

4.1.6 Pond Outflows

The Contractor shall maintain all noted pond outflows to allow proper drainage into nearby wetlands. This insures control water levels function as designed.

4.1.7 Native Plants

Native plants are generally to be encouraged to grow to enhance the aesthetics as well as provide a habitat

for native fish and wildlife.

4.1.8 Shorelines and Pond Edges

Close communication with on-site management and District staff is key since the management goals can vary from pond to pond.

4.2 Pond Open Water Maintenance

The Contractor shall be responsible for the development and implementation of a preventative maintenance program. For the algae control portion, the Contractor is responsible for taking all the preventative measures to control algae.

4.3 Littoral Shelf Maintenance

The Contractor shall perform monthly maintenance within the littoral zones. Maintenance will include monthly site inspections, manual removal and/or herbicide application on the littoral shelves and lake banks.

4.4 Wetland Preserve Area Maintenance

The Contractor will perform quarterly maintenance within preserved wetland areas. Maintenance events will include manual removal of emergent nuisance and exotic species and periodical herbicide applications.

4.5 Mitigation Area Maintenance

The Contractor will perform quarterly maintenance within Mitigation Areas. Maintenance events will include the manual removal of emergent nuisance and exotic species and periodical herbicide applications.

4.6 Target Vegetation

The Contractor shall control/remove all nuisance and exotic vegetation including, but not limited to, the following species, if present, within each of the maintenance areas. The following species may be in addition to the 2011 FEPPC list. The limits of the maintenance activities shall be defined as all property waterward of the limits of the turf, including open water areas.

- a. All species of cattails (*Typha* spp.)
- b. Cuban bulrush (*Scirpus cubensis*)
- c. Primrose willow (*Ludwigia peruviana*)
- d. Seedbox (*Ludwigia octovalvis*)
- e. Water primrose (*Ludwigia leptocarpa*)
- f. All nuisance species of the family Fabaceae
- g. Dog fennel (*Eupatorium* spp.)
- h. Caesarweed (*Urena lobata*)
- i. Carolina Willow (*Salix caroliniana*)
- j. Torpedo grass (*Panicum hemitomon*)
- k. Climbing hemp vine (*Mikania scandens*)
- l. Brazilian pepper (*Schinus terebinthifolius*)
- m. Water hyacinth (*Eichhornia crassipes*)
- n. Tropical soda apple
- o. Frogbit (*Limnobium spongia*)

- p. All species of algae filamentous and suspended
- q. Common duck weed (*Lemna minor*)
- r. Salvinia (*Salvinia minima*)
- s. Hydrilla (*Hydrilla Verticillata*)
- t. Southern Naiad (*Najas guadalupensis*)
- u. Azolla (*Azolla Caroliniana*)
- v. Musk grass (*Chara spp.*)
- w. Giant duckweed (*Spirodela polyrhiza*)

4.7 Maintenance Methodology

Maintenance methodology shall be determined by the vegetative composition within the specific pond areas. Control methods may include, but are not limited to, select herbicide applications, mechanical removal and/or hand removal. Natural recruitment of desirable herbaceous vegetation outside the planted areas shall be generally allowed and shall not be adversely affected by maintenance activities unless otherwise directed by District. It is the intent of the contract to provide a vegetated littoral zone without creating an overgrown appearance.

4.7.1 Hand-Removal Techniques

- a. The Contractor shall remove nuisance species from within the planted littoral zones by hand or as directed by the District Manager to ensure that desirable species are not damaged by maintenance activities.
- b. The Contractor shall be responsible for removing all individuals of the species listed in Item 4.7 above. Contractor shall remove all vegetative parts of the plant, including roots, stems, and flowering/fruitlet parts. The Contractor shall remove all collected vegetation from the site on a daily basis. All material removed from the immediate work site shall be disposed of by the Contractor off the Project Area. Dying biomass of desirable herbaceous vegetation may remain in place.
- c. The Contractor shall use equipment specifically designed for commercial application of herbicides. Equipment shall be kept in good repair and operational condition at all times and shall meet all safety requirements established for the type of work. Equipment is subject to inspection and acceptance by the District Manager or its designee.
- d. The Contractor shall properly use and dispose of all chemicals and herbicides in strict accordance with applicable local, State, and Federal environmental regulations and shall indemnify the District for any liabilities arising out of the Contractor's handling, use of, and disposal of said chemicals and herbicides.
- e. The Contractor shall ensure that employees who use or are in contact with registered and restricted use herbicides/pesticides are certified as required by the appropriate regulatory agencies and are knowledgeable as to qualifications for handling material safely and correctly in accordance with the Federal Environmental Pesticide Control Act of 1972 (PL 92-516, FIFRA).

Such employees shall also possess, or be under the direct supervision of an employee who possesses, the Florida Department of Agriculture's Public Applicator Certification for use of restricted herbicides. For purposes of the Scope, "pesticides" shall refer to "herbicides."

- f. The Contractor shall provide a Herbicide Summary Report for each location where nuisance species control occurs. These reports shall include specific information including the map of areas treated, the applicator's name, the date, the chemical(s) used, the mixture, the amount applied, the

application rate, the condition of growth being treated, desired results and weather conditions (wind speed and direction, temperature, precipitation) under which it was applied. Completed forms shall be submitted to the District Manager within 10 days of the application event.

- g. The Contractor shall replace desirable trees or other plants, at no cost to the District, that are injured or lost due to the Contractor's negligent acts or failure to perform the Services.

5. **Unscheduled Maintenance**

The Contractor shall be equipped and organized to provide any unscheduled maintenance and repairs related to the Services performed under this Agreement and if required by the District. The following addresses the general procedures for unscheduled maintenance activities.

5.1 **General**

The Contractor shall be responsible for additional maintenance and corrective actions relative to this Scope within the limits described unless directed otherwise by the District Manager. Unscheduled maintenance that results from the Contractor's failure to properly perform the Services under this Scope of Services shall not be considered an Additional Service and therefore, shall not warrant additional compensation to the Contractor. Unscheduled maintenance that, in the Contractor's and District Manager's opinion, are not as a result of the Contractor's negligent acts or failure to perform the Services, shall be deemed an Additional Service and shall, at the District Manager's election, be made by the Contractor upon receipt of a Work Authorization from the District. When the Contractor determines that an unscheduled maintenance is necessary, the Contractor shall submit to the District Manager a Work Authorization form (Exhibit C) together with the Contractor's estimate of the cost to perform the repair. Whenever possible, this Work Authorization and cost estimate should be sent to the District seven (7) calendar days in advance of the Contractor performing the Services. The District Manager shall return one executed copy of the Work Authorization form and shall indicate the method of compensation. In the event the Services are to be provided on a unit price of time-and-materials basis within seven (7) calendar days upon completion of the Services, the Contractor shall submit to the District Manager an itemized listing of the Contractor's costs to perform the Services including all unit quantity items or labor, equipment, materials, and Subcontractor's accordingly. The itemized listing shall be presented in a format acceptable to the District Manager and, if requested by the District Manager, shall include copies of invoices from others providing work or materials on the repair.

5.2 **Unscheduled Maintenance**

The contractor shall provide occasional unscheduled maintenance that is in addition to the base Scope of Services. The Contractor shall receive a Work Authorization from the District Manager and shall respond and complete the request within two (2) weeks, or a mutually agreeable time with the District Manager. The Contractor's cost estimate to provide the work shall be approved by the District Manager prior to commencement. The Contractor shall be available and willing to provide the following unscheduled maintenance services:

5.2.1 **Maintenance of Wetlands and Upland Buffer Areas**

- a. The District may require the Contractor to perform selected unscheduled maintenance for aquatic or nuisance species control. Unscheduled maintenance is restricted to exotic and nuisance plants within the buffers or wetlands as these areas are to be retained in their natural state. The use of pesticides, herbicides or fertilizers shall be prohibited in the buffers and the existing wetlands

they protect, except when used in accordance with applicable law and pursuant to permits from agencies having jurisdiction thereover and consistent with the management intent of these buffers and wetlands.

- b. If requested by District Manager, the Contractor shall provide a nuisance species removal plan specific to each protected wetland and buffer area. This plan will detail the methodology and target species within each area. Written approval of the plan by the District Manager will be required prior to implementation.
- c. The Contractor shall replace desirable trees or other plants, at no cost to the District, that are injured or lost due to the Contractor's negligent acts in the performance of the scheduled and unscheduled Service.

5.2.2 Wetland Planting

- a. The District Manager may elect to direct the Contractor to restore aquatic vegetation in planted littoral zones that are identified in the Contract Documents. The work included in the section shall consist of furnishing, planting, and watering all plants of the species, size, and quality in the location indicated or as directed by the District Manager. Further, the work shall include the maintenance of all plants and planting areas until acceptance by the District, and fulfilling all guarantee provisions as herein specified.
- b. Plant transportation shall comply with applicable Federal and State regulations. Upon delivery at the site, all plants shall be inspected for conformity to specifications and for handle damage.
- c. Plants specified herein shall be used unless sufficient evidence is submitted to the District Manager indicating the plant is unavailable. Alternate material may be used upon receipt of authorization from the District Manager. No substitutions shall be made without written approval of the District Manager.
- d. The Contractor shall guarantee all planting work for a minimum period of 365 days after the date of installation. The Contractor shall be responsible for the establishment of all species planted. Establishment shall be defined as all plants successfully budding or leafing out. Before final acceptance, the Contractor shall replace at no cost to the District any plant material necessary to meet the above criteria. In the event the Contractor has to replace plant material, the District Manager may allow such plant material to remain through another establishment (365) period.
- e. Materials
 - 1. The Contractor shall furnish all plants of the species requested by the District Manager. All plants shall be true to name as established by the American Joint Committee on Horticulture nomenclature publication "Standard Plant Names."
 - 2. The designated authority for the identification of all materials shall be the two (2) publications of L.H. Bailey, "HortusII" and the "Manual of Cultivated Plants," and all specimens shall be true to type, name, etc., as described herein.
 - 3. If the District Manager elects to request the Contractor to provide trees, all trees shall meet the requirements for a Florida Grade 1, listed under single upright trees in "Grades and Standards for Nursery Plants" established by the Florida Department of Agriculture and Consumer Services.

4. Furthermore, trees shall minimally be the three-gallon size with a minimum height of 4 feet and caliper measure of mid-height of 0.5 inches to 0.75 inches. The actual height of the tree installed in the field shall be dependant on existing site conditions. It is the Contractor's responsibility to ensure each tree has sufficient height to survive under existing field conditions. All trees shall be sound, healthy, and vigorous, exhibit significant apical growth on the main stem, be well branched and shaped within normal habit of growth, of proper color, and densely foliated when in leaf. They shall have healthy, well-developed root systems and shall be free of disease and insect pests, eggs, or larvae.
5. All herbaceous materials shall be provided from the following size classes: four (4) inch pot or bare root.

It is the Contractor's responsibility to ensure each plant has sufficient height to survive under existing field conditions. All plants shall be sound, healthy and vigorous, be shaped within normal habit of growth, of proper color and densely foliated with in leaf. They shall be free of disease and insect pests, eggs, and larvae.

6. In the event that it becomes apparent that any nursery supplying plants for this work has knowingly and consistently represents the grade of plans as being higher than the actual grade as determined by the plant list according to "Grades and Standards for Nursery Plant," all plants already delivered from such source shall be removed from the job at the Contractor's expense, and no further plants will be acceptable from such nursery until written evidence is submitted and confirmed that all materials for delivery have been inspected and approved by the District Manager as being of the grade represented.
7. Container-Grown Plants
 - a.) Container-grown plants shall have been grown in a container large enough and for sufficient time for the root system to have developed enough to hold its soil together firm and whole. No plants shall be loose in the container. Plants which have become pot-bound or for which the top system is too large for the size of the container will not be acceptable.
 - b.) Collected Plants: Collected plants shall be dug with a root spread at least one-third greater than nursery-grown plants of the same species.
 - c.) Bare Root:
 - (1) Plant materials removed from natural or manmade wetlands may be transported to the site as bare root plants. However, some provisions must be made to protect this material, especially the roots, from desiccation. All plant material transported in this manner must be approved in writing by the District Manager before proceeding with the work. Otherwise, no bare root plants shall be used unless specifically required by the District.
 - (2) Bare root plants shall be dug and delivered with roots adequately protected against drying out by means of moist straw, or other approved material. Shipping containers shall be opened and inspected by the Contractor upon arrival and shall be dampened, if necessary. Plants which are not to be immediately planted shall be "heeled-in" in an approved manner, in moist earth or other suitable medium, and shall be

properly cared for until planting.

f. Planting:

1. Time of Planting: Plant under favorable weather conditions. At the option of, and under the full responsibility of the Contractor, planting operations may be conducted under unreasonable conditions without additional compensation.
2. The District Manager or its designee shall inspect the plants at the time of planting. Plants will be rejected if improperly planted. Improper planting includes the following conditions: exposed roots, not at the proper depth, or planted in water either too deep or shallow. The Contractor shall be responsible for tagging the newly planted trees with surveyor's tape so that the plants can be easily identified and inspected. Plants may not be stored onsite for more than two (2) consecutive days. Any material stored onsite for longer periods of time may be rejected by the District Manager or its designee. The Contractor should notify the District at least five (5) working days prior to movement of plant material onsite, and shall request the District Manager be present to inspect the plant material as it arrives onsite. The District Manager or its designee may reject all plant material not inspected prior to planting, and the Contractor shall remove and replace rejected material without additional compensation.
3. All containers shall be cut and opened fully, in a manner such as will not damage the root system. Container-grown plants shall not be removed from the container until immediately before planting and with all due care to prevent damage to the root system.
4. The Contractor shall mark each tree planted and shall submit a drawing to the District Manager showing the location of all trees and herbaceous materials planted by the Contractor. The District Manager or its designee will not inspect the sites for final acceptance until this submittal is received.

g. Warranty of Planted Material

1. During planting, the Contractor shall request an inspection by the District Manager near the end of the warranty period. When all plants are acceptable, the Contractor will be notified of warranty compliance.
2. Defective work shall be corrected within five (5) working days of notification by the District Manager. Upon completion of planting, the Contractor shall remove from the site excess soil, planting containers and debris, and repair any damage to structures, etc., resulting from planting operations.
3. The Contractor shall be responsible for assuring that all plants, at the time of final inspection, exhibit the characteristics and qualification required for the grade of plant as originally specified.

5.2.3 Observation and Provisional Acceptance

- a. When the vegetative work is completed, including ongoing maintenance, the District Manager or its designee will make an observation to determine acceptability. The vegetative work may not be reviewed for final acceptance in parts.

- b. Where vegetative work does not comply with the requirements, the Contractor shall replace rejected work and continue specified maintenance until re-observed by the District Manager or its designee and found to be acceptable and will continue the guarantee period. The Contractor shall remove rejected plants and materials promptly from the project site.
- c. At the end of the guarantee period, inspection of plants will be made by the District Manager or its designee upon written notice requesting such inspection, submitted by the Contractor at least three (3) days before the anticipated inspection. All defects discovered shall be repaired or replaced by the Contractor before final acceptance.
- d. Upon completion of the work, prior to Final Acceptance, the Contractor shall thoroughly clean the project site. In addition to removing all equipment, unused materials, deleterious material, and surplus materials, the Contractor shall correct any damaged structures or vegetation altered as a result of the landscape work.

6. Administration/Maintenance/Operations Program

The Contractor shall develop policies and procedures and implement an Administration, Operation, and Maintenance Program. That program shall include, but not be limited to, the following:

6.1 General

- 6.1.1 This program shall be a comprehensive narrative and, where applicable, graphic/diagrammatic explanation of policies and procedures which shall govern the Contractor's Services provided under this Agreement is generally outlined in this Scope of Services. The program document shall contain key information relative to the major components described below.

The program document shall be presented in a three-ring binder using standard 8½" x 11" pages, single-spaced for text, graphics, and/or diagrams, and with, if necessary, 11" x 17" pages for diagrams and/or graphics that fold out. The document shall include as a minimum, a table of contents, section dividers, numbered pages, issuance date of each page, and appendices as required. Each copy shall be numbered and a log shall be kept by the Contractor of document holders (refer to Section 2.9.3, Data Dispersal)

- 6.1.2 The program documents shall be kept up-to-date at all times by the Contractor. Revisions to the document shall be indicated by footnote on the revised pages. Revisions shall be distributed by the Contractor to all document holders.

- 6.1.2 The Contractor shall prepare draft copies of the document for review and comment by the District Manager within thirty (30) calendar days of the notice to proceed with the Services. The Contractor shall anticipate at least two (2) more additional reviews by the District prior to issuance of the final document. All District Manager comments shall be incorporated into the document. The Contractor shall be responsible for preparing and submitting the following number of copies of the program document to the District Manager.

- First Draft Six (6) bound copies, one (1) unbound copy
- Second Draft Six (6) bound copies, one (1) unbound copy
- Third Draft Six (6) bound copies, one (1) unbound copy
- Final Document Ten (10) bound copies, two (2) digital copies on CD

6.2 Administration

- 6.2.1 The administrative sections of the program document shall, at a minimum, address those

functions which are the responsibility of the Contractor related to all administrative matters generally described in the Scope of Services and as outlined below.

- 6.2.2 Organizational charts for administrative management functions include key personnel names, job titles, and phone numbers.
- 6.2.3 Policies and procedures related to the Contractor's program for communications with the Solivita community relative to general maintenance operations and customer services.
- 6.2.4 Policies and procedures related to the coordination and communications with developers, builders and others who are a part of the continuing development and construction of the Solivita community.
- 6.2.5 Personnel policies and procedures related to the Contractor's personnel performing Services on the Poinciana CDD site.

6.3 Operations

- 6.3.1 The operations section of the program document shall, at a minimum, address those functions which are the responsibility of the Contractor related to all operations/customer service matters generally described in the Scope of Services and as outlined below.
- 6.3.2 Organizational charts for operations and customer service related functions include key personnel names, job titles, and phone numbers.
- 6.3.3 Policies and procedures related to emergency situations including 24-hour notification, emergency phone numbers, Contractor mobilization and response time (refer to Section 7.2, Emergency Response Program for further details), and so forth.

6.4 Maintenance

- 6.4.1 The maintenance section of the program document shall, at a minimum, address those functions which are the responsibility of the Contractor related to all maintenance matters generally described in the Scope of Services and as outlined below
- 6.4.2 Contractor shall provide all safety equipment required by the activities outlined in this Scope. Employees shall be provided safety equipment and proper instruction/certification for their work assignments. All equipment, safety gear, and herbicide spray apparatus shall be maintained in good working order.
- 6.4.3 All gates shall be closed and locked if applicable after accessing pond to perform maintenance services.

The Administration, Operation, and Maintenance Program shall be submitted by the Contractor for review and approval by the District Manager. The Contractor shall modify the program as required by the District Manager.

7. Response Time and Emergency Response Program

The Contractor shall provide services and repairs within the amount of time indicated in the Agreement. The following is general response time information and requirements for the Emergency Response Program to be developed, implemented, and maintained by the Contractor.

Emergency Response Program

The Contractor shall develop, implement and maintain an Emergency Response Program (ERP) for emergency work that must proceed immediately to avoid property damage or result in a public health or safety hazard. The ERP shall address emergency situations including, but not limited to, the following items:

- Fish Kills
- Chemical Spills
- Equipment Failures
- Water Quality Monitoring Results out of compliance

Additionally, the ERP shall address the following:

- Responsible parties to be notified
- Personnel, equipment, and emergency repair contractors on call and who will respond to each type of emergency.
- Procedures for notifying the District, District Manager, the Solivita community, AV Homes, and other utility companies or regulatory agencies affected by the listed emergency.
- The Contractor shall prepare, maintain, and distribute an ERP manual detailing the procedures and responsibilities for the situations listed above and any other situation deemed appropriate by the District.

The ERP Manual shall be included in the operations section of the Administrative/Maintenance/ Operations Program (refer to Section 6 for further details).

Exhibit B

The following ponds, as identified on the attached map dated June 2018, are included within the scope of this agreement:

A-1, A2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10A, A-10B, A-11, A-12, A-13, A-20, A-21, A-22; and

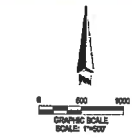
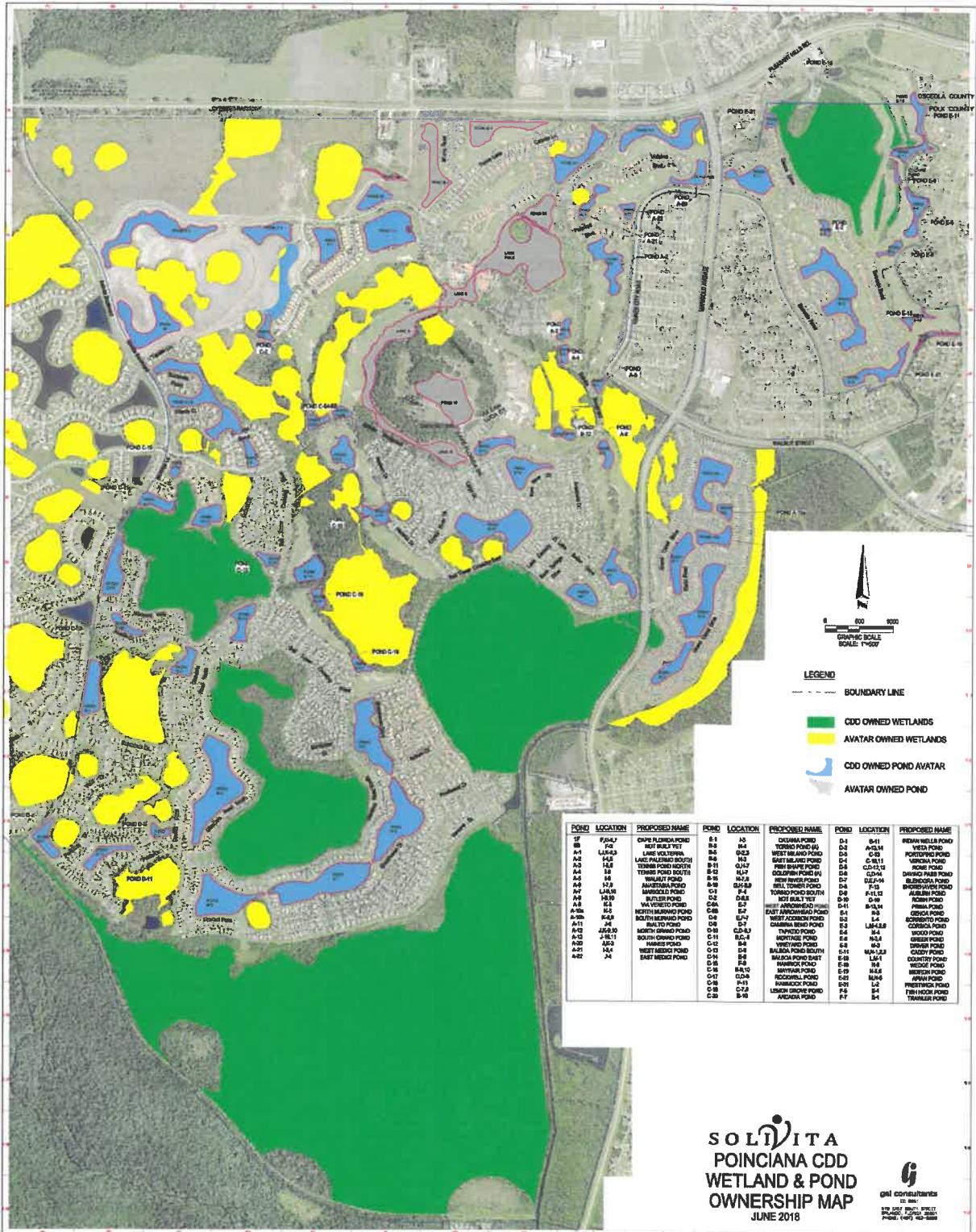
B-1, B-5, B-6, B-11, B-15, B-16; and

C-1, C-2, C-3, C-6A, C-6B, C-8, C-9, C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-17, C-18, C-19, C-20; and

D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11; and

E-1, E-2, E-3, E-5, E-6, E-8, E-11, E-18, E-19, E-21, E-31; and

F-7.



- LEGEND**
- BOUNDARY LINE
 - CDD OWNED WETLANDS
 - AVATAR OWNED WETLANDS
 - CDD OWNED POND AVATAR
 - AVATAR OWNED POND

POND	LOCATION	PROPOSED NAME	POND	LOCATION	PROPOSED NAME	POND	LOCATION	PROPOSED NAME
S7	FLP-7	CAPE FLORIDA POND	B1	J5	OLYMPIA POND	D4	S41	REDMAN WELLS POND
S8	FO	HIGH BUILT TREE	B2	M4	YONKOS POND (A)	D2	A-53-M	YONKOS POND
A-1	LJ-23	LAKE VILLAGES	B6	D-23	WEST MANAY POND	D4	C-23	PORTER POND
A-2	L4-3	LAKE PALMWOOD BOULEVARD	B4	M-3	EAST MANAY POND	D4	D-23-1	YONKOS POND
A-3	L4-8	TERRACE POND NORTH	B-11	Q-17	NEW SHAWNEE POND	D4	C-23-12	ROSE POND
A-4	M	TOWER POND SOUTH	B-12	M-7	COLORADO POND (A)	D4	C-23-14	DANIEL PAUL POND
A-5	M	WALNUT POND	B-18	M-2-A	NEW SHAWNEE POND	D7	D-23-14	ELINDORA POND
A-6	M-2	NAVIGATOR POND	B-19	Q-18	BELL TOWER POND	D4	F-15	BRISTOLVALE POND
A-7	L4-24	MANICULE POND	C3	F-4	TORONTO POND SOUTH	D6	F-11-2	AUBURN POND
A-8	M-2	BULLDOG POND	C2	D-6	HOT BUILT TREE	D-10	D-10	KONA POND
A-9	M-2	VA VINTAGE POND	C6A	E-7	WEST ANDERSON POND	D-11	B-23-M	FRANK POND
A-10	M-2	NORTH HAWAII POND	C6B	E-7	EAST ANDERSON POND	D-11	B-3	OSVALD POND
A-10B	M-2	SOUTH HAWAII POND	D8	E-7	WEST ANDERSON POND	S2	L-4	SCOTTISH POND
A-10B	M-2	SOUTH HAWAII POND	D8	E-7	CHAMBER POND	S2	L-4	CORONA POND
A-11	M-2	BALTY POND	D8	C-2-3	TRINITY POND	S2	M-4	WOOD POND
A-12	AS-10	NORTH GRAND POND	C-11	B-2-A	METRO POND	S2	M-4	GREEN POND
A-13	AS-11	SOUTH GRAND POND	C-11	B-4	WESTWOOD POND	S2	M-4	SUNNY POND
A-14	AS-3	HAWES POND	C-11	D-8	BAJARA POND SOUTH	S-12	M-2-3	COLUMBIA POND
A-15	M-4	WEST MEDCO POND	C-14	B-8	BAJARA POND EAST	S-12	L-4	COUNTRY POND
A-16	M-4	EAST MEDCO POND	C-14	F-8	HAWAII POND	S-12	M-4	MEDCO POND
			D-18	B-10	MYRTLE POND	E-19	M-4	MEDCO POND
			C-17	C-2A	RICCIOLI POND	S-12	M-4	AVIA POND
			D-18	F-11	HAMMOCK POND	S-12	L-2	PRESTON POND
			C-20	C-2A	EMERY GROVE POND	F-4	S-4	FISH HOOK POND
			B-10	B-10	ARCADIA POND	F-7	S-4	TWILLER POND

SOLVITA
POINCIANA CDD
WETLAND & POND
OWNERSHIP MAP
 JUNE 2018



SECTION 2

**AGREEMENT BETWEEN POINCIANA COMMUNITY DEVELOPMENT DISTRICT
AND CLARKE ENVIRONMENTAL MOSQUITO MANAGEMENT, INC. FOR THE
PROVISION OF MIDGE CONTROL SERVICES**

This Agreement (the "Agreement") is made and entered into as of the 1st day of October, 2018, by and between:

Poinciana Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in Polk County, Florida, and whose mailing address is 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 (the "District"); and

Clarke Environmental Mosquito Management, Inc., an Illinois corporation, whose local address is 3036 Michigan Avenue, Kissimmee, Florida 34744 (the "Contractor," and together with the District, the "Parties").

RECITALS

WHEREAS, the District was established pursuant to Chapter 190, *Florida Statutes*, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure improvements and for providing certain services, including midge control services; and

WHEREAS, the District desires to retain an independent contractor to provide midge control services within the District, as more particularly shown on the attached **Exhibit A**; and

WHEREAS, the Contractor represents that it is qualified, willing and able to provide such services to the District; and

WHEREAS, the District and Contractor warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

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

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

SECTION 2. DESCRIPTION OF WORK AND SERVICES.

A. The duties, obligations, and responsibilities of the Contractor are to provide the services, labor and materials necessary for the provision of midge control services within the District, as described herein and in **Exhibit B**, which is attached hereto and incorporated herein by reference (the "Services").

- B. Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services. Any additional compensation for additional services shall be paid only as negotiated between the parties and upon the written authorization of the District.
- C. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- D. The Contractor shall report directly to the District's Designee who shall be the District Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth in **Exhibit B**. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

SECTION 3. COMPENSATION; TERM.

- A. As compensation for the completion of the Services, the District agrees to pay the Contractor Twelve Thousand Five Hundred Eighty Three Dollars and Thirty-Three Cents (\$12,583.33) per month, which amount includes all tools, labor and materials necessary to complete the Services. The term of this Agreement shall be from October 1, 2018 through September 30, 2019, unless terminated earlier in accordance with the terms of this Agreement.
- B. If the District should desire additional work or services not provided in **Exhibit B**, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement as set forth in Section 4 herein.
- C. The District may require, as a condition precedent to making any payment to the Contractor that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.

D. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render an invoice to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. This invoice is due and payable within forty-five (45) days of receipt by the District, or in accordance with Florida's Prompt Payment Act, whichever is sooner. The invoice shall include such supporting information as the District may reasonably require the Contractor to provide.

SECTION 4. CHANGE ORDERS. Contractor understands that the Services may be reduced, enlarged or otherwise modified in scope. If any additional Services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event the service represents a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in the Agreement. In the event the service is not represented by a lump sum or unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.

SECTION 5. INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of the Services under this Agreement, with limits of liability not less than the following:

Workers Compensation	statutory
General Liability	
<i>Bodily Injury (including contractual)</i>	\$1,000,000
<i>Property Damage (including contractual)</i>	\$1,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000
Pollution Liability	\$1,000,000
Herbicide/Pesticide Applicators Coverage	\$1,000,000

Contractor shall provide the District with a certificate naming the District, its officers, agents and employees as an additional insured. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 6. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or

indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) Withhold FICA (Social Security) from Contractor's payments; ii) Make state or federal unemployment insurance contributions on Contractor's behalf; iii) Withhold state or federal income tax from payment to Contractor; iv) Make disability insurance contributions on behalf of Contractor; or v) Obtain workers' compensation insurance on behalf of Contractor.

SECTION 7. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

SECTION 8. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 9. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the substantially prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorney's fees, paralegal fees, expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 12. NOTICES. All notices, requests, consents and other communications under this Agreement (“Notices”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to District: Poinciana Community Development District
135 West Central Boulevard, Suite 320
Orlando, Florida 32301
Attn: District Manager

With a copy to: Hopping Green & Sams PA
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: Michael C. Eckert

B. If to Contractor: Clarke Environmental Mosquito Management, Inc.
3036 Michigan Avenue
Kissimmee, Florida 34744
Attn: Pete Deglomine

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 13. ARM’S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm’s length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties

are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 14. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 15. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement or any monies to become due hereunder without the prior written approval of the other.

SECTION 16. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Venue shall be in Polk County, Florida.

SECTION 17. INDEMNIFICATION.

- A.** Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 768.28, *Florida Statutes*, or other statute.
- B.** Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

SECTION 18. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 19. TERMINATION. The District agrees that the Contractor may terminate this Agreement for cause by providing thirty (30) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all Services rendered up until the effective termination of this Agreement, subject to whatever claims or off sets the District may have against the Contractor as the sole means of recovery for termination.

SECTION 20. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 21. COMPLIANCE WITH PUBLIC RECORDS LAWS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **George Flint** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GMS-CENTRAL FLORIDA, LLC, AT (407) 841-5524, GFLINT@GMSCFL.COM, OR 135 WEST CENTRAL BOULEVARD, SUITE 320, ORLANDO, FLORIDA 32801.

SECTION 22. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 23. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 24. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Attest:

POINCIANA COMMUNITY DEVELOPMENT DISTRICT

Secretary

Chairman, Board of Supervisors

Witness:

CLARKE ENVIRONMENTAL MOSQUITO MANAGEMENT, INC.

Signature of Witness

By: _____

Print Name

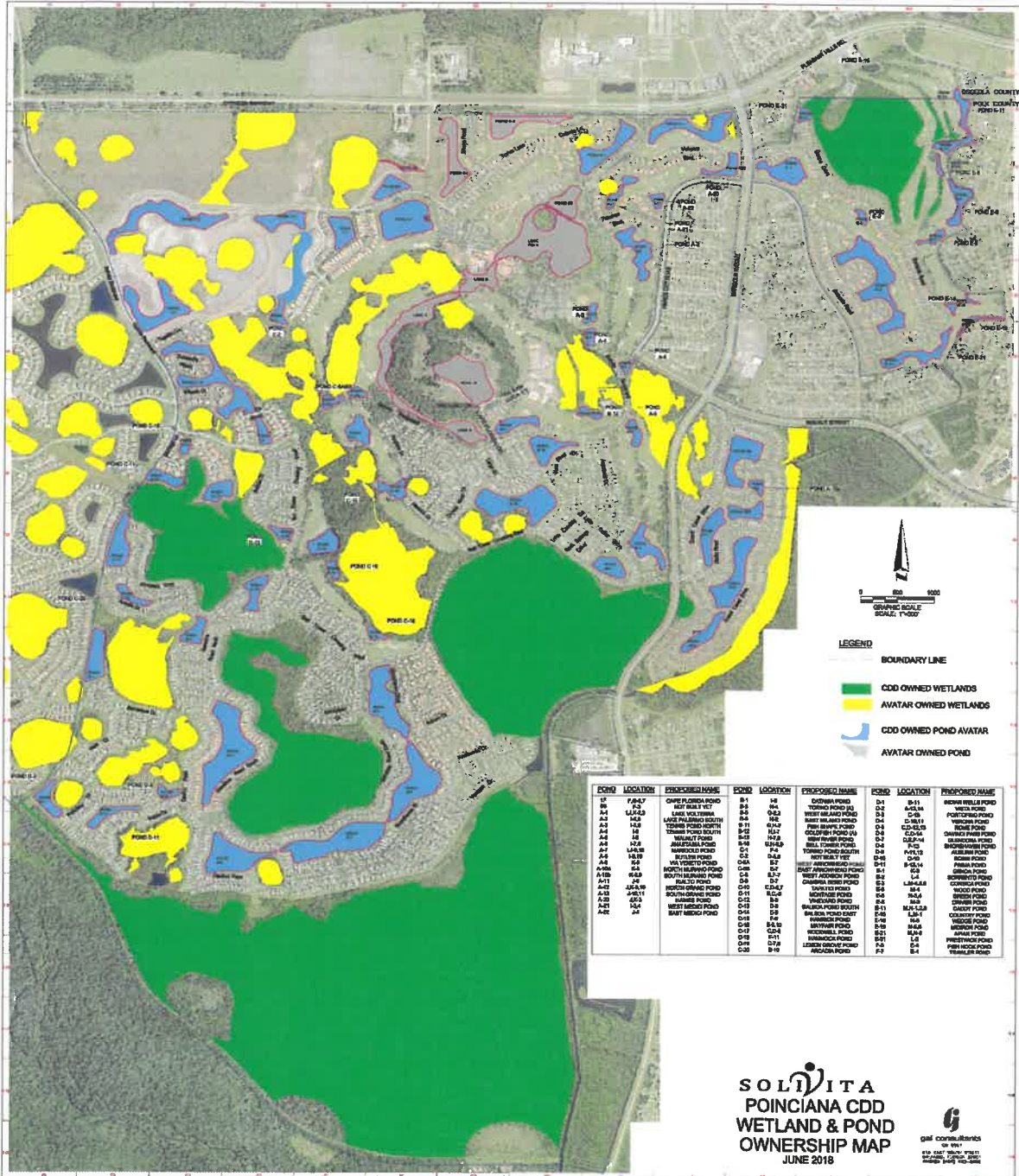
Print Name: _____

Title: _____

Exhibit A: Map of District Ponds

Exhibit B: Scope of Services

EXHIBIT A Map of District Ponds



SOLIDITA
POINCIANA CDD
WETLAND & POND
OWNERSHIP MAP
JUNE 2018


G&S CONSULTANTS
INC.
1100 EAST STATE STREET
SUITE 200
ORLANDO, FL 32801
407.251.1111

EXHIBIT B
Scope of Services

A. General Conditions:

- a. Contractor shall do the following:
 - i. Maintain a computer system and record keeping database;
 - ii. Provide educational brochures and public relations regarding aquatic midges to the residents of the District, if requested by the District;
 - iii. Make available an Aquatic Midge Citizen Response Hotline, which will be available to residents of the District; and
 - iv. Provide program consulting and quality control services.

- b. Service Guarantee. Contractor shall respond to and resolve all verbal or written concerns from the District's Board and the District's residents concerning program effectiveness.

- c. Attendance at Meetings. Upon request of the District, Contractor shall attend regularly scheduled District meetings.

B. Adult Aquatic Midge Management. Contractor shall perform at least forty (40) separate Ultra Low Volume ("ULV") applications from October 1, 2018 through September 30, 2019. Each application will be an ULV application, which will utilize a community-wide truck that will spray Anvil/Biomist or synthetic pyrethroid insecticide covering up to eleven (11) miles of approved street/road areas within the District, and will utilize an ATV to provide treatments covering up to eleven (11) miles of shoreline areas at least including Ponds A-9, A-10a, A-10b, A-11, A-12, A-13, B-1, B-15, C-2, C-10, C-12, C-20, D-5, D-6, D-7, D-8, D-9, E-1, E-2, E-3, E-21, E-31 and F-7. Contractor shall be responsible for scheduling the ULV applications during the year to maximize the effectiveness of its aquatic midge control services. Upon request, Contractor shall also provide notification of community contact, weather limit monitoring and compliance, ULV particle size evaluation, and insecticide dosage and quality control analysis.

C. Boat / Backpack Blower Larval Control. Boat or backpack blower treatments will consist of treating the ponds and/or retention areas on the property, up to one hundred thirty (130) acres at least including Ponds A-9, A-10a, A-10b, A-11, A-12, A-13, B-1, B-15, C-2, C-10, C-12, C-20, D-5, D-6, D-7, D-8, D-9, E-1, E-2, E-3, E-21, E-31 and F-7. The ponds will be treated using 5% Abate pellets or Abate 4E liquid. The retention areas will be treated throughout the year from October 1, 2018 through September 30, 2019, when midge larvae are present, treatment is deemed necessary by standard observation methods, or in response to resident concerns. Abate pellets shall be the larvicide used and shall be applied at a rate of eight (8) pounds per acre or Abate 4E Liquid shall be applied at 1.5 ounces per acre. Contractor shall be responsible for scheduling the larval control treatments during the year to maximize the effectiveness of its aquatic midge control services.

SECTION 3

**AGREEMENT BETWEEN POINCIANA COMMUNITY DEVELOPMENT DISTRICT
AND FLORALAWN2 LLC REGARDING THE PROVISION OF
LANDSCAPE MAINTENANCE SERVICES**

This Agreement (the “Agreement”) is made and entered into this 1st day of October, 2018, by and between:

Poinciana Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, being situated in Polk County, Florida, and whose mailing address is 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 (the “District”); and

Floralawn2 LLC, a Florida limited liability company, whose mailing address is 734 S. Combee Road, Lakeland, Florida 33801 (the “Contractor,” and together with the District, the “Parties”).

RECITALS

WHEREAS, the District was established pursuant to Chapter 190, *Florida Statutes*, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure, including landscape improvements and other public infrastructure; and

WHEREAS, the District desires to retain an independent contractor to provide landscape and irrigation maintenance services within the District; and

WHEREAS, Contractor represents that it is capable of providing such services and desires to contract with the District to do so in accordance with the terms of this Agreement; and

WHEREAS, the District and Contractor warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

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

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

SECTION 2. DESCRIPTION OF WORK AND SERVICES.

A. The duties, obligations, and responsibilities of the Contractor are to provide the services, labor and materials described herein and in **Exhibit A** (the “Services”), attached hereto and incorporated by reference herein, within the District, as depicted in **Exhibit B**, attached hereto and incorporated herein by reference.

- B. In the event of extreme severe weather, such as a hurricane and other extreme wind or water events, the Contractor shall provide the additional professional services as shown in **Exhibit C**, Emergency Preparedness Plan, attached hereto and incorporated herein by reference.
- C. Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services. Any additional compensation for additional duties shall be paid only as negotiated between the parties and upon the written authorization of the District.
- D. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- E. In the event that time is lost due to heavy rains (“Rain Days”), the Contractor agrees to reschedule its employees and divide their time accordingly to complete all scheduled services during the time during the same week as any Rain Days. The Contractor shall provide services on Saturdays if needed to make up Rain Days, but shall not provide services on Sundays.
- F. The Contractor shall report directly to the District’s Designee who shall be the District’s Field Services Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth in **Exhibit A** on the property as provided in **Exhibit B**. Contractor agrees to repair any damage resulting from Contractor’s activities and work within twenty-four (24) hours.

SECTION 3. COMPENSATION; TERM.

- A. The term of this Agreement shall be from October 1, 2018 through September 30, 2019, unless terminated earlier in accordance with the terms of this Agreement.
- B. As compensation for the services described in this Agreement, the District agrees to pay the Contractor Eleven Thousand Nine-Hundred and Seventy Dollars and Forty-Two Cents (\$11,970.42) per month, which amounts includes all tools, labor, materials and items necessary for the completion of the Services by the Contractor.
- C. Services involving the installation of pine straw/mulch and annuals are not included in the monthly total noted in Section 3(B) herein. Such services shall be provided at the written direction of the District pursuant to the rates depicted in **Exhibit A**. If the District should desire additional work or services not provided in **Exhibit A**, or to add additional lands to be maintained, the Contractor agrees to negotiate in good faith to

undertake such additional work or services. Upon successful negotiations, the Parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement.

- D. The District may require, as a condition precedent to making any payment to the Contractor that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.
- E. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render monthly invoices to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. These monthly invoices are due and payable within forty-five (45) days of receipt by the District and in accordance with Florida's Prompt Payment Act. Each monthly invoice will include such supporting information as the District may reasonably require the Contractor to provide.

SECTION 4. CHANGE ORDERS. Contractor understands that the Services may be reduced, enlarged or otherwise modified in scope. If any additional Services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event the service is a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in the Agreement. In the event this Agreement is not a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.

SECTION 5. COVENANT. Contractor hereby covenants to the District that it shall perform the Services: (i) using its best skill and judgment and in accordance with generally accepted professional and design standards and practices for projects of similar design and complexity as the development occurring within the District; (ii) in compliance with all applicable federal, state, county municipal, building and zoning, land use, environmental, public safety, non-discrimination and disability accessibility laws, codes, ordinances, rules and regulations, including, without limitation, all professional registration (both corporate and individual) for all required basic disciplines that it shall perform; and (iii) in an expeditious and economical manner consistent with the best interest of the District. Contractor hereby covenants

to the District that any work product of the Contractor shall not call for the use nor infringe any patent, trademark, services mark, copyright or other proprietary interest claimed or held by any person or business entity absent prior written consent from the District.

SECTION 6 INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of its Services under this Agreement, with limits of liability not less than the following:

Workers Compensation	statutory
General Liability	
<i>Bodily Injury (including contractual)</i>	\$1,000,000/\$2,000,000
<i>Property Damage (including contractual)</i>	\$1,000,000/\$2,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000

Contractor shall provide District with a certificate naming the District, its officers, agents and employees as an additional insured. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 7. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) Withhold FICA (Social Security) from Contractor's payments; ii) Make state or federal unemployment insurance contributions on Contractor's behalf; iii) Withhold state or federal income tax from payment to Contractor; iv) Make disability insurance contributions on behalf of Contractor; or v) Obtain workers' compensation insurance on behalf of Contractor.

SECTION 8. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. In performing its obligations under this Agreement, Contractor and each of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor shall comply with all

applicable laws, ordinances, rules, regulations, and orders of any public or governmental authority having appropriate jurisdiction, including all laws, regulations and rules relating to immigration and/or the status of foreign workers. Contractor shall initiate, maintain, and supervise all safety precautions and programs in connection with its obligations herein. Contractor shall ensure that all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor observe Contractor's rules and regulations of safety and conduct. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to all of its employees, agents and subcontractors performing its obligations herein and other persons who may be affected, and any material, equipment and other property. Contractor shall remedy all damage or loss to any property caused in whole or in part by Contractor, its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. Contractor shall indemnify District for all damage or losses it may incur or be exposed to because of Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor's failure to comply with the provisions contained herein.

SECTION 9. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 10. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the substantially prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorneys' fees, paralegal fees and expert witness fees, and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 11. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 12. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 13. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

- A. If to Contractor:** Floralawn2 LLC
734 South Combee Road
Lakeland, Florida 33801
Attn: _____
- B. If to District:** Poinciana Community Development District
135 West Central Boulevard, Suite 320
Orlando, Florida 32801
Attn: District Manager
- With a copy to:** Hopping Green & Sams PA
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: Michael C. Eckert

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 14. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 15. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 16. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement or any monies to become due hereunder without the prior written approval of the other.

SECTION 17. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Polk County, Florida.

SECTION 18. INDEMNIFICATION.

- A. Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 768.28, *Florida Statutes*, or other statute.
- B. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

SECTION 19. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 20. TERMINATION. The District agrees that the Contractor may terminate this Agreement for cause by providing thirty (30) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this

Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all Services rendered up until the effective termination of this Agreement, subject to whatever claims or offsets the District may have against the Contractor as the sole means of recovery for termination.

SECTION 21. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 22. COMPLIANCE WITH PUBLIC RECORDS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **George Flint** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GMS-CENTRAL FLORIDA, LLC, AT (407) 841-5524, GFLINT@GMSCFL.COM, OR 135 WEST CENTRAL BOULEVARD, SUITE 320, ORLANDO, FLORIDA 32801.

SECTION 23. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 24. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 25. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement to be effective the day and year first written above.

Attest:

**POINCIANA COMMUNITY
DEVELOPMENT DISTRICT**

Secretary/Assistant Secretary

Chairman, Board of Supervisors

Witness:

FLORALAWN2 LLC

(Signature of Witness)

By: _____
Its: _____

(Print Name of Witness)

- Exhibit A:** Scope of Services
- Exhibit B:** Landscape Map
- Exhibit C:** Emergency Preparedness Plan

Exhibit A

Scope of Services

LANDSCAPE MAINTENANCE SPECIFICATIONS

1. MOWING

Uniformity in turf texture and appearance shall be provided. Mowing shall be performed with specified mower types & blades to provide a quality cut as listed in **Appendix I**. The pond banks shall be mowed in one direction, if possible, to reduce the amount of grass clippings being displaced and/or blown into the ponds; provided, that mowing patterns shall be rotated (where applicable) to minimize scalping and rutting by mower wheels and to minimize soil compaction. Grass cutting height shall be between 3.5 - 4.5 inches for St. Augustine and 3 ½ to 4 inches for Bahia.

Contractor must use alternate methods of mowing areas where the ground is too wet to allow safe and proper mowing. Contractor will notify Property Manager within 24 hours and contractor shall use string trimming or fly mower instead of regular lawn mowers for service.

Contractor shall not mow over or through tree rings intended to be mulched.

- **ST. AUGUSTINE TURF AND IRRIGATED BAHIA TURF**

Mowing of all turf areas no less than once every seven (7) days during the months of April 1st to October 31st.

Mowing of all turf areas no less than once every fourteen (14) days from November 1st to March 31st.

- **NON-IRRIGATED BAHIA TURF**

November thru April	1 mow per month (1 st week of the month)
May & June	2 mows per month (1 st and 3 rd week of the month)
July thru September	4/5 mows per month (every week)
October	2 mows per month (1 st and 3 rd week of the month)

2. EDGING

Defined as the outlining and/ or removing of turf by use of a mechanical edger. Chemical or string edging will be allowed with prior approval of the District in special instances.

Contractor shall neatly edge and trim around all plant beds, curbs, walks, streets, trees, tree rings, plants and building areas by use of mechanical edgers. The shape and configurations of plant beds shall be maintained as instructed by District.

The edging of all sidewalks, curbs, pathways, and other paved areas will be completed no less than once every seven (7) days during the months of April to October and no less than once every fourteen (14) days from November 1st to March 31st. Edging will be done within 24 hours of the scheduled mowing service.

The edging of all planting beds and tree rings will be completed every other mowing to avoid over detailing of bed areas. Care shall be taken as not to injure tree trunks or plant materials during the edging operations.

3. DETAILING OF PLANTED AREAS

This service is defined as the trimming, weeding by mechanical or chemical means, pruning, and shaping of all shrubbery, ornamentals, and groundcover, removal of tree suckers as well as the defining of bed lines, tree saucers, tree rings, and the removal of unwanted vegetation. Weeding would include the weeding of all beds (including cut turf runners), walkways, decks, curbs and concrete joints. Chemical controls may only be used if adjacent desirable plants are guaranteed not to be injured. Contractor shall maintain a valid Florida Pesticide Applicator's License and use chemicals in strict accordance with Federal, State & County directives on environmental control. Chemicals must have EPA approval #'s and labels made available to the District per request. American National Standards Institute (ANSI) regulations are to be observed.

- Pruning services will be performed at minimum one (1) time per month year round.
- Weeding services will be performed at minimum bi-weekly year round.
 - At no time are weeds in excess of one square foot of ground cover in one location or 8" in height acceptable.

4. TREES

Trees in pedestrian walkway areas will have a clearance maintained up to eight (8' – 10') feet in height. Trees along roadways, entrances, and driveways will have a clearance maintained up to ten (10- 12') feet in height.

Palm trees up to (12') feet of clear trunk will be trimmed based on University of Florida's recommendations of 100% browning. All Palms on property will be trimmed at 3 to 9 o'clock. Palm trees up to 12 foot (ct) will be pruned during the routine detail rotation. Fronds removed before such time will be at the request of the District, with the District taking ownership for the health and any long term horticultural decline that may occur. Careful trimming procedures shall be followed to prevent damage to any portion of the tree, especially the crown, shaft & bud areas.

Palm trees over (12') feet clear trunk (ct) will be pruned at least once per year at 3 to 9 o'clock. *This includes all common areas.*

Sucker growth shall be removed monthly according to "trimming" specifications. Sucker growth is defined as the shoots that sprout out around the base and clear trunk area of a tree or crape myrtle trunk.

Crape Myrtles (if applicable) will be pruned one (1) time per year in late winter UNLESS otherwise specified by the District. It is possible that some Crape Myrtles will be allowed to grow into trees. University of Florida's recommendations shall be followed in Crape Myrtle pruning:

- Remove suckers from the bottom of the plant.
- Remove crossed, damaged, or diseased branches. For crossed branches, remove the weaker of the two limbs that are crossing or rubbing.
- Prune the tips of the branches to remove old flowers. If old blooms are removed, a second blooming may occur.
- Remove old flower buds at the beginning of the season, which will encourage new growth activity.
- Thin out small twiggy growth to allow air to better circulate in the canopy.

5. **BLOWING**

Sidewalks, curbs and other paved surfaces adjacent to turf and/ or other landscaped elements will be kept clean of unwanted debris generated by the Contractor by the use of forced air machinery. The Contractor shall ensure that there are no leaves or grass clipping blowing into the ponds.

6. **MONITORING**

All turf, shrubs, ornamentals and groundcovers are to be monitored for pest, disease and nutrient problems with positive findings being reported, in writing. If the problem is a

covered item under the provisions of this contract, immediate steps will be taken to rectify the problem. If a treatment is not in effect or not available, contractor will provide an estimate based on time and materials needed for effective treatment.

7. TRASH REMOVAL

Contractor will police the entire site prior to mowing to remove litter. Contractor will remove all debris and/or litter from all areas maintained under this contract during every visit.

8. DEBRIS REMOVAL

Contractor is responsible for the removal of any maintenance-related debris from the property no later than the end of the day where the debris was generated.

9. DEAD WOOD/ MATTER

Dead or otherwise hazardous (broken) tree branches shall be removed promptly if they are within fifteen (15') feet of a hard surface. Dead or otherwise hazardous tree branches that are above the contract specifications should be brought to the attention of the District for pre-approval and subsequent immediate removal.

All extraneous leaves, weeds, trash, limbs and debris shall be removed from lawn and plant beds.

10. CONTRACTOR'S PERFORMANCE AND APPEARANCE

The landscape maintenance contractor shall perform all work required to fulfill the spirit and intent of the Contract. The workers shall be neat in appearance, perform their work in a professional manner, keep noise to a minimum and stage their work from a location on the site out of the main stream of the users. In general, the landscape maintenance contractor's presence on the site shall be as inconspicuous as possible.

11. NEGLECT AND VANDALISM

Turf, shrubs, trees or plants that are damaged or killed due to landscape maintenance contractor's operations, negligence or chemicals, shall be replaced immediately at no cost to the District. If plant damage or death is caused by conditions beyond the landscape maintenance contractor's control, replacement shall be at the District's expense.

Sprinklers or structures that are damaged due to the landscape maintenance contractor's operations must be replaced by the landscape maintenance contractor immediately at his expense. Damage caused by others shall be promptly brought to the District's attention.

All water damage resulting from Contractor's negligence shall be corrected at Contractor's expense.

All damage to or thefts of landscaping and irrigation installation not caused or allowed by Contractor shall be corrected by the Contractor at the District's expense upon authorization to proceed.

16. QUALITY

All landscaping materials installed must meet or exceed all state and/or local codes and/or ordinances of the State of Florida (Florida #1 or Florida Fancy Plants and Trees) All plants shall be healthy, well branched and densely foliated, with well-developed root systems, free of disease and insect pests. The District reserves the right to reject any plant material(s) that if feels does not meet expectation.

FERTILIZATION AND PEST CONTROL SPECIFICATIONS

GENERAL REQUIREMENTS

1. Pond banks shall be fertilized semi-annually. This should only be done by owner's request.
2. Technicians will give appropriate notification to persons in the immediate area of impending chemical applications.
3. Application reports giving the date, type of chemical applied, application rates, name of technician and company shall be given to the District's management company.
4. Copies of manufacturer labels and Material Safety Data Sheets shall be provided to the District's management company.
5. All materials will be used as approved for intended use by the regulatory standards.
6. All materials shall be applied per the manufacturer's specifications and guidelines.
7. Lawn and pesticide signs shall be posted at the home or common area after the use of chemicals for safety and compliance.
8. The District Manager and representatives of the District reserve right to be present when chemicals are being mixed and applied.
9. Specifications are performance based and ultimately insect/disease & weed control to the complete satisfaction of the District is the responsibility of the contractor.

TURF CARE SPECIFICATIONS: *St. Augustine Turf*

Contractor shall provide fertilization & insect, disease & broadleaf (primarily but not exclusively) weed control to all areas of St. Augustine turf. The following is a recommended guideline the Contractor should follow:

All fertilizers utilized must contain a nutrient package specifically blended for Florida's unique landscapes and will have a minimum of 50% slow release nitrogen source to ensure extended performance. A complete minor element package shall be included with each application to

insure that all of the requirements for a Florida landscape are provided for. The method of application will be dependent upon the landscape layout.

- The lawn treatments should consist of a minimum of **four blanket applications** and minimum **three IPM** visits by a qualified technician or **as specified in the contract**. Premium product will be used to prevent surge growth, but still allow for an attractive, healthy, vigorous lawn.

IPM Defined- Contractor must utilize and employ an Integrated Pest Management Program or IPM program. This program is designed based off of key points of interest suggested by the University of Florida. The key elements are as follows:

1. **Prevention-** Proper planting, maintenance, and sanitation practices.
2. **Cultural-** Employment of good horticultural practice to optimize plant health.
3. **Scouting-** Trained personnel diligently scout property for signs of disease or infestation.
4. **Identification-** The appropriate means are taken to diagnose the cause.
5. **Program Implementation-** Contractor personnel must use the least noxious means of pesticide/bio-rational application to remedy situation. Ultimately, Contractor recommends the best course of action to follow.
6. **Follow up-** Trained personnel follow up on progress of treatment plan and report back to the District.

Contractor must employ methodology consistent with “Florida Green Industries Best Management Practices.”

In Polk County with an adopted fertilizer ordinance, the Polk ordinance shall prevail and serve as a guide to nutrient selection and timing. Please check the following Polk County ordinance at http://polk.ifas.ufl.edu/AG_Safety/files/pdf/publications/laws/PolkCoFertilizerMgmtOrdinance.pdf

Turf Weed Control: The control of broadleaf weeds will be included in the Contractors program. Herbicides should be applied only when temperatures are below 90 degrees and wind drift is at a minimum to avoid turf damage.

- Due to the unavailability or restricted use of effective control products, the prevention or control of Crabgrass, Bermuda grass, and select Sedges are not part of this proposal. It is understood that at the expense of the District, any areas of select Crabgrass, Bermuda & select Sedge can be replaced by the Contractor.
 - Weed control is to be maintained at no less than 90%.

Turf Insect Control: The appropriate pesticides will be used for lawn damaging insects. Turf will be inspected on a regular basis by a qualified technician or other qualified personnel for any follow up necessary.

- Ant control and other pesticide and/or fungicide applications above and beyond the standard program will be included in this contract.
- Preventative grub control is expected and curative spot control is also expected.

TURF CARE SPECIFICATIONS: *Bahia Turf*

Bahia grass has the ability to withstand extended periods of time without rainfall or irrigation. Most weeds do not possess this ability and thus drought tolerance is the turf's primary means of survival. Irrigation (where applicable) will be eliminated in all Bahia turf areas. If requested by the District, the contractor will provide a price for Bahia fertilization.

WARRANTY

If the turf included in this "turf care program" dies due to damage from biotic agents such as insects or diseases or from abiotic factors such as fuel spills or fertilizer burn, the turf will be replaced at no expense to the District.

SMALL TREE/SHRUB CARE (<10') PROGRAM:

Fertilization: Tree and shrub fertilization frequencies will be performance based, not treatment based. It is expected that the Contractor use a complete fertilizer blend with all necessary minor elements. The blend should be 50% slow release or an equivalent.

- Transplanted trees less than 3 years old will be included in standard program; trees over that age will be fertilized with the lawn application.
- In Polk County with an adopted fertilizer ordinance, the Polk County ordinance shall prevail and serve as a guide to nutrient selection and timing.

Integrated Pest Management: Pesticides will only be used on an as-needed basis and only in the general areas having the problem. A curative approach shall be implemented for insect and disease management in turf and landscape areas when damaging thresholds have been identified as negatively impacting either, health or aesthetics. In areas where problems persist, then a preventative approach should be implemented.

- Contractor personnel should be diligent in their scouting of damaging pests and disease. Horticultural pest control and or appropriate recommendations will be made to minimize injury to ornamental plants. This is to be achieved by monitoring the property and a complete service and inspection at minimum every eight (8) weeks.

ORNAMENTAL PALM TREE PROGRAM:

Fertilization: Tree fertilization frequencies shall be performance based, not treatment based. It is expected that the Contractor use a complete fertilizer blend with all necessary minor elements. The blend should be 100% slow release. Contractor will use premium products at the recommended rate to prevent any surge growth, but still allow for an attractive, healthy, vigorous landscape.

- Therapeutic applications of minor elements are to be included to ornamental palms indicating need.
- In Polk County with an adopted fertilizer ordinance, the County ordinance shall prevail and serve as a guide to nutrient selection and timing.

Palm Integrated Pest Management: Pesticides will only be used on an as-needed basis and only in the general areas having the problem. A curative approach shall be implemented for insect and disease management in turf and landscape areas when damaging thresholds have been identified as negatively impacting either, health or aesthetics. In areas where problems persist, then a preventative approach should be implemented.

- Contractor personnel should be diligent in their scouting of damaging pests and disease. Horticultural pest control and or appropriate recommendations will be made to minimize injury to ornamental plants. This is to be achieved by monitoring of the property and a complete service and inspection at minimum every eight (8) weeks.
- Bud and root drenching for specific insect/disease problems are not to be included but can be priced separately if needed and completed upon approval from the District.

WARRANTY

If a plant, shrub or tree dies from insect or disease damage while under this tree/ shrub/palm care program, it will be replaced, at no cost to the District, with one of equal value and that is reasonably available and approved by the District.

IRRIGATION MAINTENANCE SPECIFICATIONS

This service is defined as inspection & repair of the irrigation system by the contractor for the community common areas. Any damage caused by contractor activity shall be repaired by the contractor at the contractor's expense.

Minor repairs will be made at the time of inspection or during work order process on a monthly basis. Minor repairs include; spray heads, rotor heads, nozzles, stand pipes, shrub adaptors, valves and lateral lines up to 1.5 inch. Minor repairs are the responsibility of the contractor and are included in the monthly proposed price.

Major irrigation repairs are not included in the proposed price and will be completed on a separate work order upon approval by the District Manager. Major repairs include but are not limited to, main line larger than 1.5 inch, controllers, pumps, backflows and rain sensors.

The contractor **shall be** responsible for any damage to the turf or plants due to either under watering or over watering by the irrigation system. Contractor will **not be** held responsible for failure of main irrigation water supply, water pressure or water restrictions imposed by a statutory or similar authority.

FREQUENCY

Contractor shall perform a complete irrigation maintenance inspection once per month.

IRRIGATION CONTRACTOR RESPONSIBILITIES

The District irrigation contractor is responsible for the management and maintenance of the irrigation system located on District-owned lands.

The system uses reclaimed water provided by TOHO Water Authority with the exception of the community pool areas located throughout. Contractor is required to maintain communication with TOHO on behalf of the District and Developer.

Contractor is responsible for generating data from daily monitoring, interpret data and generate reports for field dispatch, field repair and adjustments as necessary and maintain documentation. Daily data will be provided by the contractor and made available to the District Manager upon request.

Contractor is responsible for adjustments to watering schedules as needed for weather, new sod, plants, trees or other improvements at the common areas as requested through the District work order system.

Contractor must respond to all District generated work orders within 48 hours for common areas. Contractor is required to activate system for residents, meet with residents on site when necessary and to close work orders through the District Manager.

Contractor will be responsible to activate and inspect all zones for the entire community monthly and make necessary adjustments for proper operation. Each inspection must be documented in writing and provided to the District Manager upon request.

SERVICE SPECIFICATIONS

1. Timing of irrigation operation must adhere to any water restrictions in effect within the property jurisdiction.
2. The following items shall be accomplished each month for common areas:
 - Activate each zone of the system.
 - Visually check and replace as necessary of any damaged or malfunctioning heads in District-owned lands. This should be done weekly by area supervisor or irrigation tech.
 - Clean and/or adjust any heads not functioning properly. The District will be allowed to inspect any heads that he may be charged for.
 - Report any valve or valve box that may be malfunctioning or damaged in any way.
 - Adjust controllers to the watering needs as dictated by environmental conditions.
 - Inspect and adjust rain sensors as needed.
 - Insure that all valves that are marked remain sufficiently marked to allow a person unfamiliar with the system to locate.
 - Provide a monthly written report detailing inspection results by clock and zone.
 - Report recommendations to improve/enhance the irrigation systems effectiveness.
3. Irrigation repairs that become necessary, that are over and above minor repairs as outlined will be done on a time and material basis. All extra repairs are to be estimated & reported to the District and the contractor must obtain approval prior to starting repair work.

The written proposal shall include:

- Hourly rate for irrigation tech
- Necessary materials

Contractor must provide and possess experience in operation of central control irrigation systems.

STORM PREPARATION

In the event of a forecasted weather event, such as but not limited to hurricanes, the District may deem it necessary to suspend all operation of irrigation equipment, pump stations, and to secure controllers to avoid power surges and any catastrophic events such as an uprooted tree that breaks a mainline. These services, should they be requested, would be considered over and above the routine maintenance contract and will be done on a time and material basis.

SPECIAL SERVICES SPECIFICATIONS

MULCH

It is anticipated that the District will mulch the entire property once per year. This will include all common areas.

Old mulch in excess of three inches (3”) in depth will be removed prior to installation of a new layer of mulch. This step will be at the discretion of the District. If the District deems this step necessary, the Contractor will provide a price to remove the excess mulch prior to installation of new mulch. The pricing for mulch installation are as follows:

<u>Item</u>	<u>Cost per Bale</u>
100 Bales	\$8.00
500 Bales	\$7.50
1,000 Bales	\$7.25
5,000 Bales	\$7.00

COMMUNICATION

As part of this agreement it is expected that the contractor will provide ongoing extensive communication to the District Manager and Residents of the community. Communications include but are not limited to:

- Daily work orders
- Daily updates as needed for “Solivita Live”

- Weekly email blast
- Monthly mow schedule
- Monthly detail schedule
- Monthly newsletter article
- Special project schedules (i.e. mulching, palm & tree pruning)

Appendix I

Types of Machinery Used at Solivita

Pond Banks:

- Batwing finish mower with rear discharge
- 60 inch pistol grip mower with mulch kit

Flat Areas:

- 70 inch mowing deck mower

Exhibit B

The following pond banks and adjacent areas owned by the District, as identified on the attached map dated June 2018, are included within the scope of this agreement:

A-1, A2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10A, A-10B, A-11, A-12, A-13, A-20, A-21, A-22; and

B-1, B-3, B-5, B-6, B-11, B-15, B-16; and

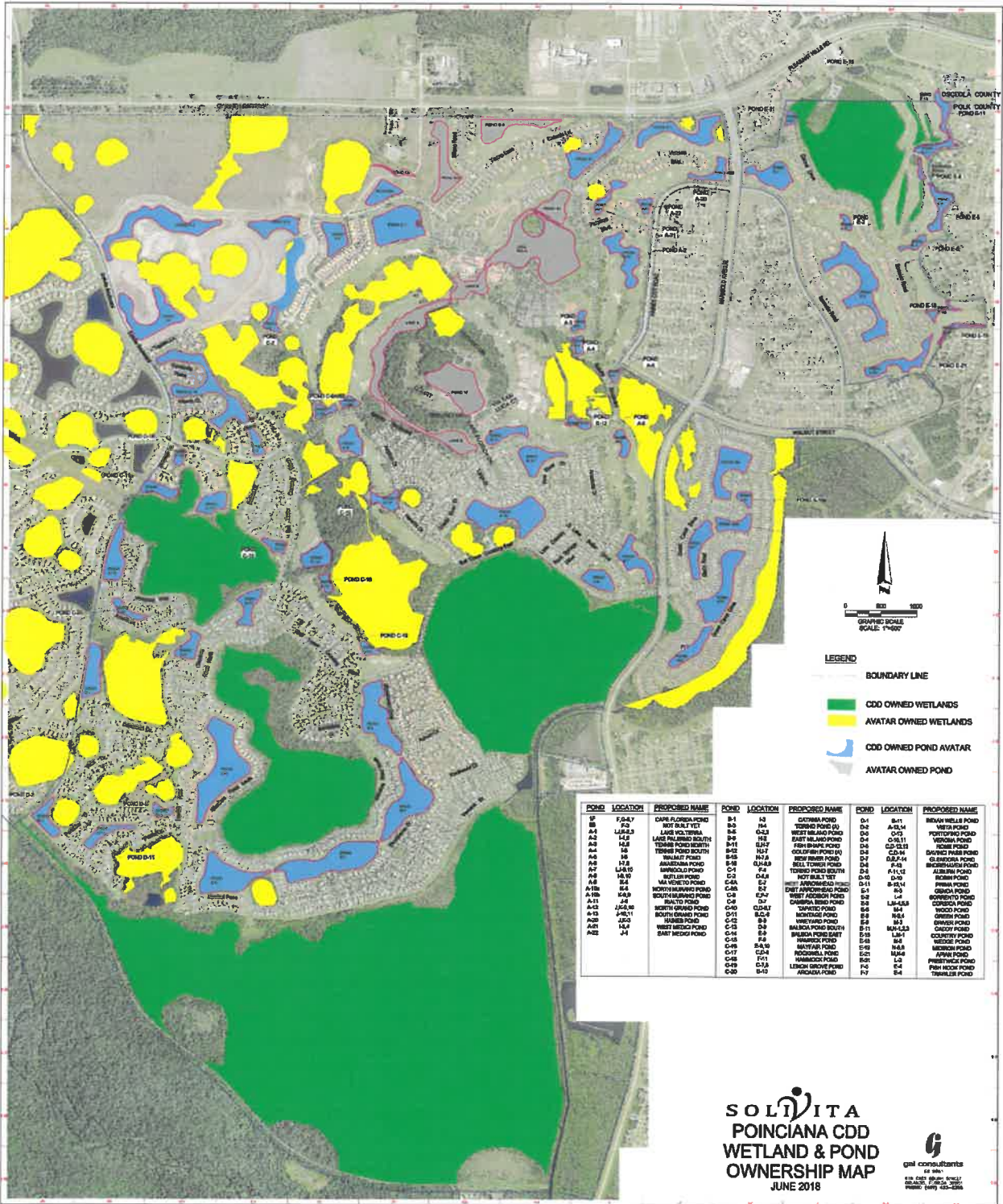
C-1, C-2, C-3, C-6A, C-6B, C-8, C-9, C-10, C-11, C-12, C-13, C-14, C-15, C-16, C-17, C-18, C-19, C-20; and

D-1, D-2, D-3, D-4, D-5, D-6, D-7, D-8, D-9, D-10, D-11; and

E-1, E-2, E-3, E-5, E-6, E-8, E-11, E-18, E-19, E-21, E-31; and

F-7.

Landscape Maintenance Map



SOLIVITA
POINCIANA CDD
WETLAND & POND
OWNERSHIP MAP
JUNE 2018

gci consultants
11000 W. BOYD AVENUE
SUITE 1000
DALLAS, TEXAS 75244

Exhibit C

Emergency Preparedness Plan

Poinciana Community Development District

EMERGENCY PREPAREDNESS PLAN

For

LANDSCAPE, HARDSCAPE & STREETScape AMENITIES

Located In

POLK COUNTY, FLORIDA

Purpose: To provide a comprehensive list of procedures to be followed by the Contractor for preparations related to storm events and other natural emergencies on the District jobsite within the District's boundaries. This plan is to be utilized as the minimal procedures to be followed during preparation for storm events, such as hurricane and other extreme wind or water events. Actual physical situations and weather conditions may affect the execution of this plan. This plan is to be utilized as a guide for the process.

The District will appoint a representative referred to as the Storm Emergency Preparedness Coordinator (SEPC) who will closely monitor the weather conditions during the hurricane season, which runs from June 1st to November 30th every year, and generally monitor the weather for the balance of the year. The SEPC will coordinate with the Contractor to ensure that the minimum requirements of this plan are met. The initial SEPC is _____.

The Contractor may have company-generated emergency/storm work procedures in place, which exceed this plan. These procedures must be coordinated and approved by the SEPC. At a minimum, the Contractor will be required to follow the procedures outlined in this plan. For the safety of all employees, the Contractor's crew shall not be dispatched until the storm has passed, unless authorized by the SEPC. After the storm has passed, the jobsite will be evaluated by the Contractor's Project Superintendent (CPS) and the SEPC for safe working conditions. All employees are not to be allowed to return to work until the site has been deemed safe and sanitary for work by the SEPC and the CPS. No personnel, whether essential or non-essential, shall be allowed to work on the site when maximum sustained winds exceed thirty-nine miles per hour (39 mph). It is contemplated that a regional emergency council/group ("Council") may be established among landowners with the District in the future for the purpose of effectuating Development-wide emergency policies and procedures. In the event the Council designates facilities for the purpose of allowing essential personnel to remain on-site during an emergency, the Contractor agrees to coordinate with the SEPC in determining whether Contractor personnel shall remain onsite during an emergency at such time in the future.

The Contractor is expected to place the District in a priority position and the Contractor shall commit to having labor and equipment on site within twelve (12) hours of the storm passing to begin cleanup and restoration operations.

The Contractor will bring in additional equipment and labor, if needed, with the approval of the SEPC. The Contractor shall submit a Labor and Equipment Rate Schedule annually for review and approval by the SEPC. The Contractor shall submit to the SEPC a rate schedule on or before October 1. All preparedness action items shall be in addition to the scope of services identified in the Agreement and shall be provided by the Contractor at no additional cost.

It is expected that, as a matter of protocol, the Contractor will also monitor the weather for tropical storms,

hurricanes, and other weather events that may create emergency conditions throughout the year. The key to providing the safest environment and protection of the landscape and hardscape assets located within the District is based upon preparations, storm awareness, communication, and response.

PREPARATIONS: Preparations for expected storm events may differ; these are the minimum actions that should be undertaken.

During the storm season, the best practice for the jobsite location is to maintain a supply of emergency supplies in the event of isolation, loss of utility services, road blockage, and loss of fuel supplies. Suggested items to be included in the Emergency Response Box (“Hurricane Box”), or other such emergency storage container, should include, but is not limited to:

- Supply of Drinking water (3 days per employee on site)
- 3 day supply of non-perishable food
- Flashlights and fresh batteries (lights plus backup batteries)
- Nylon rope (polypropylene) (500’)
- Spare Ear Plugs
- Tarps (5-10)
- Leather palmed gloves
- Fuel Electrical Generator Hand tools (ax, shovel, rake, etc.)
- First Aid Kit
- Duct tape
- Plastic garbage bags –large yard size
- Rain Suit
- 1 roll of CAUTION tape
- Spare Safety Goggles
- Rubber boots
- Mosquito Repellant
- Asphalt “cold patch”
- Quick set concrete mix
- Spare irrigation pipe and fittings
- Chainsaw(s)
- Leaf blower(s)
- Extension cord (500’)
- String of temporary lights
- Rolls of Poly (5)
- Scaffold and boards
- Portable light on wheels
- Spare chainsaw chains
- Chainsaw bar oil

5 Day Action Plan:

Where potential for a hurricane landfall, or other natural emergency, is expected within a five (5) day period, or in the event the area is placed under a “HURRICANE WATCH,” the following shall occur:

1. The CPS shall establish communication with the SEPC regarding the presence of the storm/hurricane/emergency and review site specific actions to be undertaken by the Contractor.
2. The CPS shall monitor the storms progress at regular intervals via radio, television, computer/internet, or other means available.

3. The CPS shall communicate conditions and plans with their company's Safety Team or Safety Manager as may be required to review the situation ahead of time.
4. The CPS shall continue to monitor the storm/hurricane/emergency for changes in the storm profile and/or projected course, and communicate these changes to the SEPC.

3 Day Action Plan:

Where potential for a storm/hurricane landfall, or other natural emergency, is expected within a five (5) day period or in the event the area is placed under a "HURRICANE WARNING," preparations shall be made to: secure the jobsite; protect District landscape and hardscape assets; prepare for tie down actions and evacuation. In addition, the following shall occur:

1. The CPS shall establish communication with the SEPC regarding the potential emergency conditions and review site specific protocols required by the SEPC and by the Contractor.
2. The CPS shall notify the Company Safety Manager and/or supervisory personnel of the preparations of the jobsite shutdown and preparation to secure the site.
3. The SEPC will hold meetings with Contractor supervisory personnel and employees to discuss the proposed action plan.
4. Ensure all materials, tools, tool sheds, containers and small equipment are removed from low-lying areas and are protected from rising water and are tied down.
5. Ensure that all motorized equipment is securely parked in an elevated area so it will not be damaged from possible flooding and is tied down. Equipment parking areas will be approved by the SEPC after discussion with the CPS.
6. All Contractor-owned construction trailers, office trailers, tool trailers, sheds, etc., if any, on the Contractor's jobsite shall be tied down securely according to City of Orlando Code. If equipment cannot be secured properly, it shall be removed from the jobsite.
7. Police the jobsite and storage yards to remove, or direct removal of, potential flying objects from the site or secure them with proper tie-downs.
8. Have all temporary port-o-lets pumped out, tied down or removed.
9. Have all trash dumpsters emptied or removed.
10. Top off all equipment with fuel in the event that fuel supply becomes short or service stations are inoperable following the storm/emergency. All equipment and all fuel cans should be filled to capacity.
11. All water containers should be filled with potable water to capacity.
12. All bag fertilizer or chemicals should be placed in the interior of a secure structure or removed from the site.
13. Board up all windows in field office (if applicable), or protect them with storm shutters.
14. Disconnect all field office (if applicable) electrical equipment (computers, copiers, etc.).

15. Take photos of your site prior to the storm/emergency to record site and landscape conditions.
16. Park trucks and other motorized equipment in an open area that will be easy to clear and near a major roadway, if possible, so after-storm access is easier.
17. All uninstalled landscape materials shall be secured in the best possible way considering the anticipated intensity of the upcoming storm event.
18. All ties, guys and other tree or plant material support systems shall be checked, tightened, secured or replaced to protect the landscape asset from the level of storm damage expected.
19. All drains, swales, inlets, outlets or other elements of the drainage system shall be checked to ensure that the stormwater structures and conveyance channels are free flowing.

1 Day Plan: (Hurricane is Eminent)

The CPS shall establish communication with the SEPC regarding the eminence of a storm/hurricane/emergency and review site specific protocols to be utilized by the SEPC and by the CPS. Communication options for post storm shall be established in the event of the loss of cellular or wired communication for the time period immediately following the storm event.

The CPS shall notify the Contractor's Safety Manager and/or supervisory personnel of the preparations at the jobsite and potential for a project site lockdown. Discussion will entail whether and at what time a lockdown shall be mandated or if there is adequate safe and secure shelter from the storm. In the event of an evacuation, the Contractor's employees shall be offered evacuation and encouraged to participate in an evacuation plan. Before any evacuation, the following shall be completed:

1. Remove any scaffolding.
2. Ensure that all small equipment is in the security of storage containers or secure building.
3. All small materials are placed in close proximity to storage containers.
4. All heavy equipment is parked surrounding the yard materials and storage containers to form a perimeter. Final inspection of the jobsite to secure any small items and to prevent flying debris shall be conducted by the SEPC at this point.
5. Ensure first aid kits are fully stocked.
6. Identify debris collection locations.
7. Place flashlight, fresh batteries, first aid kit and/or emergency kit in appropriate company vehicles. In the event of an evacuation, the Contractor's trucks remaining on the jobsite shall be placed in a perimeter with the heavy equipment.
8. Generators shall be placed in a point of easy access for first retrieval.
9. Take photos and/or video of the secured jobsite, if possible.
10. Sandbag the doors of the field office (if applicable), if possible.

After the storm: (Post Hurricane)

1. Once the storm has passed, the jobsite shall be evaluated in partnership with the CPS and the SEPC for its safety. The CPS shall organize available manpower to accomplish specific tasks based upon a prioritization of such tasks provided by the SEPC. All site specific hazards will be noted and corrected within the skills, abilities and training of Contractor's employees. Dangerous conditions for human occupancy may include, but are not limited to, unstable hard structures, presence of open or downed electrical lines, excessive water build-up/flooding, unsanitary conditions such as the presence of waste, threat of electrical hazards, presence of displaced wildlife, and so forth. The CPS shall communicate this with the SEPC to discuss plans for correction or elimination of unsafe conditions.
2. The SEPC in conjunction with the CPS and the Contractor's supervisory personnel shall evaluate the earliest time for resuming work on the jobsite and shall implement plans to that effect. Assistance with clean-up of non-contracted projects or work areas, using Contractor's heavy equipment, vehicles, and labor, will be negotiated based on the Pre-Approved Labor & Equipment Rate Schedules. It is the intent of the District to continue to provide the safest workplace and the highest level of efficiency in starting work following a storm.
3. The priorities will be:
 1. Ensure that the public is safe and protected from unsafe conditions on the jobsite created by the storm;
 2. Secure personal property;
 3. Proceed to the jobsite with caution;
 4. Ensure that site working conditions are safe;
 5. Clear roadways and other access routes of hazards;
 6. Identify and mark areas where dangerous conditions exist;
 7. Secure damaged buildings;
 8. Repair or make operable any equipment which can be used in the cleanup effort.
 9. Photo-document the site prior to starting cleanup operations.
4. Due to the perishable nature of landscape material, every effort should be made to return the plant material to their original location and position. Contractor shall attempt to return uprooted trees or plants within forty-eight (48) hours.
5. Areas where hardscape, signs or other site amenities have been damaged should be cleared and made passable as quickly as possible.
6. Photo-document the worksite upon return, noting any significant changes, and communicate those changes with the SEPC.
7. Photo-document any and all damage to the landscape and hardscape areas.
8. Assess all repairs and losses within seven (7) days after the storm has passed, with follow-up assessments to occur sixty (60) days and six (6) months thereafter.

SECTION B

SECTION 1

AGREEMENT BETWEEN POINCIANA WEST COMMUNITY DEVELOPMENT DISTRICT AND CLARKE AQUATIC SERVICES, INC. FOR THE PROVISION OF AQUATIC MAINTENANCE SERVICES

This Agreement (the "Agreement") is made and entered into as of the 1st day of October, 2018, by and between:

Poinciana West Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in Polk County, Florida and whose mailing address is 135 W. Central Boulevard, Suite 320, Orlando, Florida 32801 (the "District"); and

Clarke Aquatic Services, Inc., an Illinois corporation, whose local address is 3036 Michigan Avenue, Kissimmee, Florida 34744 ("Contractor").

RECITALS

WHEREAS, the District was established to plan, construct, install, acquire, finance, manage, and operate public improvements and community facilities pursuant to Chapter 190, *Florida Statutes*.; and

WHEREAS, the District has a need to retain an independent contractor to provide aquatic maintenance services for the stormwater management ponds within the District; and

WHEREAS, the Contractor submitted a price quotation and represents that it is qualified to serve as an aquatic maintenance contractor and provide such services to the District.

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

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

SECTION 2. MANNER OF CONTRACTOR'S PERFORMANCE.

- A.** The Contractor shall provide the specific aquatic maintenance services as shown in **Exhibit A**, attached and incorporated herein (the "Services") within the stormwater management ponds within the District identified in **Exhibit B**, attached and incorporated herein.
- B.** Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services including the Florida Friendly green industry standards of the Florida Department of Environmental Protection. Any additional compensation for additional services shall be paid only as negotiated between the parties and upon the written authorization of the District.

1. At no time shall the Contractor utilize any products, compounds, or materials that contain copper in any form in any of the water bodies within the project area unless such products, compounds, or materials are specifically approved for usage in water bodies by both the U.S. Environmental Protection Agency and the State of Florida. Usage of such products, compounds, or materials must also be in compliance with applicable Southwest Florida Water Management District (“SWFWMD”) rules and any and all SWFWMD permits issued to the District.
 2. Contractor shall ensure that employees who work with registered and restricted-use herbicides are certified as to qualifications for handling and applying material safely and correctly in accordance with the Florida Pesticide Law administered by the Florida Department of Agriculture and Consumer Services. Due to the presence of wetlands, such employees shall possess a Florida Aquatic Pesticide License and other applicable certifications. The Contractor shall also be familiar with the Fish and Wildlife Conservation Commission’s Chapter 68F-20: Aquatic Plant Management Permits. Prior to the utilization of herbicides on site, the Contractor will furnish to the District, copies of all required licenses and applicable permits for treatment and/or removal of aquatic plants in waters of the State. The Contractor shall at all times abide by each herbicide label.
- C. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- D. The Contractor shall report directly to the District’s Designee who shall be the District Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth in **Exhibit A**. Contractor agrees to repair any damage resulting from Contractor’s activities and work within twenty-four (24) hours.

SECTION 3. TERM; COMPENSATION.

- A. The term of this Agreement shall be from October 1, 2018 through September 30, 2021, unless terminated earlier in accordance with the terms of this Agreement.
- B. As compensation for the Services described in this Agreement and **Exhibit A**, the District shall pay Contractor Four Thousand Seven Hundred Fifty Dollars (\$4,750.00) per month, which amount includes all tools, labor, and materials necessary to complete the Services.
- C. If the District should desire additional work or services not provided in **Exhibit A**, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work

order, addendum, addenda, or change order to this Agreement as set forth in Section 4 herein.

- D. The District may require, as a condition precedent to making any payment to the Contractor that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.
- E. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render an invoice to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. This invoice is due and payable within forty-five (45) days of receipt by the District, or in accordance with Florida's Prompt Payment Act, whichever is sooner. The invoice shall include such supporting information as the District may reasonably require the Contractor to provide.

SECTION 4. CHANGE ORDERS. Contractor understands that the Services may be reduced, enlarged or otherwise modified in scope. If any additional Services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event the service represents a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in the Agreement. In the event the service is not represented by a lump sum or unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.

SECTION 5. INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of the Services under this Agreement, with limits of liability not less than the following:

Workers Compensation	statutory
General Liability	
<i>Bodily Injury (including contractual)</i>	\$1,000,000
<i>Property Damage (including contractual)</i>	\$1,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000

Pollution Liability	\$1,000,000
Herbicide/Pesticide Applicators Coverage	\$1,000,000

Contractor shall provide the District with a certificate naming the District, its officers, agents and employees as an additional insured. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 6. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) Withhold FICA (Social Security) from Contractor's payments; ii) Make state or federal unemployment insurance contributions on Contractor's behalf; iii) Withhold state or federal income tax from payment to Contractor; iv) Make disability insurance contributions on behalf of Contractor; or v) Obtain workers' compensation insurance on behalf of Contractor.

SECTION 7. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

SECTION 8. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit

or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 9. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the substantially prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorney's fees, paralegal fees, expert witness fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 12. NOTICES. All notices, requests, consents and other communications under this Agreement ("Notices") shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to District: Poinciana West Community Development District
135 W. Central Blvd., Suite 320
Orlando, Florida 32801
Attn: District Manager

With a copy to: Hopping Green & Sams PA
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: District Counsel

B. If to Contractor: Clarke Aquatic Services, Inc.
3036 Michigan Avenue
Kissimmee, Florida 34744
Attn: Pete Deglomine

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 13. ARM'S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm's length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 14. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 15. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement or any monies to become due hereunder without the prior written approval of the other.

SECTION 16. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Venue shall be in Polk County, Florida.

SECTION 17. INDEMNIFICATION.

- A. Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault.
- B. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees and expert witness fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

SECTION 18. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 19. TERMINATION. The District agrees that the Contractor may terminate this Agreement for cause by providing thirty (30) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all Services rendered up until the effective termination of this Agreement, subject to whatever claims or off sets the District may have against the Contractor as the sole means of recovery for termination.

SECTION 20. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 21. COMPLIANCE WITH PUBLIC RECORDS LAWS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **George S. Flint** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC

RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GEORGE S. FLINT, AT GOVERNMENTAL MANAGEMENT SERVICES – CENTRAL FLORIDA, LLC, 135 W. CENTRAL BLVD., SUITE 320, ORLANDO, FLORIDA 32801, (407) 841-5524, GFLINT@GMSCFL.COM.

SECTION 22. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 23. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 24. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

**POINCIANA WEST COMMUNITY
DEVELOPMENT DISTRICT**

Witness

Chairman, Board of Supervisors

CLARKE AQUATIC SERVICES, INC.

Witness

By: _____
Its: _____

Exhibit A: Scope of Services

Exhibit B: Map of Ponds

Exhibit A – Scope of Services

1. Project Scope
 - 1.1. General Overview
 - 1.2. Community Development District (CDD)
 - 1.3. Pond Management Program Objectives
 - 1.4. Contractor Adherence to Scope of Services LS Access to Jobsite

 2. General Requirements and Procedures
 - 2.1. Operation Procedures
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 - 2.4. Personnel Conduct
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 - 2.6. Facility Location
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 - 2.11. Ownership of Data
 - 2.12. Quality of Data Control
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 - 2.14. Materials
 - 2.15. Licenses and Permits
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 3. Coordination
 - 3.1. General Coordination
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 4. Scheduled Operations and Maintenance
 - 4.1. General Scope and Practices
 - 4.2. Pond Open Water Maintenance
 - 4.3. Littoral Shelf Maintenance
 - 4.4. Wetland Preserve Area Maintenance
 - 4.5. Mitigation Area Maintenance
 - 4.6. Target Vegetation
 - 4.7. Maintenance Methodology

 5. Unscheduled Maintenance
 - 5.1. General
 - 5.2. Unscheduled Maintenance

 6. Administrative/Maintenance/Operations Program
 - 6.1. General
 - 6.2. Administration
 - 6.3. Operations
 - 6.4. Maintenance

 7. Response Time and Emergency Response Program
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Scope of Services

1. PROJECT SCOPE

The Contractor shall perform maintenance services of the Poinciana West CDD Ponds shown on the map in Attachment 1. Maintenance services of the areas shown in the Contract Drawings will include, but are not limited to, treatment removal and offsite disposal of "nuisance vegetation" and algae treatment. The removal or treatment of nuisance species shall occur at a frequency that prohibits flower or seed production. The maintenance services will comply with the requirements set forth within this Scope of Services. The following is a Project overview describing the various entities within the Poinciana West CDD and the limits of service.

1.1. General Overview

Solivita, located in Polk County south of Pleasant Hill Road, is a planned residential community.

1.2. Community Development District (CDD)

The Poinciana West Community Development District ("District" or "CDD") is a special-purpose government which was created pursuant to Chapter 190, Florida Statutes and established on the property via an ordinance enacted, ordered and approved by Polk County.

The CDD areas to be included in this aquatic plant maintenance Scope of Services include CDD-managed stormwater management ponds, outfalls and related improvements. These areas are numbered on the attached map.

1.3. Pond Management Program Objectives

The Poinciana West CDD desires to manage its stormwater ponds in a way that directs the ponds toward a natural balance that reduces the need for chemical control of aquatic plants utilizing "Florida Friendly™ Landscaping" practices, "Florida Friendly Best Management Practices for Protection of Water Resources by the Green Industries," Florida DEP, 2008 edition <http://www.dep.state.fl.us/water/nonpoint/docs/nonpoint/gm-Ind-bmp-en-12-2008.pdf> and other resources setting forth best practices for the protection of waterfronts. Accordingly, the following objectives for this program are identified:

- To provide responsible environmental ecological management of the lakes and stormwater facilities under the management jurisdiction of the Poinciana West CDD.
- To eliminate or bring under control all exotic invasive and problematic native aquatic plants in the CDD's lakes and stormwater facilities.
- To ensure that the lakes and stormwater facilities are maintained to create an environmentally sound and aesthetically appealing aquatic community.
- To use Integrated Pest Management (IPM) practices in meeting these objectives.

Integrated Pest Management is a method of conducting proper aquatic vegetation management with minimum impact on human health, the environment, and non-target organisms. IPM is not a single chemical approach or strategy but a decision-making process that involves a combination of practices to control problems. Control tactics can include cultural or biological measures. For example, reduction of lakeshore fertilizing activities, installation of shoreline plants, stocking triploid carp, pond aeration and/or increased education of the public on IPM practices

and potential effects of pesticides on health and the environment might "be considered for reaching the desired natural balance. IPM requires more information, thought--and team planning than ordinary, single approach management strategies, but the outcome is a healthier community and environment, and lower management costs. Therefore, the primary service desired from the Aquatic Maintenance Contractor ("Contractor") is the contractor's knowledge about aquatic systems and plant management, and not the Contractor's ability to apply pesticides.

1.4. Contractor Adherence to the Scope of Services

The Contractor shall recognize and perform in accordance with the contract terms, written specifications, and/or drawings contained or referenced herein.

1.5. Access to Jobsite

The District shall furnish access to all areas of the jobsite where the Contractor is required to perform under the terms of this Scope of Services.

2. General Requirements and Procedures

The Contractor shall meet the requirements and follow the procedures associated with all items set forth in the Contract Documents including, but not limited to, the following:

2.1. Operation Procedures

The Contractor shall perform the basic services outlined within the Scope of Services between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday unless specified otherwise or directed by the District through its District Manager. The Contractor may submit a request for additional operation time, in response to poor weather conditions, to be reviewed for approval by the District Manager or its Designee. The District Manager or its Designee will designate where Contractor's crew will take breaks, lunches, and use restroom facilities. Employee personnel vehicles will be parked only in areas designated by the District. The Contractor shall be responsible for security of the maintenance areas during working hours and for locking all gates (if applicable) each day.

2.2. Key Personnel

2.2.1. All Services shall be managed and/or directed by key personnel identified by the Contractor in the proposal. Any changes in the assigned key personnel shall be subject to approval by the District Manager. Where applicable, the Contractor shall require that certifications, training, etc., be secured and updated for all employees for the maintenance and technical services performed under this contract.

2.2.2. Contractor shall provide one (1) Project Manager who is knowledgeable of the Contractor's daily activities when performed at this site. This Manager shall serve as the point of contact between the District Manager and Contractor. The Project Manager shall be responsible for coordinating all scheduled services with the District Manager and for the timely scheduling of unscheduled maintenance services.

2.2.3. Contractor will provide the name and resume of the onsite foreman that will be responsible for supervising and/or completing all field services. The resume shall list the firms who have employed the foreman for work similar to that to be performed under the

Contract. Contractor must demonstrate that the onsite foreman can identify all the plant species that are included as nuisance vegetation on this project.

2.2.4. The Contractor shall ensure that all employees who use or are in contact with registered and restricted-use herbicides are certified as required by the appropriate regulatory agencies and are knowledgeable as to qualifications for handling material safely and correctly in accordance with the Federal Environmental Pesticide Control Act of 1972 (PL92-516, FIFRA). Such employees shall also possess, or be under the direct supervision of an employee who possesses the Florida Department of Agriculture's Public Applicator Certification for use of restricted pesticides.

2.3. Personnel Dress Code

The Contractor shall ensure that employees working on the Project shall wear uniforms or professional attire at all times. Clothing that expresses or implies obscene language or graphics, degrading or demeaning connotations, or in the opinion of the District Manager is unsightly of any reason, shall be strictly prohibited. The Contractor personnel shall wear shirts at all times and shall wear footwear that conforms to safe work practices. Applicators must use at least minimum personal protective equipment (PPE) required by the label of the materials being handled.

2.4. Personnel Conduct

The Contractor shall enforce strict discipline and good order among its employees on the Project site. The Contractor shall ensure that its employees that communicate and interact with the Solvita community and the Poinciana West CDD are knowledgeable of the Project and the Services the Contractor is performing.

2.5. Safety Program

The Contractor shall develop, implement, and maintain a safety program for its operations on the Project. That safety program shall include, at a minimum, a safety policy, safety rules and procedures, safety training, procedures for reinforcing and monitoring safety programs, procedures for accident investigations, providing and maintaining equipment safety features, and safety record keeping.

The Contractor shall comply with all State of Florida and Federal and local regulations, rules and orders, as they pertain to occupational safety and health, the safe operation and security of the facilities.

The Contractor shall provide, at the Contractor's expense, all safety equipment and materials necessary for and related to the work performed by its employees. Such equipment will include, but is not limited to items necessary to protect its employees and the general public, if applicable.

2.6. Facility Location

The District shall not provide a facility on the Project Site for the Contractor as part of this Scope of Services. No fuels, oils or chemicals are permitted to be stored on site.

2.7. Subcontractors

If the Contractor, as a part of the performance of its Services, elects to employ Subcontractors, the following shall apply:

- The Contractor shall reserve the right to hire qualified Subcontractors to perform specialized functions or work including specialized equipment as may be required, at Contractor's expense.
- The Contractor shall be responsible for, and coordinate with, the services of any of its Subcontractors.
- The Contractor shall require all of its Subcontractors, as a condition of employment, to agree to the applicable terms and conditions identified in the Contract Documents.

2.8. Consultants

If the Contractor, as a part of the performance of its Services, elects to employ consultants, the following shall apply:

- The Contractor shall reserve the right to hire qualified consultants to perform specialized functions or work including specialized equipment as may be required, at Contractor's expense.
- The Contractor shall be responsible for, and coordinate with, the services of any of its consultants.
- The Contractor shall require all consultants, as a condition of employment, to agree to the applicable terms and conditions identified in the Contract Documents.

2.9. Document Control and Data Management

2.9.1. Document Control

The Contractor shall keep accurate records of documents received and, if applicable, issued by this Contractor. A document log shall be maintained during the work of this Contractor to provide records on the information available to or from this Contractor. The log shall outline document titles and dates, the originator, received dates, and to/from information. This log shall be updated monthly and submitted to the District Manager when requested.

2.9.2. Data Maintenance

The Contractor shall, after review with the District Manager, establish a systematic process for the insertion of revised sets and the integration of that data into the overall Project plan after verification for compatibility and consistency of the information received with existing information.

2.9.3. Data Dispersal

Should the Contractor distribute data to others, the Contractor shall document the distribution of data by completing a letter of transmittal. All distribution of data shall be accompanied by a letter of transmittal with a copy provided to the District identifying:

- Party to whom the data is being transferred
- Origination of the request for transfer
- Name of data being transferred
- Type(s) of data being transferred
- Date of transfer
- Purpose of transfer, or use of information
- Further action necessary

The Contractor shall propose a format for, and keep a log of, all data transfers for updates to the District Manager.

2.10. Verification of Data

All data provided to the Contractor shall be examined for consistency with its records and work efforts. Any obvious inconsistency shall be reported to the District Manager verbally and in writing, upon discovery.

2.11. Ownership of Data

It is to be understood that all data transmitted, and material/equipment purchased under this contract by the Contractor or provided to the Contractor, either by the District or third parties, are the sole properties of the District. The Contractor shall have temporary charge of the data while performing contracted services for the Project. All data shall be returned to the District through the District Manager at the conclusion of the Project, after which no copies of the data may be kept by the Contractor without the express written permission of the District.

The District shall retain the right to require that the Contractor transfer all Project data, material, or equipment to the District immediately upon fourteen (14) days' written notice, for any reason. The same procedures shall apply should it become necessary for the Contractor to voluntarily return all Project data to the District.

2.12. Quality Control

The District will have the right, at any stage of the operation, to reject any or all of the Contractor's services and materials, which in the District's opinion does not meet the requirements of these specifications.

If requested by the District Manager, the Contractor will make weekly walk-through reviews of the entire site related to visual observations and the Contractor's performance. The Contractor will make repairs and adjustments, as directed by the District Manager, during these site visits. A monthly Maintenance Report shall be generated by the Contractor and submitted to the District Manager outlining potential problem areas and the Contractor's proposed corrective action, upcoming work approval request, coordination, scheduling, etc. The Contractor shall provide the District Manager with a weekly updated maintenance log addressing all activities occurring in that week.

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- 2.17.6. Pesticide efficacy can vary from one area to another, one location to another, and even from one year to the next in the same location. It is essential when pesticides have to be used to select the correct materials based upon their least toxic impact and efficacy. Record keeping will be used to support selections.
- 2.17.7. Regular monitoring of pest and beneficial populations will determine the optimal times for applying pesticides or other practices and to enhance their effectiveness. The Contractor will control undesirable vegetation during the most vulnerable point in their life cycle or growth period. Young, actively growing weeds are usually the easiest to control or remove. The Contractor will control weeds before they produce seeds.
- 2.17.8. The Contractor will follow the label to determine the rate and method of application. The control action chosen must focus on the site of the problem so that only the areas that need to be treated are targeted. Proper application will maximize effectiveness and minimize effects on beneficial organisms. The goal is to use the most environmentally responsible and effective pesticide.
- 2.17.9. Liquid sprays must not be applied when winds exceed 10 mph to minimize any undesirable drift.
- 2.17.10. Personnel assigned to this contract shall use at least minimum personal protective equipment (PPE) required by the label of materials being handled.
- 2.17.11. The Contractor will establish action thresholds for undesirable plant levels to determine when numbers or situations pose a problem. The Contractor will maintain records of numbers or kinds of problems to track occurrence and to evaluate actions taken.
- 2.17.12. The Contractor will adhere to the following pesticide procedures:
- Proper application techniques
 - Knowledge and actions to follow in the event of a pesticide spill
 - Proper pesticide transporting and handling procedures
 - Cleaning and calibration of equipment procedures
 - Storage and disposal of pesticide containers
 - Scouting and record keeping – summary reports of pond observations and management strategies are to be routinely filed with the District Manager
 - Strict compliance with each EPA label's PPE requirements
 - Maintenance of up-to-date records of pesticides applied, by treatment area.
- 2.17.13. Use of any product being phased out or banned by State or Federal agencies is prohibited under this contract.
- 2.17.14. The Contractor shall provide at his own risk and cost, all labor, materials, tools, equipment, transportation, hauling, biological controls, pesticides, chemicals and other items needed to perform the aquatic plant management work under this contract.
- 2.17.15. All work shall be performed on weekdays during normal business hours unless other arrangements are made on a case-by-case basis.
- 2.17.16. Access to pond work sites can sometimes be limited; therefore, ATV use rather than truck is preferred. Pond banks, littoral shelves and other portions of the work site shall not
-

be rutted or otherwise damaged. Electric-powered vehicles are preferred where practical, but muffled gas engines may also be used. If needed, each pond is accessible for boat launching from a small truck.

2.17.17. Paper, cans, trash, and other debris shall be removed from the surface of storm water retention ponds when the Contractor is using a watercraft as part of his operations.

3. **COORDINATION**

The Contractor shall provide coordination with the District for all items associated with the requirements of this Agreement.

3.1. **General Coordination**

The Contractor shall provide coordination with the District Manager for all items associated with the requirements of this Agreement.

The Contractor shall be available to meet with the District Manager as appropriate, on a monthly basis for an inspection and walk-through during normal business hours. The inspection shall be scheduled with the District Manager's and the Contractor's representatives with a resulting punch list of problem areas and corrective actions to be reviewed each month or as time allows. The Contractor shall be responsible for immediately notifying the District Manager of any and all issues, damage, and/or decline directly related to the Contractor's scope of work.

Those inspection meetings shall also serve as a forum for the exchange of information, identification of pertinent and critical issues, determination of an action plan and schedule for resolving those issues, review of schedule and budget status, and other issues deemed appropriate by the District Manager or the Contractor. The Contractor shall record and distribute notes of each meeting to all attendees within five (5) business days, as well as other parties with a need-to-know. The District Manager shall set the meeting time and location.

In addition, Contractor shall provide a representative to attend the bi-monthly meeting of the Poinciana West CDD Board of Supervisors if requested to do so by the District Manager. This representative shall be knowledgeable of this Project Scope and Scope of Services and shall be able to respond to any questions the District Board of Supervisors may have as to the day to day activities at the Project site pursuant to this Agreement.

Coordination of the construction, operation, and general maintenance is considered one of the many critical activities of the Contractor. Further, coordination of those efforts with all parties involved, or those with a need-to-know, is crucial to the success of the Project. While all parties involved with the Poinciana West CDD Project cannot be identified at this time, a partial list is provided as follows:

- CDD District Manager
- CDD District Engineer
- AV Homes, Inc.
- Toho Water Authority
- Polk County and its various departments
- Florida Department of Transportation
- Adjacent property Owners, as directed by the District

3.2. Permitting Consideration

Poinciana West CDD was permitted through the South Florida Water Management District (SFWMD), Florida Department of Environmental Protection (FDEP).

3.3. Contractor's Project Manager

The Contractor shall designate an on-site representative with experience in aquatic plant management who will be responsible for overall supervision of the Contractor's work force on the Project and shall act as the single point of contact, on a daily basis, between the District Manager and the Contractor. This individual shall maintain at all times a means of being contacted by the District Manager and shall respond to such calls within a reasonable amount of time. This individual shall be responsible for maintaining the Contractor's schedule of activities and notifying the District Manager of this daily schedule for quality control of the Contractor's service and for arranging and supervising unscheduled service requests by the District Manager.

3.4. District Awareness

The Maintenance Contractor shall be responsible for notifying the District:

- Of any accidents involving the Contractor personnel or others on the Project
- Of any recommended cultural practices that could be taken by the community, property owners or other contractors to support the objectives of the aquatic plant management program.
- Of any desirable plants that have died or are showing significant damage, whether or not they are believed to be as a result of plant management activities

4. SCHEDULED OPERATIONS AND MAINTENANCE

The Contractor shall perform all services necessary to control and remove nuisance vegetation for those areas of the Project Scope that are to be maintained on a regularly scheduled basis, with a minimum of monthly. The Contractor shall make a complete site inspection of the CDD, specifically the areas of CDD maintenance. Exhibit D includes a plan identifying the general limits of CDD maintenance by area. Services are generally described below.

4.1. General Scope and Practices

4.1.1. Water Bodies Included in the Scope

Exhibit D describes the water bodies included in this scope and their dimensions. The scope generally consists of two parts:

- 1) Maintenance of water bodies shown on Exhibit D to consist of open water areas, shorelines and outfalls of the ponds. The perimeter and surface area of each pond is included in an accompanying table.
 - 2) Maintenance of developed littoral shelves in selected ponds for their water-cleansing qualities and habitat values.
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4.1.2. Natural Balance of Ponds

The Contractor will assess the condition of the ponds at the beginning of the contract period and develop a plan directed toward achieving a more balanced condition. The Contractor will routinely appraise the condition of ponds for progress toward such a natural balance. While it is recognized that such a balance might not be reached during the contract period, recommended strategies and maintenance activities will be directed toward that goal and not toward keeping the ponds in a "new pond" condition.

4.1.3. Noxious Weeds

The Contractor will control and maintain existing noxious aquatic weeds growing in the waterways with the use of EPA-approved chemicals in strict accordance of label specifications.

4.1.4. Grass Carp

Sterile grass carp may have already been distributed in the stormwater ponds. The Contractor will be responsible for maintaining outfall barriers per stocking permit requirements and for adding additional fish if that is part of the plan.

4.1.5. Invasive Exotic Weeds

Control of various FEPPC Category I and II invasive exotic weeds including, but not limited to, Old World Climbing Fern, Torpedo Grass, Cogon Grass and Water Hyacinth, shall be conducted on an as-needed basis in ponds and pond banks, including any forested edges, littoral shelves and outfall areas.

4.1.6. Pond Outflows

The Contractor shall maintain all noted pond outflows to allow proper drainage into nearby wetlands. This insures control water levels function as designed.

4.1.7. Native Plants

Native plants are generally to be encouraged to grow to enhance the aesthetics as well as provide a habitat for native fish and wildlife.

4.1.8. Shorelines and Pond Edges

Close communication with on-site management and District staff is key since the management goals can vary from pond to pond.

4.2. Pond Open Water Maintenance

The Contractor shall be responsible for the development and implementation of a preventative maintenance program. For the algae control portion, the Contractor is responsible for taking all the preventative measures to control algae.

4.3. Littoral Shelf Maintenance

The Contractor shall perform monthly maintenance within the littoral zones. Maintenance will include monthly site inspections, manual removal and/or herbicide application on the littoral shelves and lake banks.

4.4. Wetland Preserve Area Maintenance

The Contractor will perform quarterly maintenance within preserved wetland areas. Maintenance events will include manual removal of emergent nuisance and exotic species and periodical herbicide applications.

4.5. Mitigation Area Maintenance

The Contractor will perform quarterly maintenance within Mitigation Areas. Maintenance events will include the manual removal of emergent nuisance and exotic species and periodical herbicide applications.

4.6. Target Vegetation

The Contractor shall control/remove all nuisance and exotic vegetation including, but not limited to, the following species, if present, within each of the maintenance areas. The limits of the maintenance activities shall be defined as all property waterward of the limits of the turf, including open water areas.

- a. All species of cattails (*Typha* spp.)
 - b. Primrose willow (*Ludwigia peruviana*)
 - c. Seedbox (*Ludwigia octovalvis*)
 - d. Water primrose (*Ludwigia leptocarpa*)
 - e. All nuisance species of the family Fabaceae
 - f. Dogfennel (*Eupatorium* spp.)
 - g. Caesarweed (*Urena lobata*)
 - h. Carolina Willow (*Salix caroliniana*)
 - i. Torpedo grass (*Panicum hemitomon*)
 - j. Climbing hemp vine (*Mikania scandens*)
 - k. Brazilian pepper (*Schinus terebinthifolius*)
 - l. Water hyacinth (*Eichhornia crassipes*)
 - m. Tropical sodaapple
 - n. Frogshbit (*Limnobium spongia*)
 - o. All species of algae filamentous and suspended
 - p. Common duck weed (*Lemna minor*)
 - q. Salvinia (*Salvinia minima*)
 - r. Hydrilla (*Hydrilla verticillata*)
 - s. Southern Najas (*Najas guadalupensis*)
 - t. Azolla (*Azolla caroliniana*)
 - u. Musk grass (*Chara* spp.)
 - v. Giant duckweed (*Spirodela polyrrhiza*)
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4.7. Maintenance Methodology

Maintenance methodology shall be determined by the vegetative composition within the specific pond areas. Natural recruitment of desirable herbaceous vegetation outside the planted areas shall be generally allowed and shall not be adversely affected by maintenance activities unless otherwise directed by District. It is the intent of the contract to provide a vegetated littoral zone without creating an overgrown appearance.

4.7.1. Hand-Removal Techniques

- a. The Contractor shall remove nuisance species from within the planted littoral zones by hand or as directed by the District Manager to ensure that desirable species are not damaged by maintenance activities.
- b. Contractor shall remove all vegetative parts of the plant, including roots, stems, and flowering/fruitlet parts. The Contractor shall be responsible for removing all individuals of the species listed in item 4.7 above. The Contractor shall remove all collected vegetation from the site on a daily basis. All material removed from the immediate work site shall be disposed of by the Contractor off the Project Area.
- c. The Contractor shall use equipment specifically designed for commercial application of herbicides. Equipment shall be kept in good repair and operational condition at all times and shall meet all safety requirements established for the type of work. Equipment is subject to inspection and acceptance by the District Manager or its designee.
- d. The Contractor shall properly use and dispose of all chemicals and herbicides in strict accordance with applicable local, State, and Federal environmental regulations and shall indemnify the District for any liabilities arising out of the Contractor's handling, use of, and disposal of said chemicals and herbicides.
- e. The Contractor shall ensure that employees who use or are in contact with registered and restricted use herbicides/pesticides are certified as required by the appropriate regulatory agencies and are knowledgeable as to qualifications for handling material safely and correctly in accordance with the Federal Environmental Pesticide Control Act of 1972 (PL 92-516, FIFRA).

Such employees shall also possess, or be under the direct supervision of an employee who possesses, the Florida Department of Agriculture's Public Applicator Certification for use of restricted herbicides. For purposes of the Scope, "pesticides" shall refer to "herbicides."

- f. The Contractor shall provide a Herbicide Summary Report for each location where nuisance species control occurs. These reports shall include specific information including the chemical(s) used, the application rate, mixture, condition of growth being treated, desired results and weather conditions (wind speed and direction, temperature, precipitation) under which it was applied. Completed forms shall be submitted to the District Manager within 10 days of the application event
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- g. The Contractor shall replace desirable trees or other plants, at no cost to the District, that are injured or lost due to the Contractor's negligent acts or failure to perform the Services.

5. Unscheduled Maintenance

The Contractor shall be equipped and organized to provide any unscheduled maintenance and repairs related to the Services performed under this Agreement and if required by the District. The following addresses the general procedures for unscheduled maintenance activities.

5.1. General

The Contractor shall be responsible for additional maintenance and corrective actions relative to this Scope within the limits described unless directed otherwise by the District Manager. Unscheduled maintenance that results from the Contractor's failure to properly perform the Services under this Scope of Services shall not be considered an Additional Service and therefore, shall not warrant additional compensation to the Contractor. Unscheduled maintenance that, in the Contractor's and District Manager's opinion, are not as a result of the Contractor's negligent acts or failure to perform the Services, shall be deemed an Additional Service and shall, at the District Manager's election, be made by the Contractor upon receipt of a Work Authorization from the District. When the Contractor determines that an unscheduled maintenance is necessary, the Contractor shall submit to the District Manager a Work Authorization form (Exhibit C) together with the Contractor's estimate of the cost to perform the repair. Whenever possible, this Work Authorization and cost estimate should be sent to the District seven (7) calendar days in advance of the Contractor performing the Services. The District Manager shall return one executed copy of the Work Authorization form and shall indicate the method of compensation. In the event the Services are to be provided on a unit price of time-and-materials basis within seven (7) calendar days upon completion of the Services, the Contractor shall submit to the District Manager an itemized listing of the Contractor's costs to perform the Services including all unit quantity items or labor, equipment, materials, and Subcontractor's accordingly. The itemized listing shall be presented in a format acceptable to the District Manager and, if requested by the District Manager, shall include copies of invoices from others providing work or materials on the repair.

5.2. Unscheduled Maintenance

The contractor shall provide occasional unscheduled maintenance that is in addition to the base Scope of Services. The Contractor shall receive a Work Authorization from the District Manager and shall respond and complete the request within two (2) weeks, or a mutually agreeable time with the District Manager. The Contractor's cost estimate to provide the work shall be approved by the District Manager prior to commencement. The Contractor shall be available and willing to provide the following unscheduled maintenance services:

5.2.1. Maintenance of Wetlands and Upland Buffer Areas

- a. The District may require the Contractor to perform selected unscheduled maintenance for aquatic or nuisance species control. Unscheduled maintenance is restricted to exotic and nuisance plants within the buffers or wetlands as these areas are to be retained in their natural state. The use of pesticides, herbicides or fertilizers shall be prohibited in the buffers and the existing wetlands they protect, except when used in accordance with applicable law and pursuant to permits from agencies having jurisdiction thereover and consistent with the management intent of these buffers and wetlands.
-

- b. If requested by District Manager, the Contractor shall provide a nuisance species removal plan specific to each protected wetland and buffer area. This plan will detail the methodology and target species within each area. Written approval of the plan by the District Manager will be required prior to implementation.
- c. The Contractor shall replace desirable trees or other plants, at no cost to the District, that are injured or lost due to the Contractor's negligent acts in the performance of the scheduled and unscheduled Service.

5.2.2 Wetland Planting

- a. The District Manager may elect to direct the Contractor to restore aquatic vegetation in planted littoral zones that are identified in the Contract Documents. The work included in the section shall consist of furnishing, planting, and watering all plants of the species, size, and quality in the location indicated or as directed by the District Manager. Further, the work shall include the maintenance of all plants and planting areas until acceptance by the District, and fulfilling all guarantee provisions as herein specified.
 - b. Plant transportation shall comply with applicable Federal and State regulations. Upon delivery at the site, all plants shall be inspected for conformity to specifications and for handle damage.
 - c. Plants specified herein shall be used unless sufficient evidence is submitted to the District Manager indicating the plant is unavailable. Alternate material may be used upon receipt of authorization from the District Manager. No substitutions shall be made without written approval of the District Manager.
 - d. The Contractor shall guarantee all planting work for a minimum period of 365 days after the date of installation. The Contractor shall be responsible for the establishment of all species planted. Establishment shall be defined as all plants successfully budding or leafing out. Before final acceptance, the Contractor shall replace at no cost to the District any plant material necessary to meet the above criteria. In the event the Contractor has to replace plant material, the District Manager may allow such plant material to remain through another establishment (365) period.
 - e. **Materials**
 - 1. The Contractor shall furnish all plants of the species requested by the District Manager. All plants shall be true to name as established by the American Joint Committee on Horticulture nomenclature publication "Standard Plant Names."
 - 2. The designated authority for the identification of all materials shall be the two (2) publications of L.H. Bailey, "Hortus II" and the "Manual of Cultivated Plants," and all specimens shall be true to type, name, etc., as described herein.
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3. If the District Manager elects to request the Contractor to provide trees, all trees shall meet the requirements for a Florida Grade 1, listed under single upright trees in "Grades and Standards for Nursery Plants" established by the Florida Department of Agriculture and Consumer Services.
 4. Furthermore, trees shall minimally be the three-gallon size with a minimum height of 4 feet and caliper measure of mid-height of 0.5 inches to 0.75 inches. The actual height of the tree installed in the field shall be dependent on existing site conditions. It is the Contractor's responsibility to ensure each tree has sufficient height to survive under existing field conditions. All trees shall be sound, healthy, and vigorous, exhibit significant apical growth on the main stem, be well branched and shaped within normal habit of growth, of proper color, and densely foliated when in leaf. They shall have healthy, well-developed root systems and shall be free of disease and insect pests, eggs, or larvae.
 5. All herbaceous materials shall be provided from the following size classes: four (4) inch pot or bare root.

It is the Contractor's responsibility to ensure each plant has sufficient height to survive under existing field conditions. All plants shall be sound, healthy and vigorous, be shaped within normal habit of growth, of proper color and densely foliated when in leaf. They shall be free of disease and insect pests, eggs, and larvae.
 6. In the event that it becomes apparent that any nursery supplying plants for this work has knowingly and consistently represents the grade of plants as being higher than the actual grade as determined by the plant list according to "Grades and Standards for Nursery Plant," all plants already delivered from such source shall be removed from the job at the Contractor's expense, and no further plants will be acceptable from such nursery until written evidence is submitted and confirmed that all materials for delivery have been inspected and approved by the District Manager as being of the grade represented.
 7. Container-Grown Plants
 - a.) Container-grown plants shall have been grown in a container large enough and for sufficient time for the root system to have developed enough to hold its soil together firm and whole. No plants shall be loose in the container. Plants which have become pot-bound or for which the top system is too large for the size of the container will not be acceptable.
 - b.) Collected Plants: Collected plants shall be dug with a root spread at least one-third greater than nursery-grown plants of the same species.
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c.) Bare Root:

- (1) Plant materials removed from natural or manmade wetlands may be transported to the site as bare root plants. However, some provisions must be made to protect this material, especially the roots, from desiccation. All plant material transported in this manner must be approved in writing by the District Manager before proceeding with the work. Otherwise, no bare root plants shall be used unless specifically required by the District.
- (2) Bare root plants shall be dug and delivered with roots adequately protected against drying out by means of moist straw, or other approved material. Shipping containers shall be opened and inspected by the Contractor upon arrival and shall be dampened, if necessary. Plants which are not to be immediately planted shall be "heeled-in" in an approved manner, in moist earth or other suitable medium, and shall be properly cared for until planting.

f. Planting:

1. Time of Planting: Plant under favorable weather conditions. At the option of, and under the full responsibility of the Contractor, planting operations may be conducted under unreasonable conditions without additional compensation.
 2. The District Manager or its designee shall inspect the plants at the time of planting. Plants will be rejected if improperly planted. Improper planting includes the following conditions: exposed roots, not at the proper depth, or planted in water either too deep or shallow. The Contractor shall be responsible for tagging the newly planted trees with surveyor's tape so that the plants can be easily identified and inspected. Plants may not be stored onsite for more than two (2) consecutive days. Any material stored onsite for longer periods of time may be rejected by the District Manager or its designee. The Contractor should notify the District at least five (5) working days prior to movement of plant material onsite, and shall request the District Manager be present to inspect the plant material as it arrives onsite. The District Manager or its designee may reject all plant material not inspected prior to planting, and the Contractor shall remove and replace rejected material without additional compensation.
 3. All containers shall be cut and opened fully, in a manner such as will not damage the root system. Container-grown plants shall not be removed from the container until immediately before planting and with all due care to prevent damage to the root system.
 4. The Contractor shall mark each tree planted and shall submit a drawing to the District Manager showing the location of all trees and herbaceous
-

materials planted by the Contractor. The District Manager or its designee will not inspect the sites for final acceptance until this submittal is received.

g. **Warranty of Planted Material**

1. During planting, the Contractor shall request an inspection by the District Manager near the end of the warranty period. When all plants are acceptable, the Contractor will be notified of warranty compliance.
2. Defective work shall be corrected within five (5) working days of notification by the District Manager. Upon completion of planting, the Contractor shall remove from the site excess soil, planting containers and debris, and repair any damage to structures, etc., resulting from planting operations.
3. The Contractor shall be responsible for assuring that all plants, at the time of final inspection, exhibit the characteristics and qualification required for the grade of plant as originally specified.

5.2.3 **Observation and Provisional Acceptance**

- a. When the vegetative work is completed, including ongoing maintenance, the District Manager or its designee will make an observation to determine acceptability. The vegetative work may not be reviewed for final acceptance in parts.
- b. Where vegetative work does not comply with the requirements, the Contractor shall replace rejected work and continue specified maintenance until re-observed by the District Manager or its designee and found to be acceptable and will continue the guarantee period. The Contractor shall remove rejected plants and materials promptly from the project site.
- c. At the end of the guarantee period, inspection of plants will be made by the District Manager or its designee upon written notice requesting such inspection, submitted by the Contractor at least three (3) days before the anticipated inspection. All defects discovered shall be repaired or replaced by the Contractor before final acceptance.
- d. Upon completion of the work, prior to Final Acceptance, the Contractor shall thoroughly clean the project site. In addition to removing all equipment, unused materials, deleterious material, and surplus materials, the Contractor shall correct any damaged structures or vegetation altered as a result of the landscape work.

6. **Administration/Maintenance/Operations Program**

The Contractor shall develop policies and procedures and implement an Administration, Operation, and Maintenance Program. That program shall include, but not be limited to, the following:

6.1. **General**

- 6.1.1. This program shall be a comprehensive narrative and, where applicable, graphic/diagrammatic explanation of policies and procedures which shall govern the
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Contractor's Services provided under this Agreement is generally outlined in this Scope of Services. The program document shall contain key information relative to the major components described below.

The program document shall be presented in a three-ring binder using standard 8 1/2" x 11" pages, single-spaced for text, graphics, and/or diagrams, and with, if necessary, 11" x 17" pages for diagrams and/or graphics that fold out. The document shall include as a minimum, a table of contents, section dividers, numbered pages, issuance date of each page, and appendices as required. Each copy shall be numbered and a log shall be kept by the Contractor of document holders (refer to Section 2.9.3, Data Dispersal).

- 6.1.2. The program documents shall be kept up-to-date at all times by the Contractor. Revisions to the document shall be indicated by footnote on the revised pages. Revisions shall be distributed by the Contractor to all document holders.
- 6.1.3. The Contractor shall prepare draft copies of the document for review and comment by the District Manager within thirty (30) calendar days of the notice to proceed with the Services. The Contractor shall anticipate at least two (2) more additional reviews by the District prior to issuance of the final document. All District Manager comments shall be incorporated into the document. The Contractor shall be responsible for preparing and submitting the following number of copies of the program document to the District Manager.
- Three (3) copies, by personal delivery; or
 - One (1) copy, via email.

6.2. Administration

- 6.2.1. The administrative sections of the program document shall, at a minimum, address those functions which are the responsibility of the Contractor related to all administrative matters generally described in the Scope of Services and as outlined below.
- 6.2.2. Organizational charts for administrative management functions include key personnel names, job titles, and phone numbers.
- 6.2.3. Policies and procedures related to the Contractor's program for communications with the Solivita community relative to general maintenance operations and customer services.
- 6.2.4. Policies and procedures related to the coordination and communications with developers, builders and others who are a part of the continuing development and construction of the Solivita community.
- 6.2.5. Personnel policies and procedures related to the Contractor's personnel performing Services on the Poinciana West CDD site.

6.3. Operations

- 6.3.1. The operations section of the program document shall, at a minimum, address those functions which are the responsibility of the Contractor related to all operations/customer service matters generally described in the Scope of Services and as outlined below.
- 6.3.2. Organizational charts for operations and customer service related functions include key personnel names, job titles, and phone numbers.
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6.3.3. Policies and procedures related to emergency situations including 24-hour notification, emergency phone numbers, Contractor mobilization and response time (refer to Section 7.2, Emergency Response Program for further details), and so forth.

6.4. Maintenance

6.4.1. The maintenance section of the program document shall, as a minimum, address those functions which are the responsibility of the Contractor related to all maintenance matters generally described in the Scope of Services and as outlined below.

6.4.2. Contractor shall provide all safety equipment required by the activities outlined in this Scope. Employees shall be provided safety equipment and proper instruction/certification for their work assignments. All equipment, safety gear, and herbicide spray apparatus shall be maintained in good working order.

6.4.3. All gates shall be closed and locked if applicable after accessing pond to perform maintenance services.

The Administration, Operation, and Maintenance Program shall be submitted by the Contractor for review and approval by the District Manager. The Contractor shall modify the program as required by the District Manager.

7. Response Time and Emergency Response Program

The Contractor shall provide services and repairs within the amount of time indicated in the Agreement. The following is general response time information and requirements for the Emergency Response Program to be developed, implemented, and maintained by the Contractor.

Emergency Response Program

The Contractor shall develop, implement and maintain an Emergency Response Program (ERP) for emergency work that must proceed immediately to avoid property damage or result in a public health or safety hazard. The ERP shall address emergency situations including, but not limited to, the following items:

- Fish Kills
- Chemical Spills
- Equipment Failures
- Water Quality Monitoring Results out of compliance

Additionally, the ERP shall address the following:

- Responsible parties to be notified
 - Personnel, equipment, and emergency repair contractors on call and who will respond to each type of emergency.
 - Procedures for notifying the District, District Manager, the Solivita community, AV Homes, and other utility companies or regulatory agencies affected by the listed emergency.
 - The Contractor shall prepare, maintain, and distribute an ERP manual detailing the procedures and responsibilities for the situations listed above and any other situation deemed appropriate by the District.
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The ERP Manual shall be included in the operations section of the Administrative/Maintenance/Operations Program (refer to Section 6 for further details).



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July 13, 2018

To: George Flint PWCDD District Manger

George,

Per our recent conversations the monthly cost relative to the whole scope of work (including hydrilla) for the ponds at PWCDD is as follows:

\$4,750.00 monthly.

Dr. Brett Bultemeier's hydrilla plan is as follows:

Hydrilla was found in 7 ponds (01-01, 1-05, 1-07, 1-09, 1-10, 1-11, 1-12, 1-15, and 1-21) throughout Poinciana West. Several of these ponds are facing a severe infestation that will take time to mitigate (immediate management of these ponds is advisable, as that much hydrilla makes other management efforts difficult or pointless). Managing this submersed weed is different than algae management, or even torpedo grass control. There are key times and strategies that need to be implemented in order to best address the problem in a cost effective and long term way. Management of hydrilla falls into two categories, Spring and Fall treatments. For ponds that irrigate contact herbicides are used in the spring, and then again in the fall, before October. For ponds where systemic herbicides are possible, a spring only treatment is needed for control. The goal is no hydrilla growing by the end of October, in order to prevent the formation of tubers (October-March). These tubers can last 10+ years, so preventing their formation is critical to eradicating hydrilla, or at a minimum greatly reducing its growth. This requires that a coordinated

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resistance management plan must be in place to ensure the plants can not only be managed now, but in the long term as well.

Keys to hydrilla management

- Proper rotation of herbicides (at least 2 modes of action for systemic treatments and 2 for contact treatments)
- Proper timing of treatment
 - Late spring/early summer for systemic treatments
 - Late spring/early summer and early fall for contact treatments
 - Tubers sprout in the spring and are created by hydrilla in the fall

 - Treatments in the spring target “new sprouting tubers” as they emerge and grow. Treatments in the fall (contact only) seek to eliminate any plants that have regrown over the summer so that “new tubers” are not placed in the soil. *The aforementioned ponds need to be treated at the appropriate time in 2018; a September treatment is most beneficial for most ponds, the most severely infested should be targeted ASAP.*
- Systemic treatments are reserved for non-pumping ponds and contact treatments are for pumping/irrigation ponds
- Coordination with district manager, golf course supervisors and anyone else involved in the ponds is necessary to properly shut down irrigation and pumping activities for treatments
- Continual scouting for “new” infestations
 - Immediate treatment to eliminate spread

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- Ability to communicate complex nature of management and understanding of its impacts
 - I.e. algae blooms follow treatment of hydrilla
- Full treatment where infestations are greater than 15% of total acreage
- Spot treatments where <10% infested are treated with contact herbicides and included in the "normal contract" pricing, not a separate charge under this amendment.
- Due to timing it is desired that hydrilla management start in September, in order to best avoid a reset of tubers for 2019.

Clarke is uniquely suited to handle these challenges and is prepared to implement a long term management plan that seeks to achieve suppression and elimination of hydrilla from Poinciana West. We have been largely successful in these endeavors at Solivita and see no reason that couldn't occur here.

Dr. Brett Wells Bultemeier
Clarke Water Resource Manager

George, if You have any questions pertaining to the aforementioned pricing and Hydrilla plan please contact me. Thanks for the opportunity!

Sincerely,

Pete Deglominis
Control Consultant



Cell: 407 509 1004

Fax: 407 944 0709



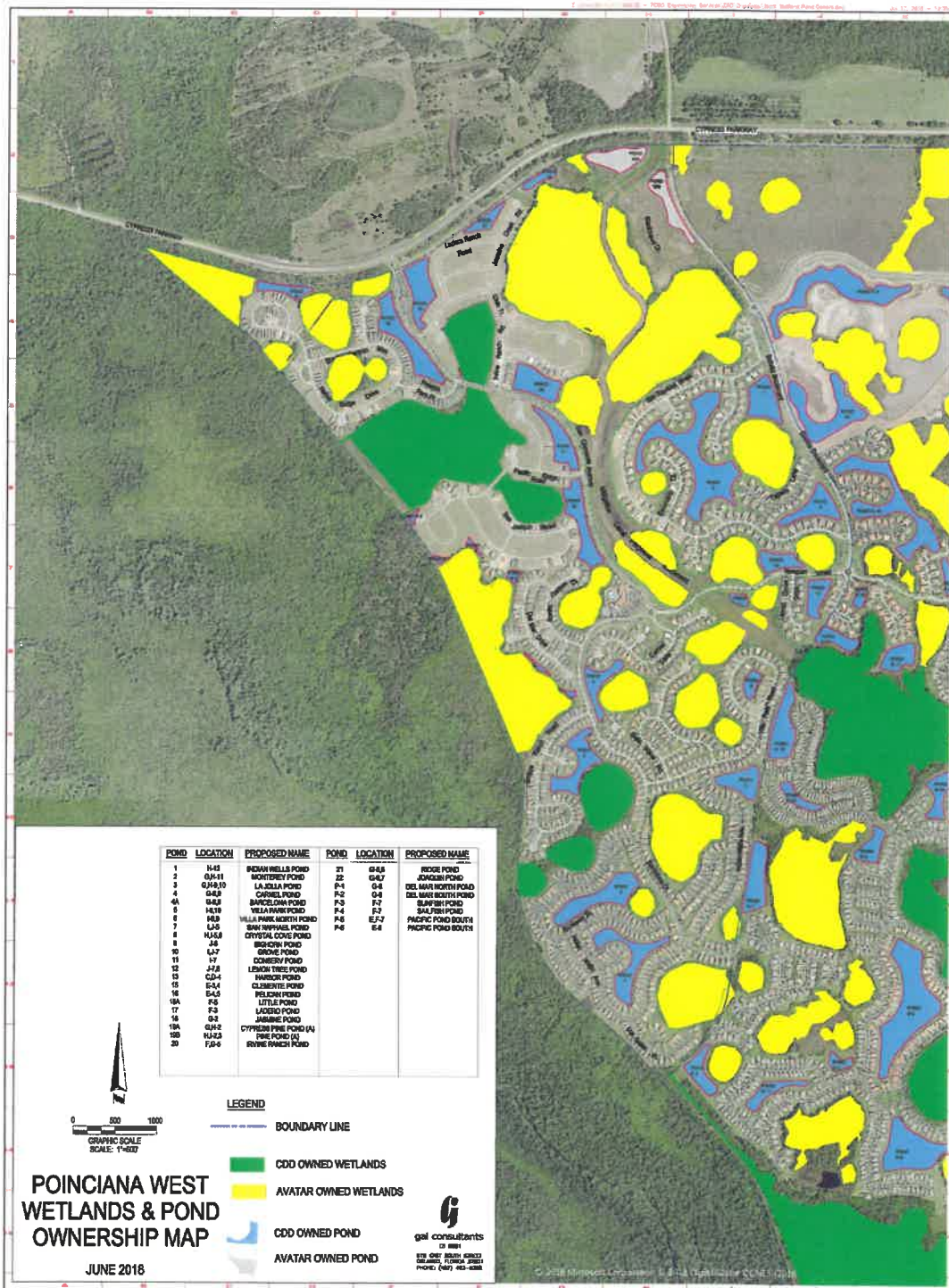
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Exhibit B

The following ponds, as identified on the attached map dated June 2018, are included within the scope of this agreement:

1, 2, 3, 4, 4A, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 16A, 17, 18, 20, 21, & 22.

Map of Ponds



SECTION 2

**AGREEMENT BETWEEN POINCIANA WEST COMMUNITY DEVELOPMENT
DISTRICT AND CLARKE ENVIRONMENTAL MOSQUITO MANAGEMENT, INC.
FOR THE PROVISION OF AQUATIC MIDGE CONTROL SERVICES**

This Agreement (the “Agreement”) is made and entered into as of the 1st day of October, 2018, by and between:

Poinciana West Community Development District, a local unit of special-purpose government established pursuant to Chapter 190, *Florida Statutes*, located in Polk County, Florida and whose mailing address is 135 West Central Boulevard, Suite 320, Orlando, Florida 32801 (the “District”); and

Clarke Environmental Mosquito Management, Inc., an Illinois corporation, whose local address is 3036 Michigan Avenue, Kissimmee, Florida 34744 (the “Contractor”).

RECITALS

WHEREAS, the District was established pursuant to Chapter 190, *Florida Statutes*, for the purpose of planning, financing, constructing, operating and/or maintaining certain infrastructure improvements and for providing certain services, including aquatic midge control services; and

WHEREAS, the District desires to retain an independent contractor to provide aquatic midge control services within the District, as more particularly shown on the attached **Exhibit A**; and

WHEREAS, the Contractor represents that it is qualified, willing and able to provide such services to the District; and

WHEREAS, the District and Contractor warrant and agree that they have all right, power and authority to enter into and be bound by this Agreement.

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

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

SECTION 2. DESCRIPTION OF WORK AND SERVICES.

- A.** The duties, obligations, and responsibilities of the Contractor are to provide the services, labor and materials necessary for the provision of aquatic midge control services within the District, as described herein and in **Exhibit B**, which is attached hereto and incorporated herein by reference (the “Services”).

- B. Contractor shall be solely responsible for the means, manner and methods by which its duties, obligations and responsibilities are met to the satisfaction of the District and in accordance with this Agreement. Contractor shall use industry best practices and procedures when carrying out the Services. Any additional compensation for additional services shall be paid only as negotiated between the parties and upon the written authorization of the District.
- C. This Agreement grants to Contractor the right to enter the lands that are subject to this Agreement, for those purposes described in this Agreement, and Contractor hereby agrees to comply with all applicable laws, rules, ordinances and regulations affecting the provision of the Services.
- D. The Contractor shall report directly to the District's Designee who shall be the District Manager. Contractor shall use all due care to protect the property of the District, its residents and landowners from damage and shall follow and be responsible for the Services set forth in **Exhibit B**. Contractor agrees to repair any damage resulting from Contractor's activities and work within twenty-four (24) hours.

SECTION 3. COMPENSATION; TERM.

- A. As compensation for the completion of the Services, the District agrees to pay the Contractor One Thousand Eight Hundred and Thirty-Three Dollars and Thirty-Three Cents (\$1,833.33) per month, which amount includes all tools, labor and materials necessary to complete the Services. The term of this Agreement shall be from October 1, 2018 through September 30, 2021, unless terminated earlier in accordance with the terms of this Agreement.
- B. If the District should desire additional work or services not provided in **Exhibit B**, the Contractor agrees to negotiate in good faith to undertake such additional work or services. Upon successful negotiations, the parties shall agree in writing to a work order, addendum, addenda, or change order to this Agreement as set forth in Section 4 herein.
- C. The District may require, as a condition precedent to making any payment to the Contractor that all subcontractors, material men, suppliers or laborers be paid and require evidence, in the form of Lien Releases or partial Waivers of Lien, to be submitted to the District by those subcontractors, material men, suppliers or laborers, and further require that the Contractor provide an Affidavit relating to the payment of said indebtedness. Further, the District shall have the right to require, as a condition precedent to making any payment, evidence from the Contractor, in a form satisfactory to the District, that any indebtedness of the Contractor, as to services to the District, has been paid and that the Contractor has met all of the obligations with regard to the withholding and payment of taxes, Social Security payments, Workmen's Compensation, Unemployment Compensation contributions, and similar payroll deductions from the wages of employees.

D. The Contractor shall maintain records conforming to usual accounting practices. Further, the Contractor agrees to render an invoice to the District, in writing, which shall be delivered or mailed to the District by the fifth (5th) day of the next succeeding month. This invoice is due and payable within forty-five (45) days of receipt by the District, or in accordance with Florida's Prompt Payment Act, whichever is sooner. The invoice shall include such supporting information as the District may reasonably require the Contractor to provide.

SECTION 4. CHANGE ORDERS. Contractor understands that the Services may be reduced, enlarged or otherwise modified in scope. If any additional Services are proposed beyond those identified in this Agreement, Contractor shall perform them but only after receiving a written change order from the District. Contractor shall cooperate with and assist the District in preparing and determining the scope of any change order. In the event the service represents a unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order in accordance with the unit prices established in the Agreement. In the event the service is not represented by a lump sum or unit price set forth in this Agreement, Contractor's compensation shall be adjusted for the added or deducted services proposed by the change order as reasonably determined by the District in conference with the Contractor.

SECTION 5. INSURANCE. Contractor shall, at its own expense, maintain insurance during the performance of the Services under this Agreement, with limits of liability not less than the following:

Workers Compensation	statutory
General Liability	
<i>Bodily Injury (including contractual)</i>	\$1,000,000
<i>Property Damage (including contractual)</i>	\$1,000,000
Automobile Liability (if applicable)	
<i>Bodily Injury and Property Damage</i>	\$1,000,000
Pollution Liability	\$1,000,000
Herbicide/Pesticide Applicators Coverage	\$1,000,000

Contractor shall provide the District with a certificate naming the District, its officers, agents and employees as an additional insured. At no time shall Contractor be without insurance in the above amounts. No policy may be canceled during the term of this Agreement without at least thirty (30) days written notice to the District. An insurance certificate evidencing compliance with this section shall be sent to the District prior to the commencement of any performance under this Agreement.

SECTION 6. INDEPENDENT CONTRACTOR. It is understood and agreed that at all times the relationship of Contractor and its employees, agents, subcontractors or anyone directly or

indirectly employed by Contractor to the District is the relationship of an independent contractor and not that of an employee, agent, joint venturer or partner of the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the District and Contractor or any of its employees, agents, subcontractors or anyone directly or indirectly employed by Contractor. The parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall hire and pay all of Contractor's employees, agents, subcontractors or anyone directly or indirectly employed by Contractor, all of whom shall be employees of Contractor and not employees of District and at all times entirely under Contractor's supervision, direction and control.

In particular, District will not: i) Withhold FICA (Social Security) from Contractor's payments; ii) Make state or federal unemployment insurance contributions on Contractor's behalf; iii) Withhold state or federal income tax from payment to Contractor; iv) Make disability insurance contributions on behalf of Contractor; or v) Obtain workers' compensation insurance on behalf of Contractor.

SECTION 7. COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS. The Contractor shall keep, observe, and perform all requirements of applicable local, State, and Federal laws, rules, regulations, or ordinances. If the Contractor fails to notify the District in writing within five (5) days of the receipt of any notice, order, required to comply notice, or a report of a violation or an alleged violation, made by any local, State, or Federal governmental body or agency or subdivision thereof with respect to the services being rendered under this Agreement or any action of the Contractor or any of its agents, servants, employees, or materialmen, or with respect to terms, wages, hours, conditions of employment, safety appliances, or any other requirements applicable to provision of services, or fails to comply with any requirement of such agency within five (5) days after receipt of any such notice, order, request to comply notice, or report of a violation or an alleged violation, the District may terminate this Agreement, such termination to be effective upon the giving of notice of termination.

SECTION 8. DEFAULT AND PROTECTION AGAINST THIRD PARTY INTERFERENCE. A default by either party under this Agreement shall entitle the other to all remedies available at law or in equity, which may include, but not be limited to, the right of actual damages and/or specific performance. The District shall be solely responsible for enforcing its rights under this Agreement against any interfering third party. Nothing contained in this Agreement shall limit or impair the District's right to protect its rights from interference by a third party to this Agreement.

SECTION 9. ENFORCEMENT OF AGREEMENT. In the event that either party is required to enforce this Agreement by court proceedings or otherwise, then the parties agree that the prevailing party shall be entitled to recover from the other all fees and costs incurred, including reasonable attorney's fees and costs for trial, alternative dispute resolution, or appellate proceedings.

SECTION 10. AMENDMENTS. Amendments to and waivers of the provisions contained in this Agreement may be made only by an instrument in writing which is executed by both the District and the Contractor.

SECTION 11. AUTHORIZATION. The execution of this Agreement has been duly authorized by the appropriate body or official of the District and the Contractor, both the District and the Contractor have complied with all the requirements of law, and both the District and the Contractor have full power and authority to comply with the terms and provisions of this instrument.

SECTION 12. NOTICES. All notices, requests, consents and other communications under this Agreement (“Notices”) shall be in writing and shall be delivered, mailed by First Class Mail, postage prepaid, or overnight delivery service, to the parties, as follows:

A. If to District: Poinciana West Community Development District
135 West Central Boulevard, Suite 320
Orlando, Florida 32801
Attn: District Manager

With a copy to: Hopping Green & Sams PA
119 South Monroe Street, Suite 300
Tallahassee, Florida 32301
Attn: Michael C. Eckert

B. If to Contractor: Clarke Environmental Mosquito Management, Inc.
3036 Michigan Avenue
Kissimmee, Florida 34744
Attn: Pete Deglomine

Except as otherwise provided in this Agreement, any Notice shall be deemed received only upon actual delivery at the address set forth above. Notices delivered after 5:00 p.m. (at the place of delivery) or on a non-business day, shall be deemed received on the next business day. If any time for giving Notice contained in this Agreement would otherwise expire on a non-business day, the Notice period shall be extended to the next succeeding business day. Saturdays, Sundays, and legal holidays recognized by the United States government shall not be regarded as business days. Counsel for the District and counsel for the Contractor may deliver Notice on behalf of the District and the Contractor. Any party or other person to whom Notices are to be sent or copied may notify the other parties and addressees of any change in name or address to which Notices shall be sent by providing the same on five (5) days written notice to the parties and addressees set forth herein.

SECTION 13. ARM’S LENGTH TRANSACTION. This Agreement has been negotiated fully between the District and the Contractor as an arm’s length transaction. Both parties participated fully in the preparation of this Agreement and received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties

are deemed to have drafted, chosen, and selected the language, and the doubtful language will not be interpreted or construed against either the District or the Contractor.

SECTION 14. THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of the District and the Contractor and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the District and the Contractor any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the District and the Contractor and their respective representatives, successors, and assigns.

SECTION 15. ASSIGNMENT. Neither the District nor the Contractor may assign this Agreement or any monies to become due hereunder without the prior written approval of the other.

SECTION 16. APPLICABLE LAW AND VENUE. This Agreement and the provisions contained herein shall be construed, interpreted and controlled according to the laws of the State of Florida. Each party consents that the venue for any litigation arising out of or related to this Agreement shall be in Polk County, Florida.

SECTION 17. INDEMNIFICATION.

- A. Contractor agrees to defend, indemnify, and hold harmless the District and its officers, agents, employees, successors, assigns, members, affiliates, or representatives from any and all liability, claims, actions, suits, liens, demands, costs, interest, expenses, damages, penalties, fines, judgments against the District, or loss or damage, whether monetary or otherwise, arising out of, wholly or in part by, or in connection with the Services to be performed by Contractor, its subcontractors, its employees and agents in connection with this Agreement, including litigation, mediation, arbitration, appellate, or settlement proceedings with respect thereto. Additionally, nothing in this Agreement requires Contractor to indemnify the District for the District's percentage of fault if the District is adjudged to be more than 50% at fault for any claims against the District and Contractor as jointly liable parties; however, Contractor shall indemnify the District for any and all percentage of fault attributable to Contractor for claims against the District, regardless whether the District is adjudged to be more or less than 50% at fault. Contractor further agrees that nothing herein shall constitute or be construed as a waiver of the District's limitations on liability contained in section 768.28, *Florida Statutes*, or other statute.
- B. Obligations under this section shall include the payment of all settlements, judgments, damages, liquidated damages, penalties, forfeitures, back pay awards, court costs, arbitration and/or mediation costs, litigation expenses, attorneys' fees, paralegal fees (incurred in court, out of court, on appeal, or in bankruptcy proceedings), any interest, expenses, damages, penalties, fines, or judgments against the District.

SECTION 18. LIMITATIONS ON GOVERNMENTAL LIABILITY. Nothing in this Agreement shall be deemed as a waiver of immunity or limits of liability of the District beyond any statutory limited waiver of immunity or limits of liability which may have been adopted by the Florida Legislature in Section 768.28, *Florida Statutes*, or other statute, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

SECTION 19. TERMINATION. The District agrees that the Contractor may terminate this Agreement for cause by providing thirty (30) days written notice of termination to the District; provided, however, that the District shall be provided a reasonable opportunity to cure any failure under this Agreement. The Contractor agrees that the District may terminate this Agreement immediately for cause by providing written notice of termination to the Contractor. The District shall provide thirty (30) days written notice of termination without cause. Upon any termination of this Agreement, the Contractor shall be entitled to payment for all Services rendered up until the effective termination of this Agreement, subject to whatever claims or off sets the District may have against the Contractor as the sole means of recovery for termination.

SECTION 20. OWNERSHIP OF DOCUMENTS. All rights in and title to all plans, drawings, specifications, ideas, concepts, designs, sketches, models, programs, software, creation, inventions, reports, or other tangible work product originally developed by Contractor pursuant to this Agreement shall be and remain the sole and exclusive property of the District when developed and shall be considered work for hire.

SECTION 21. COMPLIANCE WITH PUBLIC RECORDS LAWS. Contractor understands and agrees that all documents of any kind provided to the District in connection with this Agreement may be public records, and, accordingly, Contractor agrees to comply with all applicable provisions of Florida law in handling such records, including but not limited to Section 119.0701, *Florida Statutes*. Contractor acknowledges that the designated public records custodian for the District is **George Flint** ("Public Records Custodian"). Among other requirements and to the extent applicable by law, the Contractor shall 1) keep and maintain public records required by the District to perform the service; 2) upon request by the Public Records Custodian, provide the District with the requested public records or allow the records to be inspected or copied within a reasonable time period at a cost that does not exceed the cost provided in Chapter 119, *Florida Statutes*; 3) ensure that public records which are exempt or confidential, and exempt from public records disclosure requirements, are not disclosed except as authorized by law for the duration of the contract term and following the contract term if the Contractor does not transfer the records to the Public Records Custodian of the District; and 4) upon completion of the contract, transfer to the District, at no cost, all public records in Contractor's possession or, alternatively, keep, maintain and meet all applicable requirements for retaining public records pursuant to Florida laws. When such public records are transferred by the Contractor, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the District in a format that is compatible with Microsoft Word or Adobe PDF formats.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, *FLORIDA STATUTES*, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, GMS-CENTRAL FLORIDA, LLC, AT (407) 841-5524, GFLINT@GMSCFL.COM, OR 135 WEST CENTRAL BOULEVARD, SUITE 320, ORLANDO, FLORIDA 32801.

SECTION 22. SEVERABILITY. The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the validity or enforceability of the remaining portions of this Agreement, or any part of this Agreement not held to be invalid or unenforceable.

SECTION 23. HEADINGS FOR CONVENIENCE ONLY. The descriptive headings in this Agreement are for convenience only and shall not control nor affect the meaning or construction of any of the provisions of this Agreement.

SECTION 24. ENTIRE AGREEMENT. This instrument shall constitute the final and complete expression of the agreement between the parties relating to the subject matter of this Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

Attest:

**Poinciana West
Community Development District**

Secretary

Chairman, Board of Supervisors

Witness:

**Clarke Environmental Mosquito
Management, Inc.**

Signature of Witness

By: _____

Print Name

Print Name: _____

Title: _____

Exhibit A: Map of District Ponds

Exhibit B: Scope of Service

EXHIBIT A Map of District Ponds

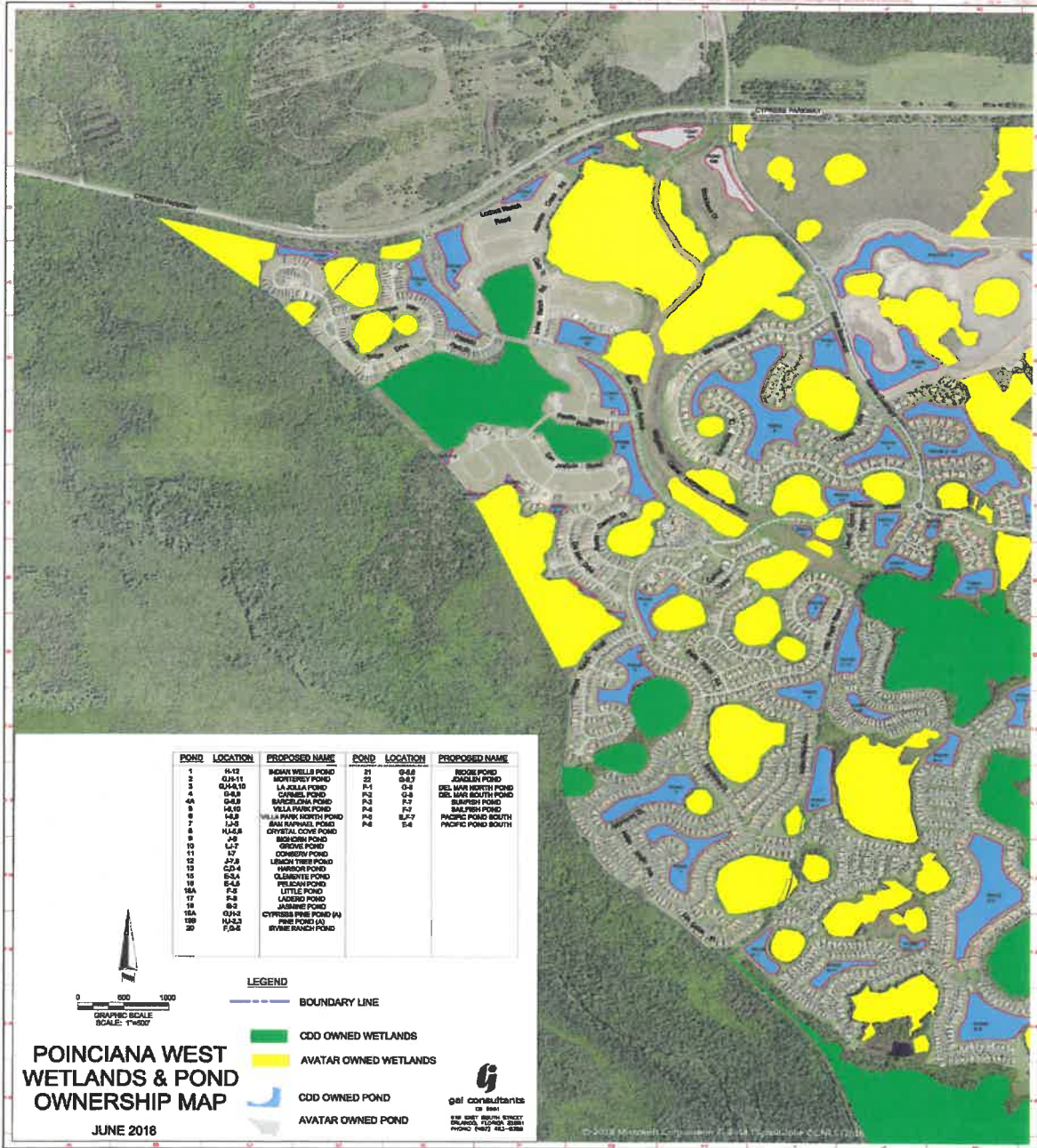


EXHIBIT B

Scope of Services

A. General Conditions:

- a. Contractor shall do the following:
 - i. Maintain a computer system and record keeping database;
 - ii. Provide educational brochures and public relations regarding aquatic midges to the residents of the District, if requested by the District;
 - iii. Make available an Aquatic Midge Citizen Response Hotline, which will be available to residents of the District; and
 - iv. Provide program consulting and quality control services.
- b. Service Guarantee. Contractor shall respond to and resolve all verbal or written concerns from the District's Board and the District's residents concerning program effectiveness.
- c. Attendance at Meetings. Upon request of the District, Contractor shall attend regularly scheduled District meetings.

B. Adult Aquatic Midge Management. Contractor shall perform at least forty (40) separate Ultra Low Volume ("ULV") applications each fiscal year. Each application will be an ULV application, which will utilize a community-wide truck that will spray Anvil/Biomist or synthetic pyrethroid insecticide covering up to three (3) miles of approved street/road areas within the District, and will utilize an ATV to provide treatments covering up to three (3) miles of shoreline areas at least including Ponds P-5, P-8 and P-9. Contractor shall be responsible for scheduling the ULV applications during the District's fiscal year to maximize the effectiveness of its aquatic midge control services. Upon request, Contractor shall also provide notification of community contact, weather limit monitoring and compliance, ULV particle size evaluation, and insecticide dosage and quality control analysis.

C. Boat / Backpack Blower Larval Control. Boat or backpack blower treatments will consist of treating the ponds and/or retention areas on the property, up to twenty-one (21) acres at least including Ponds P-5, P-8, and P-9. The ponds will be treated using 5% Abate pellets or Abate 4E liquid. The retention areas will be treated throughout the District's fiscal year when midge larvae are present, treatment is deemed necessary by standard observation methods, or in response to resident concerns. Abate pellets shall be the larvicide used and shall be applied at a rate of eight (8) pounds per acre or Abate 4E Liquid shall be applied at 1.5 ounces per acre. Contractor shall be responsible for scheduling the larval control treatments during the year to maximize the effectiveness of its aquatic midge control services.