



UNIVERSITY OF CENTRAL FLORIDA

**Board of Trustees
Finance and Facilities Committee Meeting
November 15, 2018
10:30 a.m.
FAIRWINDS Alumni Center
Conference call in phone number 800-442-5794, passcode 463796**

REVISED AGENDA

- | | |
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| I. CALL TO ORDER | Alex Martins
<i>Chair, Finance and Facilities Committee</i> |
| II. ROLL CALL | Tracy D. Slavik
<i>Coordinator of Administrative Services
for Administration and Finance Division</i> |
| III. MEETING MINUTES | |
| <ul style="list-style-type: none">• Approval of the September 27, 2018, October 5, 2018, and October 10, 2018, Finance and Facilities Committee meetings minutes | Chair Martins |
| IV. NEW BUSINESS | Chair Martins |
| <ul style="list-style-type: none">• UCF Downtown Campus Store Contract (FFC-1) | Kathy Mitchell
<i>Interim Chief Financial Officer</i>
Thad Seymour
<i>Vice President for Partnerships and Chief Innovation Officer</i>
Greg Robinson
<i>Assistant Vice President for Procurement Services</i> |
| <ul style="list-style-type: none">• Chilled Water Services Agreement for Sanford Burnham Prebys Building (FFC-2) | Misty Shepherd
<i>Interim Vice President for Administration and Finance</i> |

- | | |
|---|---|
| | Lee Kernek
<i>Associate Vice President for Administration and Finance</i> |
| • Temporary License and Construction Agreement for Rosen Campus (FFC-3) | Misty Shepherd
Jennifer Cerasa
<i>Associate General Counsel</i> |
| • L3 Building Lease (FFC-4) | Misty Shepherd
Jennifer Cerasa |
| • Sanford Burnham Prebys Building Name Designation (FFC-5) | Deborah C. German
<i>Vice President for Health Affairs and Dean of the UCF College of Medicine</i>
Jeanette C. Schreiber
<i>Senior Associate Vice President for Health Affairs and Chief Legal Officer for the UCF College of Medicine</i>
Misty Shepherd |
| • John C. Hitt Library Renovation and Expansion (FFC-6) | Misty Shepherd
Kathy Mitchell
Joel Hartman
<i>Vice President and Chief Information Officer</i> |
| • Student Union Renovation and Expansion (FFC-7) | Misty Shepherd
Kathy Mitchell
Rick Falco
<i>Director, Student Union</i>
Kevin Sowers
<i>Director, Business Services</i> |
| • CREOL Expansion (FFC-8) | Misty Shepherd
Kathy Mitchell |
| • Roth Athletics Center Shell Building Construction Costs (Phase I) (FFC-9) | Danny White
<i>Vice President and Director of Athletics</i>
David Hansen
<i>Executive Associate Athletics Director and Chief Operating Officer</i> |
| • L3 Building Purchase Loan (FFC-10) | Misty Shepherd
Jennifer Cerasa |

V. OTHER BUSINESS

Chair Martins

VI. CLOSING COMMENTS

Chair Martins



UNIVERSITY OF CENTRAL FLORIDA

Board of Trustees
Finance and Facilities Committee Meeting
FAIRWINDS Alumni Center
September 27, 2018

MINUTES

CALL TO ORDER

Trustee Alex Martins, chair of the Finance and Facilities Committee, called the meeting to order at 11:10 a.m. Committee members Joshua Bolona, Robert Garvy, John Lord, David Walsh, and Bill Yeargin were present. Committee member John Sprouls attended by teleconference. Trustees Ken Bradley, Danny Gaekwad, Beverly Seay, and William Self were present.

Chair Martins began by reinforcing his confidence that in light of the recent events surrounding the misuse of \$38 million in state funds for Trevor Colbourn Hall, the Finance and Facilities Committee performed all due diligence at the time any information concerning that project was brought to the committee and asked the right questions. He encouraged the committee to continue that diligence to continue to restore public trust and confidence in the university and also to provide guidance to the staff to ensure the university and the board are in compliance and are successful.

Moving forward, all Board of Trustees' committees' agendas will be created with input and approval of the committee chair before public posting. In addition, all committee meeting minutes will be reviewed and approved by the chair before public posting.

NEW BUSINESS

UCF Downtown Campus Store Award (FFC-1)

Kathy Mitchell, Interim Chief Financial Officer, Thad Seymour, Vice President for Partnerships and Chief Innovation Officer, and Greg Robinson, Assistant Vice President for Procurement Services, requested approval to proceed with the award to Barnes and Noble College for the operation and management of the UCF Downtown campus store, which will be located on the first floor of the UCF Downtown parking garage.

Year one of the contract is for planning, construction, and build-out of the approximately 9,000 square feet of white-box space provided by UCF to the campus store provider. The remaining 10 years are for the operation and management of the store. The contract will be for 11 years total, with two 10-year renewal options that must be mutually agreed upon by both UCF and the provider.

This award stems from a competitive procurement process (Invitation to Negotiate). The awarded contractor will design, build-out and finish, and operate the UCF Downtown Campus

Store. The store will provide retail space and a full-service café. This contract represents significant capital dollars (provided by the awarded contractor) to build-out and finish the space, revenue sharing through commissions, and flexibility for exploring, adopting, and delivering course materials.

UCF received proposals from Barnes and Noble College and Follett Higher Education Group. The evaluation team at UCF consisted of three Business Services employees, four Valencia College staff members, one UCF professor, one UCF student, and one UCF Downtown staff member. UCF Procurement Services and the evaluation team also worked with Tom Bryne of Campus Bookstore Consulting.

Seymour was the decision maker and recommended to the Finance and Facilities Committee that Barnes and Noble College be given the award based on its stronger financials, and he is confident it can build-out and finish the store within its \$700,000 capital investment budget. The team also appreciated that Barnes and Noble College showed innovation with a modern Amazon-like model for textbook ordering, along with other outside-of-the-box ideas for the store.

The commission schedule is tiered and based on revenue volumes with a \$250,000 minimum for the first year, and for years two through 10 of the contract, 95 percent of calculated sales commission of the immediately preceding year. Seymour projects \$2 million in commissions over the first five years, but this could be higher or lower.

Trustee Yeargin suggested the contract end date be prior to the Summer term to ensure a smooth transition to a new provider if need be before the rush of the Fall term. Robinson added for contracts of this size negotiations usually begin at least a year before the contract ends.

Trustee Garvy expressed his curiosity as to why only two companies bid. Robinson stated Barnes and Noble College and Follett Higher Education Group are the two primary companies in the college bookstore industry. Garvy also requested and received confirmation from Robinson that the contract complies with all state statutes and Board of Governors regulations.

Trustee Gaekwad requested that renderings of the space be included with the final contract.

Martins asked why the contract is 11 years in length. Seymour stated it is because of the substantial capital dollar investment by the provider, but he reiterated that UCF has termination clauses in the contract that protect the university. Martins also asked and received confirmation that customer service standards have been placed in the contract, and the provider will be held accountable if those are not met.

The full contract will be brought to the board for approval at a later date.

The committee unanimously approved the request to proceed with the award to Barnes and Noble College for the operation and management of the UCF Downtown campus store.

Concessions Award (FFC-4)

Mitchell, Robinson, and Ronnie Korosec, Associate Provost and Chief of Staff for Academic Affairs, requested approval to proceed with the award to Spectra Food Services and Hospitality to provide concession services at the CFE Arena and the Venue.

A competitive procurement process (Invitation to Negotiate) was recently completed. This award will include capital dollars (provided by the awarded contractor) to improve concession spaces at the CFE Arena while also offering substantial revenue sharing through commissions. No UCF funds will be used for the facility improvements.

The award will be for five years with the option for one five-year renewal that must be mutually agreed upon by UCF and the provider.

UCF received proposals from Spectra Food Services and Hospitality and Valley Services. The evaluation committee at UCF consisted of Trustee Seay, former Trustee David Albertson, Chief Audit Executive Robert Taft, Associate General Counsel Sherry Andrews, and Assistant Controller Albert Francis. Robinson emphasized these individuals have strong business acumen. The committee also received guidance from John Pittman, Associate Vice President for Debt and Revenue Management.

Korosec was the decision maker and recommended to the Finance and Facilities Committee the award be given to Spectra Food Services and Hospitality. She detailed the robust six-prong approach used by the evaluation committee that included an evaluation rubric, reference checks, and an in-person tasting by each potential vendor that included requests from the committee for gluten-free items along with the foods people usually eat at events such as beef and seafood.

Spectra will provide a tiered commission schedule, with 36 percent of gross for sales under \$750,000 and 40 percent of gross for sales over \$750,000. Martins and Marchena noted it might be futile for future contracts to lower the commission amount to receive lower prices and higher levels of customer service.

Spectra also will provide a capital investment of \$125,000 for the CFE Arena facility, \$125,000 for technology in the arena, and \$40,000 for a refresh in year six if the contract is renewed. The Convocation Corporation and the contractor will mutually decide exactly how the money will be spent, and the Convocation Corporation and the contractor also will mutually decide upon the pricing for menu items.

Martins asked about customer service standards. Ronnie Lamkin, General Manager for the Convocation Corporation, detailed the options available for patrons to provide feedback including a customer service phone number and e-mail. QR code scanners also are onsite in the arena that take patrons directly to the survey. In addition, Lamkin and his team perform onsite inspections during operations and during off hours.

Garvy inquired as to why only two companies bid, and Robinson stated this is likely because of the smaller scope of the contract and the Spectrum Stadium concessions not being included.

Gaekwad requested that in the future the evaluation committee for any contract pertaining to food service include individuals with restaurant and hospitality management experience. He also detailed his recent experience at a concert at the arena and expressed concern over the vendor not having hot water for tea and the \$4 price for bottled water.

Walsh suggested including performance-based metrics in the final contract, and Martins concurred. Martins will work with Robinson to develop key performance indicators.

Walsh also asked about termination clauses. Robinson said if UCF terminates for cause, the university does not have to return any of the capital investment dollars. If the termination is not for cause, the university would have to reimburse the vendor the appropriate portion of the capital investment dollars. In either case, however, the fixtures remain the property of UCF.

The full contract will be brought back to the board at a later date with the key performance indicators included.

Martins also requested moving forward that for any contract the item cover page in the committee and full board meeting materials contain a “this conforms to all state statutes and Board of Governors regulations” statement.

The committee unanimously approved the request to proceed with the award to provide concessions at the CFE Arena and the Venue, with Trustee Sprouls recusing himself because of potential conflict of interest.

Puerto Rico Tuition Waiver Extension (FFC-2)

Maribeth Ehasz, Vice President for Student Development and Enrollment Services, requested approval to extend granting in-state tuition rates for students from Puerto Rico and the Virgin Islands who were impacted by Hurricane Maria.

In response to Hurricane Maria in September 2017, the Board of Trustees voted unanimously to waive out-of-state fees and charge in-state tuition beginning in Spring 2018, through Spring 2019, for students from Puerto Rico and the Virgin Islands. Ehasz requested that this waiver be extended through Summer 2023 for students affected by the storm who meet one of the following criteria: are currently enrolled at UCF, are currently enrolled in a Florida state college, or are new students admitted in Spring 2019 to UCF or any Florida state college.

Students who meet the above criteria can continue to receive in-state tuition rates through Summer 2023 as long as they remain continuously enrolled.

The waiver has been granted to 244 students (a question asked by Trustee Lord). Trustee Self asked if UCF has lost money because of the waiver. Ehasz stated yes, but UCF received \$2 million in federal replacement funds to help offset the loss of revenue.

The committee unanimously approved the request to extend granting in-state tuition rates for students from Puerto Rico and the Virgin Islands who were impacted by Hurricane Maria.

Capital Projects Approval Policy (FFC-3)

Scott Cole, Vice President and General Counsel, requested approval for a policy requiring a written certification to be presented to the Finance and Facilities Committee and Board of Trustees as to the source of funds for any capital project exceeding \$2 million.

Effective September 6, 2018, the University President, Vice President submitting the item, Chief Financial Officer, and General Counsel, must submit a completed Capital Projects Funding

Certification Form identifying the source of funds for all capital projects exceeding \$2 million to the Finance and Facilities Committee and Board of Trustees for approval.

Trustee Walsh stated this might not be the only control feature put in place for capital projects, and Chairman Marchena added he fully expects other steps will be made.

Walsh also recommended exploring what changes need to be made to the UCF Five-year Capital Improvement Plan, and Martins said a review of the UCF Five-year Capital Improvement Plan will be placed on a future Finance and Facilities Committee meeting agenda.

Martins asked Cole for and received confirmation this policy and certification will appease the Board of Governors.

The committee unanimously approved the new policy and the Capital Projects Certification Form as submitted.

Chair Martins adjourned the Finance and Facilities Committee meeting at 12:17 p.m.

Reviewed by:

Alex Martins	Date
Chair, Finance and Facilities Committee	

Respectfully submitted :

Grant Heston	Date
Associate Corporate Secretary	



UNIVERSITY OF CENTRAL FLORIDA

Board of Trustees
Finance and Facilities Committee Meeting
President's Boardroom, Millican Hall, 3rd Floor
October 5, 2018

MINUTES

CALL TO ORDER

Trustee Alex Martins, chair of the Finance and Facilities Committee, called the meeting to order at 9:02 a.m. Committee member David Walsh was present. Committee members Josh Bolona, John Lord, John Sprouls, and Robert Garvy attended by teleconference. Trustee Beverly Seay was present. Chairman Marcos Marchena was present.

Chair Martins began by stating staff realized after conducting research and searching records related to the UCF Downtown construction that, while these projects were presented to the board for information purposes, they were never brought to the board for individual approval based on the delegation of authority provisions that had been approved by the board.

NEW BUSINESS

UCF Downtown Project Overview (INFO-1)

Kathy Mitchell, Interim Chief Financial Officer, Thad Seymour, Vice President for Partnerships and Chief Innovation Officer, and Misty Shepherd, Interim Vice President for Administration and Finance, shared an overview of the UCF Downtown projects. The board was well informed through many presentations and discussions. However, when the projects were revisited, staff realized they were missing specific approval and had been discussed as information items only.

The parking garage approval was deemed urgent, as even an approval the previous Friday (September 28) would still have the garage open one week after classes are scheduled to begin. The contractor hopes to honor that date with an approval at today's meetings.

Previously, the Five-year Capital Improvement Plan and the Capital Outlay Budget were used as informal approval. Moving forward, however, each project will be presented individually, and the board will approve not only the projects but the funding sources in order to build trust and transparency.

Mitchell noted these projects had begun well before the current Delegation of Authority guidelines were approved on October 26, 2017. Those guidelines state that the use of university funds for capital improvement projects exceeding two million dollars in construction costs and all changes to such projects that increase project costs by more than 10 percent of the original estimate require specific approval of the board.

The \$14.6 million for the UCF Downtown Parking Garage is being paid in cash, by directive of the Division of Bond Finance.

The rest of the downtown projects are being paid from a central university resources account.

The funding for this account consists of:

- Auxiliary overhead that the university charges to all auxiliary services is 11 percent. The top 3 percent of that is dedicated to university-wide projects. \$9 million
- Auxiliary late fees \$12.1 million
- Non-E&G interest earnings \$30.2 million
- Student Development and Enrollment Services housing reserves \$2.7 million
- PECO funding \$20 million
- UCF Foundation \$20 million
 - Agreed to raise an additional \$6 million

Trustee Seay asked if the central university resources account contains E&G dollars. Mitchell stated no.

Trustee Walsh stated that he appreciated the process as open and transparent. He also stated that he believes the Finance and Facilities Committee always reviewed large projects, but perhaps the threshold for which large projects were to be brought forward individually for approval was never clearly defined.

Chair Martins stated the Finance and Facilities Committee approval of the Five-year Capital Improvement Plan and Capital Outlay Budgets was not the individual approval of the specific projects, but rather approval to add those projects to the Five-year Capital Improvement Plan and Capital Outlay Budget for submission of those lists to the Board of Governors. Chairman Marchena said with the clear Delegation of Authority guidelines now in place, any confusion regarding this will not happen again.

Mitchell said they are learning about the level of detail the board would like to see and agreed to include a greater level of specificity on the Capital Projects Funding Certification Form. Chair Martins and Chairman Marchena requested a deeper level of specificity on completed forms that includes the specific bucket of funds.

Mitchell also stated one journal entry corrected the issue with the funds for Trevor Colbourn Hall.

Mitchell added all sources of funds in the central university resources account can be used for any university project and are not tied to any particular one. President Whittaker added the account sources are verified against their uses for all projects, and verification of sources for the money in the account occurs, as well.

Chairman Marchena (answering a question posed by Trustee Walsh) said while the overall downtown campus was approved by the Board of Trustees, and extensive subsequent discussions were held regarding the parking garage and other individual components, the assumption was that because the board gave approval for the campus, that meant they also gave approval for the

individual projects, as well. However, now all bases are being covered, and the individual projects for UCF Downtown are receiving separate board approval and certification of funding.

President Whittaker noted the current Delegation of Authority guidelines were not in place when the original UCF Downtown campus was approved.

Chairman Marchena confirmed that the Board of Governors approved the establishment of a new campus and their support of the state of Florida funding \$20 million toward the campus. No additional BOG approval was necessary. Any remaining approvals come from the university Board of Trustees.

Today's meeting is for the approval of the individual UCF Downtown projects at the Board of Trustees' level.

Dr. Phillips Academic Commons at UCF Downtown (FFC-1)

Shepherd and Seymour requested the approval of \$66.38 million toward the design, construction, and furnishing of the 148,000-square-foot Dr. Phillips Academic Commons at UCF Downtown.

Seymour shared the project is well underway with the final beams being put in place, but more work remains to be done prior to the building completion.

A motion was made by Trustee Garvy and seconded by Trustee Sprouls.

Trustee Walsh asked why the project is now \$4.5 million over the original projection. Seymour stated the project is operating in a construction environment where inflation is averaging over 1 percent a month, and while pricing was locked in for some projects, this was not an option for all. Additionally, they have already exhausted both the contractor and owner contingency.

Chair Martins asked that at the conclusion of these projects, the board receive a report on the project's completion as an information item.

Trustee Walsh asked that the forensic audit being done surrounding the Trevor Colbourn Hall financing be expanded to include other large projects that need board approval. He also asked if approval on the items being presented at today's meeting could be delayed until after this review.

Seymour responded this would prevent the parking garage, which includes the bookstore, and the renovations to the Center for Emerging Media being completed in time for the campus opening.

Chairman Marchena stated the investigation is into the use of incorrect funds for projects, not into the Board's approval of projects. Today's meeting is a formality for the contracts to have the blessing of the committee and the board, even though they have previously been fully discussed. Staff is identifying issues where things are not perfect and is working to make them perfect, unrelated to what the law firm is investigating. There is no question in this case whether the funds are appropriate or not.

Trustee Walsh stated he thought we should potentially expand the scope of the investigation to capture other projects like these. Scott Cole, Vice President and General Counsel, stated the university needs the legal authority of a governing board to continue to spend on these projects, so we cannot delay the approval.

Mitchell stated that the Board of Governors has asked for a 10-year lookback be provided to them by October 19, 2018. She thinks their work related to this review will provide the scope requested by Trustee Walsh. This report also will be provided to Bryan Cave.

Vice Chair Garvy asked that the committee move ahead with the motion for the Dr. Phillips Academic Commons at UCF Downtown and discuss the expansion of the investigation under a different cover.

The committee unanimously approved \$66.38 million toward the design, construction, and furnishing of the 148,000 square-foot Dr. Phillips Academic Commons at UCF Downtown.

Center for Emerging Media at UCF Downtown (FFC-2)

Seymour and Shepherd presented for approval a request for \$5.75 million for the design, renovation, and furnishing of the Center for Emerging Media at UCF Downtown. Seymour stated they are experiencing financial pressure because of higher than estimated technology costs. They do not have a final guaranteed maximum price (GMP) contract in place yet and thus have been conservative with the \$5.75 million figure. While it is only a projected figure, he said staff will do their best to come in under that amount.

Chairman Marchena asked for the source of funds, and Shepherd confirmed it is non-E&G interest earnings.

A motion was made by Trustee Lord and seconded by Trustee Walsh.

Trustee Walsh asked if the UCF Downtown team has looked at the academic programming for the facilities and how the spaces will be optimized for a mix of online and traditional classes for both traditional and non-traditional students. Seymour stated they had reexamined plans and updated those based on new data. He believes they have hit the mark, but only time will tell. The team also has explored ways to create efficient office space, such as using offices that are smaller than the main campus but better designed, as well as creating more “hoteling” spaces for shared use by those who aren’t permanently working at the UCF Downtown campus.

Trustee Walsh also asked if they had requirements for in-person usage for those who have spaces (such as offices or classrooms). Seymour said they have asked those questions as part of the design. He shared they have focused on having consistency of furniture so items can be moved around, and UCF Downtown also will be centrally scheduling space (as opposed to individual departments or colleges) in order to drive efficiency of classrooms and conference room space.

The committee approved the use of \$5.75 million toward the design, renovation, and furnishing of the Center for Emerging Media at UCF Downtown, with Chair Martins, Vice Chair Garvy, Trustee Bolona, Trustee Lord, and Trustee Sprouls voting to approve. Trustee Walsh opposed.

Parking Garage at UCF Downtown (FFC-3)

Seymour and Shepherd presented for approval a request for \$14.62 million toward the design and construction of a 580-space parking garage at UCF Downtown, including 25,000 square feet

of space to support the university store, campus services, and facilities operations. Seymour reiterated as Mitchell said earlier in the meeting, this is the most time sensitive of the items being presented.

Shepherd confirmed that the funding sources were Parking and Transportation Services and Business Services reserves, in addition to non-E&G interest earnings.

A motion was made by Trustee Garvy and seconded by Trustee Lord.

Trustee Walsh asked if the Board of Governors supports the ability to use self-generated funds. Shepherd stated the auxiliary service funds are kept within the units where they are generated for their specific uses, such as building parking garages.

Vice Chair Garvy asked for confirmation that the materials in the packet contain signed documents by the acting Chief Financial Officer and General Counsel verifying that the funds being discussed for approval for this building have been appropriately reviewed and presented to the trustees in accordance with the altered approval process and in accordance with all oversight regulations. Chair Martins confirmed.

Trustee Walsh again requested that the board approve an objective and expanded review of all projects, in an abundance of caution. Chair Martins responded that this discussion would be added to the agenda for the next Finance and Facilities Committee meeting on October 10. Chairman Marchena added even if the committee makes that recommendation, it would ultimately be a decision for the full board.

President Whittaker added they commit to timely sequencing and presentation for each of these projects. The only reason they asked for this special meeting was because of the urgency of two of the pieces that require moving forward immediately. Otherwise, they would have been held for the normal process and normal governance of the Finance and Facilities Committee, were it not for this urgency.

Chair Martins said this was understood and clearly outlined in briefings by the staff, particularly because the parking garage needs to be approved by Monday (October 8).

The committee unanimously approved \$14.62 million toward the design and construction of a 580-space parking garage at UCF Downtown, including 25,000 square feet of ground floor “white-box” space to support the university store, campus services, and facilities operations.

Infrastructure for UCF Downtown (FFC-4)

Seymour and Shepherd presented for approval a request for \$9.8 million toward the design and construction of campus infrastructure, including civil, utilities, hardscape and landscape for the new campus.

Seymour stated these items had not previously been included on the Five-year Capital Improvement Plan or the Capital Outlay Budget but are essential to opening the campus.

The work that is associated with this project includes constructing and connecting the exterior utilities, which include potable water, fire main, sanitary sewer, storm water attenuation, and water quality, electrical, data/fiber/communications, chilled water distribution, and return. In

addition, it includes exterior signage, hardscape, and landscape serving this initial phase of the campus.

They do not have a final GMP contract and are conservatively estimating \$9.8 million. Shepherd confirmed that the funding sources were non-E&G interest earnings.

A motion was made by Trustee Boloña and seconded by Trustee Lord. The committee unanimously approved \$9.8 million toward the design and construction of the campus infrastructure to support UCF Downtown, including civil, utilities, hardscape and landscape for the new campus.

OTHER BUSINESS

Five-year Capital Improvement Plan Review

Trustee Walsh asked if the Five-year Capital Improvement Plan list should be updated now. Mitchell responded the plan is currently being reviewed by the Facilities Budget Committee and then the University Budget Committee, who will generate the next list.

Walsh asked if the list needs to be reviewed now by the trustees prior to the Facilities Budget Committee and University Budget Committee.

Mitchell and Chair Martins stated the plan will be brought to the Finance and Facilities Committee as it normally does after review by the Facilities Budget Committee and University Budget Committee. Chairman Marchena said a decision can be made at that time whether the Finance and Facilities Committee wants to make modifications.

Trustee Walsh expressed concern at that being five or six months away, but Chairman Marchena stated the board will not be approving projects in that time they do not want to approve.

Chair Martins and Chairman Marchena confirmed the projects presented today, with the exception of the UCF Downtown infrastructure, are on the current Five-year Capital Improvement Plan.

President Whittaker said the only item to be presented from the PECO list to the Board of Governors will be the renovation of Engineering I on October 14.

Trustee Walsh said the opportunity has presented itself to reduce the list by \$38 to \$40 million. Chair Martins asked Trustee Walsh if he agreed to let the Five-year Capital Improvement Plan go through its normal review process by the internal committees and then try to expedite it coming before the Finance and Facilities Committee. Walsh agreed.

Chair Martins adjourned the Finance and Facilities Committee meeting at 9:52 a.m.

Reviewed by:

Alex Martins

Chair, Finance and Facilities Committee

Date

Respectfully submitted :

Grant Heston
Associate Corporate Secretary

Date



UNIVERSITY OF CENTRAL FLORIDA

Board of Trustees
Finance and Facilities Committee Meeting
President's Boardroom, Millican Hall, 3rd Floor
October 10, 2018

MINUTES

CALL TO ORDER

Trustee Alex Martins, chair of the Finance and Facilities Committee, called the meeting to order at 8:32 a.m. Committee members Joshua Bolona and David Walsh were present. Committee members John Lord and Robert Garvy attended by teleconference. Chairman Marcos Marchena was present. Trustee Beverly Seay attended by teleconference.

NEW BUSINESS

Nicholson School of Communication Building Name Change (FFC-1)

Robert Littlefield, Director of the Nicholson School of Communication and Media, requested Board of Trustees approval to change the name of the Nicholson School of Communication building to the Nicholson School of Communication and Media building. On July 1, 2018, the Nicholson School of Communication became a new interdisciplinary, intercollegiate school, the Nicholson School of Communication and Media. The building now needs to display the proper name.

Trustee Lord made a motion to approve, and Trustee Walsh seconded. The committee unanimously approved the request.

Bryan Cave Investigation Expansion (FFC-2)

At the request of Trustee Walsh, it was requested the committee consider recommending to the full Board of Trustees the expansion of the Bryan Cave investigation to include a three-year review for possible capital projects that did not receive necessary committee and board approvals.

Trustee Walsh made a motion to approve, and Chairman Marchena seconded in order to proceed with discussion.

Trustee Seay said three investigations are ongoing—the Board of Governors, the Florida House, and Bryan Cave. All of the requests for information are slowing down the investigations, and she believes staff is currently covering the motion. In addition, she does not believe expanding the scope of the investigation will improve processes. Rather, it would only continue to slow down the investigation to address the concerns with Trevor Colbourn Hall.

Vice Chair Garvy said he has similar concerns, and asked how this request is this different from what is already being investigated. Scott Cole, Vice President and General Counsel, said this is what staff is investigating for the Board of Governors' requested 10-year lookback, but Chairman Marchena clarified what Bryan Cave is investigating is if projects were done utilizing wrong funds. What Trustee Walsh is asking to check for is projects that potentially never received formal approval by the Finance and Facilities Committee and Board of Trustees for the contracts to proceed based on the delegated authority. Chairman Marchena suggested letting General Counsel and staff continue their current investigation topics to keep the investigation clear and focused and finished on time.

Trustee Walsh said the thought process was generated by the emergency meeting just last week to review Downtown projects the staff felt were not approved. Given the origin of that concern came from the current investigation and set of circumstances, it is a logical and easy conclusion that an objective review of the facts surrounding any other project, as we go forward with the state, legislature, Board of Governors, and other reviews, be included so the Bryan Cave investigation is as thorough, complete, objective, and comprehensive as possible.

He continued his request is consistent with what the study is about, and he struggles to think it would add much time. He also cited the past confusion regarding projects being on the Five-year Capital Improvement Plan erroneously meaning those specific projects had committee and board approvals.

Kathy Mitchell, Interim Chief Financial Officer, added that if any contract is found to have not received appropriate approvals, it will be brought to the committee and the board.

Chair Martins said he understands the request, but it was the work of the staff, not the investigation, that uncovered the contracts that were brought back to the committee and the board at the October 5 Finance and Facilities Committee and Board of Trustees meetings. He also is concerned about Trustee Seay's worry about the pace of the investigation. He is confident the staff will uncover and bring to the board additional contracts if indeed any are found. Bryan Cave also can perform additional work later if contracts are found that were not approved. Chair Martins expressed concerned about slowing down the investigation and it not being completed on time. Based on what he has heard, expanding the investigation would bog it down.

Trustee Walsh voted for approval of expanding the Bryan Cave investigation. Chairman Marchena, Chair Martins, Vice Chair Garvy, Trustee Bolona, and Trustee Lord opposed. The motion did not carry.

Chairman Marchena asked what staff was hearing from the Board of Governors. Cole said there is a lot of confusion among all the state universities as to what standards were for use of E&G funds for capital projects. There is a lack of written guidance, with universities relying on verbal direction from board staff. The Board of Governors is going to clarify what they believe those standards are, including down to the level of defining what is a capital project. That is expected shortly from the Board of Governors so everyone is on the same page.

Mitchell added there was even confusion as to what the Board of Governors was requesting from the universities, so they are looking at extending the original October 19 deadline to the end of the month.

Chairman Marchena said he was confused because they had asked for a 10-year lookback, but then the report was given to the trustees with the additional projects, and he thought the rule had only gone into effect five years ago. He was trying to figure out what we were looking for in the proceeding five years if the rule was not in effect.

Mitchell said the BOG regulation for the use of operating capital outlay was strengthened and clarified in 2013, specifically to state what operating capital may be used for.

Chairman Marchena asked if there were a definition of capital projects and appropriate use of funds for the various types of projects before 2013 that might have been less clear. Mitchell said that was possible, but if it was there they have not found it. For example, one statute refers to a \$1 million capital threshold and another statute states \$2 million, but they do not specifically define a capital project.

President Whittaker reiterated our commitment to the trustees is we are operating under the 2017 Delegation of Authority guidelines, which have more clarity and are more restrictive than the Board of Governors' guidelines. Then, when we implemented the process for certifying the sources of funds that took it to a higher standard that is now being looked at across the state. What we did in the emergency meeting, with the exception of one project that had not been previously discussed for approval, was retroactively implement our own source of funds certification. We should be in good shape for everything that is operating, especially since that 2017 delegation here at UCF, and we will continue to commit to that and bring anything forward that is underway or needs further approval.

Vice Chair Garvy asked if our lookback beyond five years might find projects that involved E&G funds, but then we will not know whether or not it was inappropriate because of the confusion regarding the Board of Governors' regulations. Mitchell said that was correct.

Chairman Marchena said it was like a video replay, where somebody will end up making a decision as to what the rule meant. He and Mitchell said we will then follow that guidance.

Vice Chair Garvy further asked should the Board of Governors clarify before we go through the time and expense and distraction of our primary mission, and would it be advisable to take direction from the Board of Governors on extending the investigation. Marchena said he does not want to slow down the current investigation, and for the staff to assume that we knew what the rule said.

Vice Chair Garvy added prior to 2013, there might be significant questions throughout the state university system about whether or not the use of E&G funds for capital projects was even disallowed.

Trustee Walsh commented the use of E&G funds might have been per say periodically approved, and the actions we have taken at recent board meetings might not have been necessary. Chairman Marchena said the actions taken last week needed to occur, and those contracts needed to be approved. President Whittaker confirmed and said it was to operate under our Delegation of Authority guidelines. It could be we are operating under higher standards right now.

Mitchell said there is a good chance we overcorrected. Chairman Marchena said he would rather err on the side of overcorrecting than be found to have continued to be in noncompliance. We

will always, once the investigation is over and the clarification comes from the Board of Governors, have the ability to make adjustments if deemed appropriate. He is much more comfortable in the place we are today than where we would have been had we not taken the actions from a few weeks ago.

Direct Support Organizations' 2017-18 Fourth-Quarter Financial Reports (INFO-1)

Mitchell and John Pittman, Associate Vice President for Debt and Revenue Management, presented as an information item the fourth-quarter reports for the university direct support organizations. Vice Chair Garvy commended the UCF Athletics Association and the UCF Convocation Corporation for their increases in operations funds and revenues.

He also asked why UCF Limbitless Solutions had no sponsorship and naming rights revenues. Albert Manero, President of UCF Limbitless Solutions, explained this is because sponsorship contracts were signed after the fourth quarter ended and thus were not reflected in the report. They also are working with the UCF Foundation and the Knights Partnership Alliance for naming rights opportunities. Jones added they actually received the same amount of funds as projected in their budget from sponsorships and naming rights but from other sources.

Vice Chair Garvy also asked the Central Florida Clinical Practice Organization to comment on their total revenue being above last year yet still below projections. He wondered if they are still in line with expectations and if budgets should be adjusted. Steve Omli, Assistant Dean of Medical School Finances, explained actuals are lower than budget because those fiscal years included a hiring plan for clinical faculty, but there was a lag in hiring those faculty. This caused the revenues to never meet the budget. The current budget is more conservative in revenue projections, and they did not make the same assumptions about hiring faculty. Their revenue projections are in line with what they expect going forward. He added the clinical practice is growing, so they expect revenues to continue to grow, as well.

University and Direct Support Organization Debt Report (INFO-2)

Mitchell and Pittman presented as an information item the University and Direct Support Organization Debt Report. Chairman Marchena asked if the Fifth Third line of credit for the UCF Athletics Association still had a rest period at the end of the year. Brad Stricklin, Senior Associate Athletics Director and Chief Financial Officer, confirmed.

UCF Investments Quarterly Report Ended June 30, 2018 (INFO-3)

Mitchell and Tracy Clark, Associate Provost for Budget, Planning, and Administration and Associate Vice President for Finance, presented as an information item the UCF Investments Quarterly Report for the quarter that ended June 30, 2018.

Clark noted the portfolio had good gains in the second quarter and had risen to a 15.51 percent equity position. That number was 10 percent when they started the investment portfolio in 2010. She proposed rebalancing Pools III and IV, as the university investment policy mandates rebalancing if outside 5 percent of the target range.

Chairman Marchena asked if rebalancing occurs quarterly, and Clark said no, it is only when the numbers are outside of range. It is not a continuous process. She said for this rebalancing they will be moving \$10.4 million from equity to fixed income.

Chairman Marchena also asked about the current status of the investment portfolio, as the report only reflects activity up to June 30. Dave West, the assigned &Co (the investment company) UCF investment advisor, said they have reviewed the current status and rebalancing is still required. Clark added cash is constantly flowing in and out, and the investments are fluid, so they must just select a point in time and perform the rebalancing.

Chairman Marchena asked if there is a set time of year to look at rebalancing, and Clark responded they review quarterly, but they also have a range of 10 to 12 percent to allow for fluctuations.

Chairman Marchena proposed having a presentation by Finance and Accounting and the &Co team to explain the structure and content of the investment pools. This will be added to the agenda of a future Finance and Facilities Committee meeting.

Chair Martins asked if the investments are further exceeding the target equity allocation since the June 30 date of the report, and West confirmed.

Vice Chair Garvy stated rebalancing a portfolio is a positive as long as there is a tendency to reversion to the mean. UCF has earned \$80 million in gross earnings on the portfolio, but we are in the longest bull market in history. Eventually the economy will go from this high point to a period of distress, and we must be prepared for volatility. We have disciplined methodology and guidelines in place. He expects more deviation moving forward, so the presentation to the committee would be useful.

West informed the committee &Co went to the treasury for site visits as part of their due diligence with SPIA oversight and have positive findings. He trusts the current policies and procedures in place, and SPIA contains reasonable liquidity prospects for UCF investments in that fund.

Clark added SPIA functions much like a checking account, with funds being added and withdrawn (as an example, state appropriations go into SPIA) daily. It produces approximately a 1.6 percent yield.

Trustee Walsh asked if we have excess money in reserves that could be used toward improving undergraduate education. Clark and Chairman Marchena emphasized the investment pools are not reserves, and commitments are in place for those funds, such as the new faculty start-up packages. Chairman Marchena stated the actual reserve, required by the state, is 5 percent, but the university keeps slightly more than that to allow for future expenses.

Trustee Walsh then asked if any funds are available that could be used for improving undergraduate education, such as the College of Business' need for \$2 million. President Whittaker said he would rather discuss that with Trustee Walsh offline, as he is not convinced the College of Business is underfunded. President Whittaker added a plan is in place for the coming months to review funding.

2019 Finance and Facilities Committee Meeting Dates (INFO-4)

Chair Martins presented the 2019 Finance and Facilities Committee meeting dates and instructed the committee members to add the dates to their calendars. Meetings are scheduled for February 20, April 17, May 16, June 19, August 14, October 16, and December 11.

OTHER BUSINESS

Make Good Process Recommendation

Trustee Walsh proposed going forward the staff consider implementing a make good process. This would involve reviewing three or four major projects each year to see if they met objectives and are performing as expected. In other words, it is a post mortem project review. Chair Martins said the committee has approved many projects but has not gone to see any of them. During the next year he would like to take a tour of some of the projects or hold a committee meeting in one of the buildings.

Five-year Capital Improvement Plan Revision

Trustee Walsh requested that the Five-year Capital Improvement Plan be rescrubbed and updated with the latest approvals and developments. Chair Martins said committee work is ongoing on this and suggested bringing it as it currently stands for the committee to review. Trustee Walsh said he wants to potentially speed up the process and see the whole list sooner than the previous due date.

Chairman Marchena added because there has always been such a short time to review this even in normal circumstances, he sees merit in allowing more time to examine the list.

President Whittaker explained this past year was the first time the university used a comprehensive exercise for all units and divisions to present their budget requests at a retreat in November to the Facilities Budget Committee. Clark added it then took from November to April to assimilate the information presented at the retreat, hold the necessary follow-up meetings, and then make sure their internal plan matches the Five-year Capital Improvement Plan. The Facilities Budget Committee now plays a part in the development of the Five-year Capital Improvement Plan.

Chairman Marchena said we have two lists. The first is the reality list prepared by the Facilities Budget Committee. The second is the Five-year Capital Improvement Plan, which can be thought of as a wish list of projects the university wants to complete. He voiced his concern about Trustee Walsh's request to remove projects from the Five-year Capital Improvement Plan, as the state mandates that any item must be on the Five-year Capital Improvement Plan to even be considered for approval. Chairman Marchena added we need to be prepared in the off chance funding becomes available.

Trustee Walsh said he wants to ensure what projects have been approved so far are on the Five-year Capital Improvement Plan, such as the components of UCF Downtown approved at the October 5 Finance and Facilities Committee and Board of Trustees meetings. He also asked if items are not on the Campus Master Plan, should they be put on the Five-year Capital Improvement Plan anyhow, or wait to be added to the Five-year Capital Improvement Plan once the committee and full board have approved.

President Whittaker proposed having the Five-year Capital Improvement Plan be brought to the committee in two stages. First would be a reading cycle, and the second would be an approval cycle.

Chairman Marchena said a closer look at the Five-year Capital Improvement Plan is needed sooner rather than later. President Whittaker also suggested providing to the trustees the internal

Facilities Budget Committee document that shows the financial reasoning for the budget breakdown and how it aligns to the Five-year Capital Improvement Plan.

Roth Athletics Center Funding

Danny White, Vice President and Director of Athletics, and Stricklin informed the committee they will be requesting its approval at the November 15 meeting to begin the loan solicitation process to secure the financing to finish construction on the Roth Athletics Center before football season begins in August 2019.

White said Athletics staff has been working on picnic tables and folding card tables for almost three years, and the time has come for genuine and productive workspaces. The football team's locker room also will be updated as part of the renovation.

Stricklin said construction must start in mid-January in order to reach the August 2019 completion deadline. A special BOT meeting will likely be needed in early January for final project approval, as the January construction start time is critical in order for the project to be finished on time.

Stricklin added they will have a "does not exceed" number for the loan request, but they are thinking it will be in the low \$10 million range. They have \$11.4 million from five-year pledges set aside to cover the loan principal and interest.

Martins clarified they will be asking for approval at the November 15 meeting to approve the "not to exceed" loan amount and then come back to the committee for approval later with the final funding details and guaranteed maximum price (GMP) contract.

Chairman Marchena asked how the original groundbreaking was funded. Stricklin stated cash through donations. Chairman Marchena also asked for confirmation only donations will be used, and the university will not back the loan. This was confirmed by Stricklin and Pittman. President Whittaker stated because this project is using donations, it is exempt from his moratorium on capital projects.

Chairman Marchena emphasized the board would only consider approving the loan "do not exceed" amount, not a "do not exceed" amount for the GMP.

Trustee Walsh asked for confirmation of total project costs for the Roth Athletic Center, and Stricklin confirmed it was right around \$13 million. White said of the \$11.4 million in donations, some were marked as specifically for the Roth Athletics Center, and some were for the overall expansion of the Dixon Athletics Village.

Vice Chair Garvy said Athletics has been innovative and making do with their current space, but it is critical to keep the project moving forward. He emphasized it does not require Board of Governors' approval, and no university funds will be used.

Chair Martins adjourned the Finance and Facilities Committee meeting at 10 a.m.

Reviewed by:

Alex Martins
Chair, Finance and Facilities Committee

Date

Respectfully submitted : _____
Grant Heston Date
Associate Corporate Secretary

ITEM: FFC-1

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: UCF Downtown Campus Store Contract

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve the attached agreement with Barnes and Noble Booksellers, LLC for the design, build-out, operation, and management of the UCF Downtown Campus Store.

BACKGROUND INFORMATION

On September 27, 2018, the board approved the award to Barnes and Noble Booksellers, LLC, for the UCF Downtown Campus Store. The agreement consists of design, build-out, and finish of the campus store, which will end on or about 120 days from UCF providing the completed white box space. The agreement for the operation and management of the campus store will be for 10 years, effective on or about July 1, 2019, through June 30, 2029. The university will have the option to renew the agreement for two, 10-year mutually agreed renewal periods, not to exceed 20 years in total.

This is a new agreement, stemming from a competitive procurement process (Invitation to Negotiate). The store will provide retail space and a full-service café. This contract represents significant capital dollars (provided by Barnes and Noble Booksellers, LLC) to build-out and finish the space, revenue sharing through commissions, and flexibility for exploring, adopting, and delivering course materials.

Supporting documentation: Attachment A: Contract
Attachment B: Summary of Contract

Prepared by: Thad Seymour, Vice President for Partnerships and Chief Innovation Officer

Submitted by: Thad Seymour, Vice President for Partnerships and Chief Innovation Officer

Attachment A

CONTRACTUAL AGREEMENT

For

INVITATION TO NEGOTIATE (ITN) #1710NCSA

ENTITLED: OPERATION AND MANAGEMENT OF UNIVERSITY OF CENTRAL
FLORIDA DOWNTOWN CAMPUS STORE

Between

UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES

AND

BARNES & NOBLE COLLEGE BOOKSELLERS, LLC

This Agreement is entered into and effective as of the last signature hereto, by and between the University of Central Florida Board of Trustees ("University" or "UCF"), and Barnes & Noble College Booksellers, LLC ("Contractor"). The parties agree as follows:

WHEREAS, Contractor is in the business of managing and operating campus store facilities; and

WHEREAS, University desires to grant to Contractor the right and privilege to manage and operate the UCF Downtown Campus Store and provide services at the facilities identified herein; and

WHEREAS, Contractor desires to accept the right and privilege to manage and operate such campus store at the facility, subject to the terms and conditions contained herein.

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

1. **ACKNOWLEDGMENT.** Contractor acknowledges that:

- A. The University is a public entity of the State of Florida;
- B. The University is exempt from federal and Florida taxes;
- C. Except for its employees acting within the course and scope of their employment or as otherwise permitted under applicable law, UCF shall not indemnify any entity or person and, then, such indemnification is limited to the express terms of §768.28, Florida Statutes. The State of Florida is self-insured to the extent of its liability under law and any liability in excess of that specified in statute may be awarded only through special legislative action. Accordingly, UCF's liability and indemnification obligations in this Agreement shall be effective only to the extent expressly required by Florida Statutes. Any provision requiring UCF to provide insurance coverage other than the State of Florida self-insurance shall not be effective.

2. **DESCRIPTION OF SERVICES.** The University does hereby agree Contractor shall occupy and manage the campus store location at UCF Downtown – consisting of approximately 9,000 square feet; for the sole purpose of providing the following services and/or products: *Operation and Management of the UCF Downtown Campus Store*. UCF represents and warrants to the Contractor that the University has the lawful right to enter into this Agreement for the purposes set forth herein. UCF further warrants that the Contractor may use the campus store during the entire Term hereof solely for the purposes set forth therein. Such services shall be rendered/delivered in accordance with the schedule and for the amounts set forth in Section 4: "Payments to UCF".

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SECTION 1: INTRODUCTION

Statement of Objective

The University of Central Florida is creating a new campus that will be the academic heartbeat of Orlando, a growing city that is attracting national attention for its entrepreneurial, high-tech and creative economy. In partnership with Valencia College, the new downtown campus (UCF Downtown/Valencia College or UCF/VC) will provide innovative education for high-demand fields that integrate with industry and place thousands of students within walking distance of jobs and internships.

Contractor will design, build-out/finish, and operate an innovative and dynamic Campus Store. The Campus Store will provide products, services, and materials within a cool vibe to support and contribute to the vitality of the new downtown campus.

The University's vision for this Downtown Campus Store centers around a retail space that is creative, innovative, and designed to draw in students and visitors looking for a welcoming, convenient and comfortable environment to fulfill their academic and shopping needs. Course Material support is an important function of the store, but as it is a seasonal demand, it should not be the year-round focus of the Store.

The University's goal is to provide an innovative, state-of-the-art Campus Store with the following primary components, as described below:

- Retail / Campus Store
- Course Materials

a) Retail / Campus Store

1. Product Lines. Major product lines will include, but not be limited to, the following:

- Emblematic/branded merchandise
- School supplies
- Technology supplies
- General books/trade books (limited selection)
- Convenience (snacks, beverages, light groceries, HBA's, etc.)
- Café/coffee shop
- Textbooks/course materials
- Miscellaneous product lines, including backpacks, dorm accessories, etc.

2. Environment/Gathering Space. The Campus Store environment should promote community gathering, but it is not intended as a student union or primary student center. Gathering space should not be at the expense of retail space. The cafe outdoor space immediately external to the Campus Store will be the focal point for social gathering, seating, etc.

3. Innovative/Cutting Edge. The Campus Store must be innovative and cutting edge as befitting a 21st century urban model university which seeks to redefine the educational model while promoting the community partnership; there must not be a conventional approach. Contractor will be expected to consistently offer fresh products and services at the Campus Store, which will include piloting first-to-market products and services.

4. Flexible Space. The Campus Store space must be flexible. Flexible retail fixtures are desirable to help ensure a vibrant and constantly changing retail environment.

5. Emblematic / Branded Merchandise. The emblematic/branded merchandise selection will be approximately 85-90% UCF merchandise and 10-15% Valencia merchandise.

6. Innovation. Innovation is required in all aspects of the Campus Store including, but not limited to, operations, technology, marketing, merchandising, visual display, etc.

b) Course Materials

1. Financial Aid. The Campus Store will be able to accept financial aid from both institutions.

2. Website. There will be a robust UCF/VC Campus Store website.

3. Textbook / Course Materials Adoptions. The Campus Store will be responsible for soliciting and processing course material adoptions from both institutions.

4. System Integration. The Campus Store will have an interface with both institutions for financial aid, HEOA, etc. (Valencia - Banner and Canvas. UCF - PeopleSoft.)

c) Customer-Centric

Contractor will provide a Retail / Campus Store and Course Materials Program that is customer-centric; a visible representation of the academic quality and image of UCF and Valencia College; an industry leader in providing creative and affordable course materials who continually implements effective initiatives to reduce the cost of education for students; a retail focused brand that measures and embraces industry changes while continually looking forward to improve customer experiences online and in-store; and is focused on advancing the UCF and Valencia brands by increasing the selection and marketing of UCF and Valencia emblematic merchandise.

Elements of a customer-centric, innovative Campus Store at UCF Downtown should include, but not be limited to, the following:

- Creating a customer-centric innovative retail environment.
- Creating and implementing effective strategies to reduce the cost of course materials to UCF-Valencia Students by offering a comprehensive textbook rental program, a strong used textbook program, an innovative digital textbook/course materials program, access to Open Educational Resources (OER) course materials, and by utilizing emerging technologies.
- Communicating and coordinating effectively and proactively with faculty regarding the use of all types of course materials.
- Providing excellent customer service, including minimizing transaction times and wait times for in-store and e-commerce transactions, and ensuring efficient processing of all transactions.
- Providing exceptional value to customers by offering high quality products and services at fair prices and multiple price points.

Contractor shall operate the Campus Store on its own credit and shall furnish at its own expense all merchandise, equipment, labor, supplies, and services required to perform its duties and responsibilities as required by the University.

SECTION 2: GENERAL CONDITIONS

Definitions

“Academic Year” - the period of the year during which students attend the University. The “Academic Year” falls within the university’s Fiscal year (July 1 – June 30). The current Academic Year consists of three periods: the Fall semester, the Spring semester, and the Summer semester. The Academic Calendar can be viewed at <http://calendar.ucf.edu/2017/fall>

“And/Or” - The word “and” shall also mean “or”, and the word “or” shall also mean “and” whenever the contents or purpose so require.

“Campus Store” – refers to the UCF Downtown Campus Store, and the UCF Downtown Campus Store website.

“Commissionable Sales” - shall be defined as Gross Sales less voids, less customer refunds, less handling fees associated with the non-return of rental textbooks, less discounted sales to UCF Departments, less discounts (provided that the discount amount thereof was included in Gross Sales), less sales tax paid by the Contractor to any government agency which was collected from customers, less merchandise required by UCF to be sold at less than a 20% initial gross margin, , less sales made at no margin by the Contractor at the request of the University.

“Contract” or “Agreement” - The formal bilateral agreement signed by a representative of the University and the Contractor which incorporates the requirements and conditions listed in ITN 1710NCSA and Contractor’s offer.

“Contract Year” or “Agreement Year” shall be July 1 through June 30 of each year during the Term, and any Renewal Terms.

“Gross Sales” - shall be defined as all sales of the Contractor and revenue received by the Contractor based upon all business conducted in or from the Campus Store for any product or service offered by the Campus Store, including revenue received from textbook rentals and the amounts earned from processing transactions for publishers related to the consignment of their rental property. This includes all orders taken or received at the Campus Store, whether such orders are placed at the Campus Store, via the internet (i.e., "on-line sales"), orders received through the Campus Store Website, or elsewhere. Gross Sales shall include any commissions, and rebates received by the Contractor (whether such commissions and/or rebates are received at the store level or at the corporate office) from products such as class rings, clothing, general merchandise, etc.; and commissions and rebates received by the Contractor (whether such commissions and/or rebates are received at the store level or at the corporate office) for authorized sales by other companies or organizations on the Campus Store Website.

“May, Should” - Indicates something that is not mandatory, but permissible, recommended, or desirable.

“Must, Shall, Will” - The words “shall,” “must,” or “will” are equivalent and indicate mandatory requirements or conditions.

“Publisher Consignment Rentals” – shall be defined as titles available from the publisher only as rentals and only at the price set by the publisher. These restrictions are applied to everyone, and no entity may sell these titles or rent them for any price other than the price set by the publisher.

“Pure Digital Course Materials Sales” - shall be defined as digital-only content that is adopted by UCF or Valencia Faculty as course material for academic instruction and sold at a gross margin of twenty (20%) or less. Pure Digital Course Materials Sales, regardless of margin amount, shall not include sales of Net-Priced Bundled Packages or any other bundled packages of Course Materials adopted by UCF or Valencia Faculty that include physical content and digital content, including, but not limited to, textbook, workbook, course packets, CD/DVD, custom published printed materials or other physical course materials bundled with a passcode for digital only content. These bundled course materials of physical and digital content as well as Pure Digital Course Material Sales with a gross margin exceeding 20% are included in the calculation of Commissionable Sales for the full commission rates. Pure Digital Course Materials shall include sales of course materials through an Inclusive/Course Fee Program (e.g., the Contractor’s “First Day Program”), in the event UCF agrees to implement an Inclusive/Course Fee Program.

“Renewal” - Contracting with the same Contractor for an additional period of time after the initial Agreement term, provided the original terms of the agreement specify an option to renew or the renewal is determined by UCF General Counsel to be in the best interest of the University.

“UCF’S Contract Administrator” - The University’ designated liaison will oversee the Contractor’s performance. In this matter, UCF’s Contract Administrator will be the “Director of Business Services” or his/her designee.

“UCF or University” – refers to the “University of Central Florida”.

“UCF/VC” – refers to the partnership between the University of Central Florida and Valencia College. The use of “UCF/VC” refers to those terms and conditions that are jointly applicable to both UCF and VC, whereas the use of “UCF” or “University”, or “Valencia” individually, refers to those terms and/or conditions that apply only to the specific party named.

VC – Valencia College.

“White Box” – refers to the state of construction in which Contractor will receive the Campus Store facility from UCF (i.e. delivered premises) for build-out/finishing. Refer to section 3.13.

2.1 **Force Majeure**

No default, delay or failure to perform on the part of UCF or the Contractor shall be considered a default, delay or failure to perform otherwise chargeable, hereunder, if such default, delay or failure to perform is due to causes beyond UCF’s or the Contractor’s reasonable control including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities, epidemics, war, embargoes, fire, earthquake, acts of God, default of common carrier. In the event of such default, delay, or failure to perform due to causes beyond UCF’s or the Contractor’s reasonable control, any date or times by which UCF or the Contractor is otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of UCF or the Contractor.

2.2 **Indemnification And Insurance**

- a. Contractor shall hold the University and the UCF Board of Trustees and the University’s officers, employees, agents and/or servants harmless and indemnify each of them against any and all liabilities, losses, actions, damages, suits, proceedings, judgments from claims, costs and expenses (including all costs for investigation and defense thereof, including but not limited

to, court costs, paralegal and expert fees and reasonable attorney's fees) which may be incurred by, charged to or recovered from any of the foregoing (i) by reason or on account of damage to, or destruction or loss of any property of the University, or injury to or death of any person resulting from or arising out of or in connection with the Contractor's performance of this contract, or resulting from the acts or omissions of Contractor, its employees, its contractors, its invitees, its agents, or of others under Contractor's control and supervision, while under Contractor's supervision and control and while acting within the scope of their employment or agency, regardless of where the damage, destruction, injury or death occurred, unless such liability, loss, suit, claim, demand, judgment, fine, damage, cost or expense was proximately caused solely by University's negligence or by the joint negligence of University and any person other than Contractor, its employees, its contractors, its invitees, its agents, or of others under Contractor's control and supervision, or (ii) arising out of or in connection with the Contractor to keep, observe or perform any of the covenants or agreements in this Agreement which are required to be kept, observed or performed by Contractor, or (iii) arising out of or in connection with any action by Contractor, its employees, its contractors, its invitees, its agents, or of others under Contractor's control and supervision. University agrees to give Contractor reasonable notice of any suit or claim for which indemnification will be sought hereunder, to allow Contractor or its insurer to compromise and defend the same to the extent of its interests, and to reasonably cooperate with the defense of any such suit or claim. In carrying out its obligation under this section, Contractor shall engage counsel reasonably acceptable to University. In any suit, action, proceeding, claim or demand brought in respect of which the University may pursue indemnity, the University shall have the right to retain its own counsel. The fees and expenses of such counsel shall be at the expense of the University unless (1) the Contractor and the University shall have mutually agreed to the contrary in writing, (2) the Contractor has failed within a reasonable time to retain counsel reasonably satisfactory to the University, or (3) the University and the Contractor are both named parties in any such proceeding and, in the sole judgment of the University, representation of both the University and the Contractor by the same counsel would be inappropriate due to actual or potential differing interests between them. In the event of the above stated instances in the previous sentence, Contractor shall be responsible for all of the reasonable legal fees and expenses. The indemnification provisions of this section shall survive the expiration or earlier termination of this Agreement with respect to any acts or omissions occurring during the term of the contract.

- b. If any part of a delivery to the University pursuant to this Agreement is protected by any patent, copyright, trademark, other intellectual property right or other right, Contractor also shall indemnify and hold harmless the University and the UCF Board of Trustees and the University's officers, employees, agents and/or servants from and against any and all liabilities, actions, damages, suits, proceedings and judgments from claims instituted or recovered against the University by any person or persons whomsoever on account of the University's use or sale of such article in violation of rights under such patent, copyright, trademark, other intellectual property right or other right.
- c. Up to the amount expressly authorized by F.S. 768.28 and the Constitution of the State of Florida, UCF shall hold the Contractor, its officers, employees and agents harmless from and indemnify each of them against any and all liabilities, actions damages, suits, proceedings, and judgments from claims arising or resulting from the acts or omissions of the University or its employees or the acts or omission of others under UCF's supervision and control while acting within the scope of their employment or agency.
- d. In any and all claims against the University, or the UCF Board of Trustees, or any of the University's officers, employees, agents and/or servants, by any employee of the Contractor,

any subcontractor of Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation of Contractor to University under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor under Workers' Compensation Acts, disability benefit acts or other employee benefit acts.

- e. No provisions of this section herein shall be construed to negate, abridge, or otherwise reduce any other right of indemnity that the University may have as to any party or person described herein.

INSURANCE. All insurance shall be procured from companies authorized to do business in the State of Florida with a minimum A.M. Best rating of A, or equivalent acceptable to the University, and shall be solely related to Contractor's operation of the Campus Store during the Term (as defined below). Proof of coverage shall be provided by submitting to the University a certificate, or certificates, evidencing the existence thereof, or binders upon execution of this Agreement. In the event a binder is delivered it shall be replaced within thirty (30) days by a certificate in lieu thereto. A renewal certificate shall be delivered to the University at least thirty (30) days prior to the expiration date of each expiring policy. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the University.

- a. **General Liability:** Contractor shall provide a Certificate of Insurance at the time of "notification of intent to award" the Agreement evidencing Commercial General Liability insurance coverage in force with minimum limits of \$1,000,000 (ONE MILLION DOLLARS) per Occurrence and \$1,000,000 (ONE MILLION DOLLARS) Aggregate. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Contractor will maintain said General Liability insurance in force and provide University with a Certificate of Insurance and endorsement naming the University of Central Florida Board of Trustees as "Additional Insured."

Auto Liability: Contractor shall provide a Certificate of Insurance at the time of notification of intent to award the Agreement evidencing Auto Liability insurance with minimum \$1,000,000 (ONE MILLION DOLLARS) per Accident Combined Single Limit for Bodily Injury and Property Damage. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Contractor will maintain said Auto Liability insurance in force and provide University with a Certificate of Insurance listing the University Of Central Florida Board Of Trustees as "Additional Insured."

- b. **Workers Compensation:** Contractor shall provide a Certificate of Insurance at the time of notification of intent to award the Agreement evidencing Workers Compensation coverage consistent with Florida Statute and Employers liability no less than \$500,000 (FIVE HUNDRED THOUSAND DOLLARS) for Bodily Injury by accident, each accident, Bodily Injury by disease, each employee, and policy limit. Upon acceptance and confirmation of coverage by University and before beginning work, and at all times during the term of the contract, Contractor will maintain said Workers Compensation and Employer's Liability insurance in force and provide University with a current Certificate of Insurance.

- c. **Certificates of Insurance:** The University Of Central Florida Board Of Trustees is to be named as Additional Insured on all Certificates issued. Contractor shall send a copy of its Certificate of Insurance along with accompanying Additional Insured Endorsement to the following address:

Email : Olivia.Escalona@ucf.edu
Mail: University of Central Florida
Risk Management
12601 Aquarius Agora Dr.
Orlando, FL 32816-3500

- d. The University, at its sole discretion, has the right to deviate from any of the insurance requirements herein. If the University decides to deviate from the insurance requirements stated herein, the University will inform the Contractor in writing.
- e. UCF shall maintain Fire and Extended Coverage insurance on the Campus Store premises occupied by Contractor. In the event the premises is partially or totally destroyed by fire or otherwise, during the term of this Agreement UCF shall, at its sole option, terminate this Agreement, repair the premises or rebuild the premise; and in the event of partial destruction which leaves the premises uninhabitable, or in the event of total destruction, this Agreement shall, at UCF's sole option, be terminated immediately or be extended for a period of time equal to the time from when the premises became uninhabitable until the premises again became habitable.
- f. Contractor, at its own expense, shall obtain and maintain property insurance to cover all personal property owned by it, and its stock, materials and supplies, related to this Agreement. Under no condition shall UCF be liable for the personal property, tangible or intangible, of the Contractor or its customers, employees or contractors that might be damaged or destroyed on the premises because of fire or other casualty.

2.3 **Term Of Agreement**

Contractor shall commence performance of the Campus Store design and build-out upon approval of a Memorandum of Understanding on/or about October 24, 2018 and continue design and build-out under the final executed agreement herein-. Design and build-out shall end on or about 120 days from UCF providing the completed "White Box" to the Contractor. The Agreement for the operation and management of the Campus Store will be for **ten (10) years**, effective on/or about July 1, 2019 through June 30, 2029. The University shall have the option to renew the Agreement for mutually agreed renewal terms ("Renewal Terms," with renewals not to exceed two (2) - ten (10) year renewals, twenty years in total) by providing the Contractor with one hundred twenty (120) days written notice of intent to renew prior to the expiration of the Term or Renewal Term.

2.4 **Termination Of Contract**

- a. The Contractor shall perform in accordance with the terms and conditions as stated herein and in accordance with the highest standards and commercial practices for operation of a Campus Store serving UCF. If the Contractor shall fail to fulfill or perform any material obligation of the Contractor under the Agreement and such failure shall continue for sixty (60) days following written notice (the "Default Notice") from the University to the Contractor informing the Contractor of its failure to fulfill or perform said material obligation, then the University may terminate the Agreement by providing the Contractor with written notice (the "Termination Notice").

- b. The University and the Contractor shall have the right to terminate the Agreement at any time by one-hundred-twenty (120) days written notice.
- c. The University may terminate the Agreement immediately upon written notice to the Contractor if the Contractor becomes (i) insolvent; (ii) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding; or (iii) proceedings in bankruptcy or insolvency are instituted against the contractor, a receiver is appointed, or if any substantial part of the Contractor's assets is the object of attachment, sequestration or other type of comparable proceeding, and such proceeding is not vacated or terminated within thirty (30) days after its commencement or institution.
- d. In the event of cancellation, commissions shall be prorated until the effective date of cancellation and Contractor shall pay to UCF that portion of commission earned and unpaid.
- e. Should this Agreement be cancelled, upon the effective date of cancellation, neither party hereto shall have any liability, whether for damages, additional rents, fees or other charges, or otherwise, to the other based upon this Agreement, except as to liabilities from incidents or circumstances which occurred, accrued, or existed prior to such cancellation.
- f. UCF shall repurchase, or require a successor contractor to purchase, Contractor's inventory at cost in the event of cancellation of this Agreement, in the same manner as purchased by Contractor, provided that reason for cancellation is not Contractor's convenience per Section 2.4 of this Agreement.

In the event of cancellation of this Agreement, UCF shall purchase, or require a successor contractor to purchase, Contractor's "course materials" rental inventory outstanding at the time of the transition, at the industry standard buyback value, provided that reason for cancellation is not Contractor's convenience, per Section 2.4 of this Agreement.

Should UCF change logo or contracted athletic apparel provider/licensee, UCF will give Contractor six months written notice.

2.5 **Assignment And Amendment Of Contract**

Except as expressly provided herein, neither University nor the Contractor shall assign, transfer or subcontract any rights or obligations under the Agreement between both parties, in whole or part without the prior written consent of the other party. Any assignment, transfer, or subcontract without such consent shall be deemed void and of no effect. The Contractor may assign, without the University's prior approval, the Agreement between both parties and its rights and obligations to any successor corporation or entity resulting from a merger or consolidation with such party or the sale of substantially all of the assets of the Contractor, or to any entity controlled by, controlling or under common control by the Contractor. Consent by either party to such assignment in one instance shall not constitute consent by the party to any other assignment. The Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No changes or amendments to this Agreement are binding on (a) the University unless made in legible writing that is signed by an attorney in the University's General Counsel's Office and an authorized UCF signatory or (b) the Contractor unless in a writing signed by one of its authorized agents.

2.6 **Independent Parties**

Each of the parties is an independent contractor and nothing contained herein shall constitute or designate any of the employees or agents of one party as employees or agents of the other party. Each party shall remain independent parties and neither shall be an officer, employee, agent, representative or co-partner of, or a joint venture with, the other.

2.7 **Records**

Contractor agrees to keep and maintain, separate and independent records, in accordance with generally accepted accounting principles, devoted exclusively to its obligations and activities pursuant to this Agreement. Such records (including books, ledgers, journals, and accounts) shall contain all entries reflecting the business operations under this Agreement. The University or its authorized agent shall have the right to audit and inspect such records from time to time during the Term of this Agreement, upon reasonable prior notice to Contractor.

2.8 **Public Records**

This Agreement may be canceled unilaterally by the University for refusal by Contractor to allow public access to all papers, documents, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Contractor in conjunction with this Agreement.

2.9 **Public Records, Service Contracts, Compliance With Section 119.0701, F.S.**

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: Office of the General Counsel, (407) 823-2482, gcounsel@ucf.edu, University Of Central Florida, 4365 Andromeda Loop N., Millican Hall, Suite 360, Orlando, FL 32816-0015.

PUBLIC RECORDS, CONTRACT FOR SERVICES

To the extent that Contractor meets the definition of "Contractor" under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Contractor must comply with public records laws, including the following provisions of Section 119.0701, Florida Statutes:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the

public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the Contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

If Contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

This Contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

2.10 **Severability**

If any provision of the contract resulting from this ITN, if any, is contrary to, prohibited by, or deemed invalid by applicable laws or regulations of any jurisdiction in which it is sought to be enforced, then said provision shall be deemed inapplicable and omitted and shall not invalidate the remaining provisions of such contract.

2.11 **Notices**

Any written notices between the parties shall be sent by certified mail to the following addresses, or other addresses of which the parties shall have notified each other.

For UCF:

The University of Central Florida
Director, Business Services
12479 Research Parkway
Orlando, FL 32826-0055

For Barnes & Noble College:

Barnes & Noble College Booksellers
Brian Stark, Vice President of Stores
c/o UCF Bookstore
101 Aquarius Agora Drive
Orlando, FL 32816

With a courtesy copy only to:
Barnes & Noble College Booksellers
120 Mountain View Blvd.
Basking Ridge, NJ 07920
Attn: Legal Department

2.12 **Governing Law And Venue**

This Agreement and any attachments and addenda hereto are subject to and governed by Florida law. Venue for any action arising hereunder shall be in Orange County, Florida. The University is entitled to the benefits of sovereign immunity, including immunities from taxation, as provided for under Florida law.

2.13 **Liaison**

UCF's liaison with the Contractor shall be the Director of Business Services and/or his/her designee.

2.14 **Subcontracts**

The Contractor is fully responsible for all work performed under this Agreement. The Contractor may enter into written subcontract(s) for performance of certain of its functions under this Agreement unless otherwise specified. No subcontract(s) which the Contractor enters into shall in any way relieve the Contractor of any responsibility for performance of its duties under this Agreement. Contractor is responsible to fully notify any subcontractor(s) of their responsibilities under any subcontract. All payments to subcontractors shall be the sole responsibility of the Contractor.

2.15 **Employment Of UCF Personnel**

The Contractor shall not, without UCF's prior written consent, knowingly recruit for engagement, on a full time, part time, or other basis during the period of this Agreement, and any individuals who are or have been UCF employees at any time during such period, except for UCF's regularly retired employees, or any adversely affected State employees and unless such recruitment shall occur as a result of a general job advertisement directed by the Contractor to the public at large.

2.16 **Conflicts Of Interest**

Contractor is aware of the requirements of Chapter 112, Florida Statutes and in compliance with the requirements of Chapter 112, Florida Statutes and other laws and regulations concerning conflicts of interests in dealing with entities of the State of Florida. Contractor certifies that its directors and/or principal officers are not employed and/or affiliated with the University unless a current Conflict of Interest (Report of Outside Activity/Employment) form has been completed, executed by such director or officer and approved in accordance with applicable University policies or rules. Violation of this section by Contractor shall be grounds for cancellation of the Agreement.

2.17 **Equal Opportunity Statement**

This Contractor and any subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) to the extent legally required. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

2.18 **Waiver Of Rights And Breaches**

No failure or delay by a party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, shall constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder shall affect or alter the remaining terms of the Agreement, but each and every term of the Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in the Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

2.19 **Headings**

Headings have been included in this Agreement for convenience only and shall not affect the interpretation of any terms found herein.

2.20 Employee Involvement / Covenant Against Contingent Fees

In accordance with Section 112.3185, Florida Statutes, the Contractor hereby certifies that, to the best of its knowledge and belief, no individual employed by the Contractor or subcontracted by the Contractor has an immediate relationship to any employee of UCF who was directly or indirectly involved in any way in the procurement of the Agreement, or goods or services thereunder. Violation of this section by Contractor shall be grounds for cancellation of the Agreement. The Contractor also warrants that no person or selling agency has been employed, engaged or retained to solicit or secure any Agreement or any advantage hereunder upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, or in exchange for any substantial consideration bargained for, excepting that which is provided to the Contractor's bona fide employees or to bona fide professional commercial or selling agencies or in the exercise of reasonable diligence should have been known by the State to be maintained by the Contractor for the purpose of securing business for Contractor. In the event of the Contractor's breach or violation of this warranty, UCF shall, subject to Contractor's rights under Chapter 120, Florida Statutes, have the right, at its option, to annul the Agreement without liability, to deduct from the charges otherwise payable by UCF under the Agreement the full amount of such commission, percentage, brokerage, or contingent fee, and to pursue any other remedy available to UCF under such contract, at law or in equity.

2.21 Employment Of Aliens

Contractor's employment of unauthorized aliens, if any, shall be considered a violation of §§274(e) of the Immigration and Nationality Act. If the Contractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of the Agreement by the University.

2.22 Site Rules And Regulations

Contractor shall use its best efforts to assure that its employees and agents, while on UCF's premises, shall comply with the State's and UCF's site rules and regulations, if any, of which Contractor is provided prior notice.

2.23 Travel Expenses

Not Applicable

2.24 Annual Appropriations

The University's performance and obligations under this agreement are subject to and contingent upon annual appropriations by the Florida Legislature and other funding sources.

2.25 Taxes

The State of Florida is a tax-immune sovereign and exempt from the payment of all sales, use and excise taxes. The Contractor shall be responsible to pay any such taxes imposed on taxable activities/services under the contract.

2.26 Use Of Contract By Other Governmental Agencies

At the option of the Contractor, the use of the Agreement may be extended to other governmental agencies, including the State of Florida, its agencies, political subdivisions, counties, and cities. Each governmental

agency allowed by the Contractor to use the Agreement shall do so independent of any other governmental entity. Each agency shall be responsible for its own purchases and shall be liable only for goods or services ordered, received and accepted. No agency receives any liability by virtue of this offer and subsequent Agreement award.

2.27 **Public Entity Crimes**

A person or affiliate who has been placed on Florida's convicted vendor list following a conviction for a public entity crime may not submit an offer on a contract to provide any goods or services to a public entity, may not submit an offer on a contract with a public entity for the construction or repair of a public building or public work, may not submit offers on leases of real property to a public entity, may not be awarded, or perform work as a contractor, supplier, subcontractor, or consultant under, a contract with any public entity, and may not transact business with any public entity in excess of the offer limit for that public entity, for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

2.28 **Work For Hire**

Any work specifically created for the University under this Agreement by the Contractor or anyone working on behalf of the Contractor (the term Contractor shall encompass both) shall be considered a "work for hire." All designs, prints, paintings, artwork, sketches, etchings, drawings, writings, photographs, or any other work or material or property produced, developed or fabricated and any other property created hereunder, including all material incorporated therein and all preliminary or other copies thereof, (the "Materials") shall become and remain the property of the University, and, unless otherwise specifically set forth herein, shall be considered specially ordered for the University as a "work made for hire," or, if for any reason held not to be a "work for hire," the Contractor who created, produced, developed or fabricated the Materials hereunder assigns all of his/her right, title and interest in the Materials to the University.

The University shall own all right, title and interest in the Materials. The Contractor agrees upon request to execute any documents necessary to perfect the transfer of such title to the University. The Materials shall be to the University's satisfaction and are subject to the University's approval. The Contractor bears all risk of loss or damage to the Materials until the University has accepted delivery of the Materials. The University shall be entitled to return, at the Contractor's expense, any Materials which the University deems to be unsatisfactory. On or before completion of the Contractor's services hereunder, the Contractor must furnish the University with valid and adequate releases necessary for the unrestricted use of the Materials for advertising or trade purposes, including model and property releases relating to the Materials and releases from any persons whose names, voices or likenesses are incorporated or used in the Materials.

The Contractor hereby represents and warrants that, (a) all applicable laws, rules and regulations have been complied with, (b) the Contractor is free and has full right to enter into the Agreement and perform all of its obligations hereunder, (c) the Materials may be used or reproduced for advertising or trade purposes or any commercial purposes without violating any laws or the rights of any third parties, and (d) no third party has any rights in, to, or arising out of, or in connection with the Materials, including without limitation any claims for fees, royalties or other payments.

The Contractor agrees to indemnify and hold harmless the University and those acting for or on its behalf, the UCF Board of Trustees, the State of Florida and the Florida Board of Governors and their respective officers, agents, employees and servants from and against any and all losses, claims, damages, expenses or liabilities of any kind, including court costs and attorneys' fees, resulting from or in any way, directly or indirectly, connected with (a) the performance or non-performance of the University's order by the

Contractor, (b) the use or reproduction in any manner, whatsoever, or (c) any breach or alleged breach of any of the Contractor's contracts or representations and warranties herein.

2.29 **Export Control**

The parties shall comply with all applicable U.S. export control laws and regulations, including but not limited to the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799 and/or other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls (OFAC), in the performance of this Agreement. The parties agree that no technology, related data or information will be exchanged or disseminated under this Agreement nor any collaboration conducted pursuant to the Agreement, which are export controlled pursuant to the export control laws of the United States, including the EAR and the ITAR and any other applicable regulations.

The parties agree that the Contractor will not provide the University with any ITAR or EAR restricted technology and/or related data, and that any ITAR or EAR restricted technologies and/or data produced in furtherance of a contract will be in the exclusive possession of the Contractor and at no time will any export controlled technologies, related data, or information be intentionally or inadvertently transferred to the University, its facilities, labs, staff, researchers, employees, officers, agents, servants or students in the performance of such a contract.

If the Contractor wishes to disclose export controlled technology or technical data to the University, the Contractor will, prior to disclosing any information, technical data or source code that is subject to export controls under federal law, notify the University in writing that the material is export controlled and shall identify the controls that apply. The University shall have the right to decline or limit (a) the receipt of such information, and (b) any task requiring receipt of such information. In the event the Contractor sends any such technical data or product that is subject to export control, without notice of the applicability of such export control, the University has the right to immediately terminate this agreement. The Contractor understands and agrees that to the extent the Contractor's personnel have access to work or materials subject to U.S. export controls while on University property, such personnel will meet all federal export control regulatory requirements or have the appropriate U. S. government approval.

2.30 **Parking**

Contractor(s) shall ensure that all vehicles parked on campus for purposes relating to work resulting from the Agreement shall have proper parking permits. This applies to all personal vehicles and all marked and unmarked company vehicles that will be on any University campus for one (1) day or more or on a recurring basis. All such vehicles must be registered with the University's Parking Services Department, and parking permits must be purchased by the Contractor. Contractor's vehicle(s) shall observe all parking rules and regulations. Failure to obtain parking permits, properly display them, and otherwise comply with all of the University's parking rules and regulations could result in the issuance of a parking ticket and/or towing at the expense of the Contractor or Contractor's employees. For additional parking information or information regarding parking fees/rates, contact the University's Parking Services Department at (407) 823-5812 or online at <http://parking.ucf.edu>.

2.31 **Compliance**

The parties shall at all times comply with all applicable ordinances, laws, rules and regulations of local, state and federal governments, or any political subdivision or agency, or authority or commission thereof, which may have jurisdiction to pass laws, ordinances, or make and enforce rules and regulations with respect to the parties.

2.32 **Billing**

The University shall only submit payment to the Contractor if Contractor has provided the University with approved invoices. Mere statements in lieu of approved invoices will not be accepted by the University. All invoices must specifically describe the services and/or goods provided, the dates and hours that the services were rendered and/or goods delivered and the fee charged. Contractor shall deliver the invoices to UCF's Finance and Accounting Department, unless Contractor has been otherwise instructed by the University. Contractor must display the applicable purchase order number on the face of each of Contractor's invoices to the University. The University will not be responsible for any goods or services delivered without a properly completed University purchase order or other order provided in writing by a duly authorized University signatory or designee. If Contractor's invoice lists any freight or cartage charges, such invoice must attach all of Contractor's receipted transportation bills.

2.33 **No Joint Venture**

Nothing contained in this Agreement shall be construed to create a joint venture, partnership, or other like relationship between the parties.

2.34 **Leased Equipment**

Not Applicable

2.35 **Material Safety Data Sheet (MSDS)**

Not Applicable

2.36 **Non-Performance**

Neither party shall be required to perform under this Agreement or any attachments or addenda hereto executed by the University's duly authorized signatory when such performance is delayed or prevented by any cause beyond the party's or parties' control. This Agreement and any attachments and addenda hereto executed by the University's duly authorized signatory may not be altered, amended or assigned without the prior written agreement of all parties.

2.37 **Vietnam Era Veteran's Readjustment Act of 1974**

The University and the Payee must comply with all applicable provisions of: (i) §402:60-250.4 of the Vietnam Era Veterans Readjustment Act of 1974; (ii) §503:60-741.4 of the Rehabilitation Act of 1973; (iii) Executive Order 11246, as amended; and, (iv) the rules, regulations, and relevant orders of the U.S. Secretary of Labor.

2.38 **State Licensing Requirements**

To the extent applicable, Contractor shall have all appropriate licenses to conduct business in the State of Florida and Orange County. If Contractor contemplates the use of subcontractors, the Contractor is responsible for ensuring that all subcontractors are registered with the State of Florida in accordance with

Chapter 607 or 620, Florida Statutes. For additional information, the Contractor should contact the Florida Secretary of State's Office.

2.39 **Family Educational Rights And Privacy Act**

Contractor acknowledges that UCF has a duty to maintain the privacy of student records, including without limitation education records as defined by the Family Educational Rights and Privacy Act (20 USC § 1232g; 34 CFR Part 99) ("FERPA"), and further acknowledges that as a contractor to which UCF has outsourced certain institutional services or functions:

- a. Confidential information about UCF's students may be contained in records provided to and maintained by Contractor, and Contractor will protect the privacy of all student education records containing such confidential information to the fullest extent and if legally required of Contractor under FERPA;
- b. Contractor is performing an institutional service or function that has been outsourced by UCF and for which UCF would otherwise use its employees;
- c. Contractor is subject to FERPA requirements governing the use and re-disclosure of personally identifiable information from education records, including without limitation the requirements of 34 CFR § 99.33(a);
- d. Even in circumstances that might justify an exception under FERPA, Contractor may not disclose or re-disclose personally identifiable information unless legally required to do so or UCF has first authorized in writing such disclosure or re-disclosure; and
- e. Contractor will not use any personally identifiable information acquired from UCF for any purpose other than performing the services or function that are the subject of this Agreement.

2.40 **Smoke Free Policy**

The University prohibits smoking on all university owned, operated, leased and/or controlled properties in order to maintain a healthy and safe environment for its faculty, staff, students, and visitors. Visit <http://www.ucf.edu/smokefree> for additional information.

2.41 **Contractual Precedence**

This Agreement, and any attachments and/or addenda that are executed by the University's duly authorized signatory constitutes the entire and exclusive agreement between the parties. Attachments and/or addenda may include, but are not limited to the ITN including all the University's ITN specifications, and the Contractor's ITN response. In the event of any conflict or inconsistency between before mentioned documents, the order of precedence is:

- a. The Agreement/Contract;
- b. University's ITN and ITN specifications;
- c. Contractor's ITN response; and
- d. Any other attached documents signed by the University's official signatory at the time the Agreement/Contract is executed.

**UNIVERSITY OF CENTRAL FLORIDA BOARD
OF TRUSTEES**

**BARNES & NOBLE COLLEGE
BOOKSELLERS, LLC**

Signature: _____

Signature: _____

Printed: Dale Whittaker

Printed: _____

Title: President

Title: _____

Date: _____

Date: _____

Signature: _____

Printed: Misty Shephard

Title: Interim Vice President of Administration and
Finance

Date: _____

SECTION 3: CAMPUS STORE PROGRAM REQUIREMENTS**3.1 Operations**

This Agreement is for the management and operation of the UCF Downtown Campus Store.

- a. Contractor Duties/Responsibilities. The Contractor shall operate the Campus Store on its own credit and shall furnish at its own expense all merchandise, equipment, labor, supplies, and services required to perform its duties and responsibilities as required by the University.
- b. Products And Services. The Contractor shall provide the UCF community with a full range of course materials, new textbooks, used textbooks, digital textbooks, medical books, custom published materials, rental textbooks, OER course materials, general books, reference books, medical reference books, supplies, culinary supplies, computer/technology supplies, general merchandise, emblematic clothing, emblematic gifts, greeting cards, convenience items, health and beauty aids (HBAs), special order services, graduation related merchandise, full-service café services, and other services expected from a full-service Campus Store.
- c. Right To Operate Campus Store. The Contractor shall have the rights to operate the UCF Downtown Campus Store as described below (Note that such rights are specific to the Downtown Campus Store and do not extend to the other UCF or Valencia campuses):
 - i. The Contractor shall be the exclusive “on-campus” buyer and seller of all required, recommended or suggested course materials and tools, including textbooks, trade books, and course packs.
 - ii. The Contractor shall be the exclusive provider of course pack publishing services. Such services will include the development of course packs for faculty members, securing the appropriate copyright clearances, printing and binding of course packs and distribution and sale of the course packs in the Campus Store. Complimentary desk copies of course packs will be provided to faculty members.
 - iii. The Contractor shall be UCF’s exclusive “on-campus” seller of those items typically sold in college Campus Stores which bear a University of Central Florida or Valencia College emblem, logo, insignia or other such identifying mark such as apparel, class and alumni rings, and jewelry.
 - iv. The Campus Store shall be UCF’s exclusive “on-campus” seller of those items typically sold in college Campus Stores such as educational supplies, notebooks, and stationary; except that the University’s Contract Administrator shall have the right to grant a limited number of other campus locations/stores (such as “The Spot”, University’s Print Shop, etc.) rights to sell such supplies (paper, stationary, business cards, etc.) and other merchandise bearing the UCF or Valencia College logo/emblem.
 - v. The Contractor shall have non-exclusive rights to operate a Cafe’ or Coffee Shop within its campus store facilities to sell related food and beverage products.
 - vi. The Campus Store shall have non-exclusive rights to sell convenience store items such as food, health and beauty aids, and sundries.

- vii. The University's Contract Administrator may authorize the sale of certain items by approved vendors, student groups, or by organizations of UCF or Valencia College.
- d. The Contractor will bring value-added programs and services with respect to digital delivery. The Contractor must recognize that the University is focused on course materials affordability for UCF/Valencia College Students. As part of this focus, the University shall continue to explore all options regarding the digital delivery of course materials and course content, including direct coordination with publishers. Exceptions to this require approval from the UCF Contract Administrator.
- e. University Authority Re: Product Offerings. The Contractor shall withdraw from display or sale, any item or items, which the University/Valencia College requests not be displayed or sold. New product categories that the Contractor would like to sell at the Campus Store require the University's prior written approval.
- f. Advertising. Contractor covenants and agrees not to promote in any way the use of its services which might be construed in any way that UCF/VC is endorsing such without prior University approval.
- g. Signage. Contractor shall have the right to erect and maintain a sign upon the building (space it occupies) for the conduct of business as permitted by the University and in accordance with University regulations and policy. It is agreed that any signs placed on the Campus Store premises by Contractor shall advertise only Contractor's name, business products, networks to which it belongs, or services provided, and shall be of reasonable size, subject to the approval of the University. No signs shall be installed without first receiving written approval by UCF Business Services as to the sign and location.
- h. Exclusive Use Agreements. The University of Central Florida has entered into agreements whereby exclusive rights to sell, market, promote, and/or provide specific services, merchandise, classes of products, and the licensing of University indicia/trademarks, have been granted to University partners. It is the responsibility of Contractor to be aware of, and comply with, all University exclusivity agreements stated below. These exclusivity agreements are:

These exclusivity agreements include, but are not limited to:

1. Coca-Cola Exclusive. UCF has entered into an agreement designating Coca-Cola as the exclusive fountain syrup company on campus. Contractor must agree to honor this arrangement by offering only Coca-Cola designated products in its operation on campus. Contractor may not vend, dispense, promote, or use any display or sign that is in competition with Coca-Cola.
 2. The Contractor shall purchase all of its beverage requirements, including cups, lids, and CO2 for Coca-Cola products from the local (Florida) Coca-Cola Bottler. Refer to the "Coca-Cola Agreement" for specifics and permitted exceptions.
 3. The University has sole discretion to enter into exclusive contracts.
- i. Fixtures/Equipment For Special Events. The Contractor shall, at its sole expense, provide any necessary fixtures or equipment (e.g., cart, tent, POS terminal, Handheld POS devices, etc.) to sell UCF merchandise at designated special events on campus to capitalize on sales opportunities.

- j. Website/Social Media. The Contractor shall manage and operate a full-service website and social media program including, but not limited to, Facebook, Instagram, Twitter, etc.
- k. Special Events. The Contractor shall support special events (e.g., lectures, readings, speakers, etc.) on campus by selling books at UCF/VC events.
- l. Donations. The Contractor shall provide reasonable donations of merchandise (retail value), gift card/course materials, scholarships, Campus Store gift cards, etc., to support various departments, programs, events, etc., on campus. Contractor shall track and report such donations to the University annually.
- m. Trash Removal/Recycling. The Contractor shall be required to participate in the University's recycling program. The Contractor shall remove all trash and recyclable materials and place them in the proper UCF recycling containers.
- n. Environmental/Sustainability Practices. The Contractor shall utilize environmentally friendly practices in its operation of the Campus Store and shall abide by all University environmental/sustainability practices.
- o. Reporting Requirement. The Contractor shall report to the Director of Business Services and/or his/her designee, for matters pertaining to the Campus Store. The Contractor's Regional Manager will meet with the Associate Vice President for Administration and Finance and/or his/her designees on a quarterly basis, or as mutually agreed, to review the Campus Store's performance.
- p. Licensing, Permits, Taxes. The Contractor shall, at its sole expense, procure and keep in effect all necessary permits and licenses required for its performance under this Agreement, and shall post or display in a prominent place such permits and/or notices as are required by law. The Contractor shall pay for any and all taxes and assessments attributable to the operation of the Campus Store provided herein, including, but not limited to, sales taxes, payroll taxes, and federal, state, and local income taxes for Contractor's employees, but Contractor shall not be responsible for any property, excise, or municipal taxes on the Campus Store.

3.2 Customer Service

- a. Customer Service Expectations. The Contractor shall provide excellent customer service at the Campus Store. The Contractor shall work closely with the University to establish goals for customer service performance metrics and shall provide to the University all supporting evidence, including customer survey results and internal evaluations as necessary to establish and document the actual/current level of customer service provided.

UCF will measure the level of customer service provided by the Contractor throughout the term of the contract. Customer service metrics include, but are not limited to, the following:

- Customer checkout wait times- Rush
- Customer checkout wait times- Non-Rush
- Online order fulfillment processing time (i.e., time from receipt of customer order until order is shipped or available for customer pickup)
- In-stock position / textbook availability on 1st day of class
- Used textbook ratio
- Textbook rental availability ratio

- Textbook rental sales ratio
- Customer survey results

The Contractor shall work closely with UCF to establish goals for customer service performance metrics.

- b. Nametags/Identification Tags. The Contractor shall ensure that all UCF Campus Store employees wear nametags/identification tags, along with a standardized UCF Campus Store uniform shirt, subject to University approval.
- c. Image Of The Campus Store. The Contractor shall operate the Campus Store in a manner that reflects the image and reputation of UCF/VC and supports the mission of the University. The Contractor shall become involved in the academic, cultural, and social environment at UCF/VC, taking advantage of opportunities to offer special merchandising, marketing, and/or assistance based upon the ongoing and unique activities of UCF/VC, and, where and when appropriate, creating temporary selling points at various sites around the campus in connection with special events and programs.
- d. Support Of Student Organizations. It is in the Contractor's best interest to be engaged with, and be supportive of, UCF/VC student organizations and student activities. The Contractor will be expected to establish strong relationships with student organizations and student activities.
- e. Customer Feedback. The Contractor shall seek customer feedback on a regular basis through methods that include, but are not limited to, customer surveys per semester, student focus groups, customer comment cards, secret shopper programs, etc. Customer feedback results shall be shared with the UCF Contract Administrator on each campus for evaluation and input. Individual campuses shall reserve the right to seek additional customer feedback by whatever method they deem appropriate for their purposes.
- f. Hours Of Operation. The Standard Hours of operation shall include, at a minimum, Monday through Saturday during the Academic Year unless changes are mutually agreed to in advance. Contractor shall establish the standard operating hours' (opening and closing times) for each location which shall then be approved by the University and any changes to the approved schedule will only be made in conjunction with the Contractor and University.
 - i. The Standard Hours of operation shall be extended during the beginning of each semester and to support special programs and events as necessary (e.g., Open Houses, Parent's Weekend, Orientation, Alumni Weekend, etc.).
- g. Changes to the Standard Hours of operation must be approved by the University. The University prefers that the standard operating hours to be "consistent" during the Academic Year.
- h. During all hours of operation, including peak business hours and extended hours of operation, the contractor shall staff the Campus Store adequately to provide the level of service required by the University.
- i. Campus Store Advisory Board. The Contractor's Campus Store Manager shall meet semi-annually with the Campus Store Advisory Board and with University stakeholders to review Campus Store operations and merchandise selection. The Contractor's Regional Manager shall attend at least one Campus Store Advisory Board meeting per year. Further, the Contractor's Campus Store Manager shall work cooperatively with the Advisory Board, and with University stakeholders in the

development and improvement of the Campus Store's program, merchandise selection, services, and policies. The Contractor shall make every reasonable effort to comply with requests from the Advisory Board and from University stakeholders to improve the Campus Store's program, services, and policies. The Campus Store Manager or his/her designee is also expected to meet periodically with deans, department heads, and other faculty members.

- j. **UCF and Valencia Licensing.** The Contractor shall meet regularly with individuals responsible for UCF and Valencia Licensing to develop and implement marketing campaigns to promote merchandise sales.
- k. **Refund Policy.** The Contractor's refund policy must be sensitive to the needs of students and customers.

3.3 **Staffing / Personnel**

- a. **Staffing.** The Contractor shall be responsible, at its sole cost and expense, to employ all personnel necessary for the efficient operation of a full-service Campus Store in accordance with the requirements established by the University and shall maintain an adequate staff at all times to ensure a high quality operation, including providing a sufficient number of experienced personnel for operational and administrative purposes.
 - i. **UCF/VC desires that Contractor give favorable attention to prospective qualified employees from the surrounding community, and UCF/VC students, when appropriate.**
- b. **Organization Chart/Staffing Level.** The Contractor shall present its organization chart/staffing level to UCF for discussion and approval to ensure there will be sufficient on-site staff to provide the required level of service. All Salaried positions must be identified and listed on the staffing chart. Changes or reductions to the agreed-upon staffing level shall require discussion with the University. The review and/or approval of any of Contractor's organization chart and/or staffing levels by the University does not relieve Contractor of its responsibility to perform in accordance with the terms of this Agreement and the expectations of the University.
- c. **Manager.** The University reserves the right, but is not obligated to, review and approve the Manager that the Contractor intends to hire for the UCF Campus Store. Subsequent changes in assignments will be made by the Contractor only after prior consultation with, and approval by, the University. The University expects management continuity (i.e., limited turnover of the Manager) in order for the Contractor to meet the expectations and requirements of the University. The review and/or approval of the Contractor's Manager by the University does not relieve Contractor of its responsibility for the performance and monitoring of its staff. The University reserves its right to request the replacement of any of Contractor's personnel that fail to meet the expectations of the University.
- d. **Employee Conduct.** The Contractor shall be responsible for the actions of its employees, agents, and independent contractors hereunder acting within the course and scope of their employment or agency and for the payment of all taxes, wages, benefits, as applicable, and other costs associated with such persons. While on UCF premises, all employees, agents and independent contractors of the Contractor shall comply with all applicable University policies and procedures. If a Contractor's employee is found to be unacceptable, the Contractor shall be required to remove any such employee, agent, or independent contractor from the University at the University's request. If UCF makes such a request, Contractor shall replace said person no later than thirty (30) days after the request is made, except that Contractor shall terminate the employee immediately if UCF determines that the employee has engaged in theft or dishonesty, has used alcohol or illegal substances during work hours or been under

the influence of alcohol or illegal substances during work hours, has abused legal substances during work hours, or has been convicted of a felony.

- e. ADA. The Contractor shall comply with the Americans with Disabilities Act (ADA).
- f. Employment Laws. The Contractor shall comply with all applicable Florida and federal employment requirements.
- g. Background Checks.
The Contractor assumes all liability arising out of, and is solely responsible for, conducting background checks for all of the Contractor's employees, agents, or independent contractors. The Contractor shall provide background checks for all of the Contractor's non-temporary employees, agents, or independent contractors working at UCF and shall ensure that all hires have been cleared before placement at the University. Temporary employees hired through a temporary staffing agency shall require the background checks listed herein, and Contractor may satisfy this requirement by conducting the background checks directly or having a contract with the temporary staffing agency that incorporates the same requirements. If Contractor hires currently-enrolled UCF students on a temporary basis, Contractor is not required to perform the background checks listed herein.

Convictions discovered in the background check will be reviewed by Contractor's Loss Prevention and/or Human Resources department. Consideration may be given to the person's relationship to the job, how long ago the conviction occurred, the potential risk posed to employees, customers, students, and the University and any other circumstances deemed relevant to the final determination of whether to employ or retain the person. Conviction information will be maintained by Contractor as confidential.

ii. Background checks shall include, at a minimum, the following items:

- 1. National Criminal History Records
- 2. National Sex Offenders Registry
- 3. Federal Criminal Database
- 4. Statewide Criminal History background check through FL Dept. of Law Enforcement Website
- 5. SS Trace Validation
- 6. County Criminal Search

3.4 **General Merchandise And Marketing**

- a. General Merchandise Selection. The Contractor shall provide a full range of general merchandise including emblematic clothing, emblematic gifts, computer/technology supplies, general books, reference books, medical reference books, culinary supplies, novelty gifts, school supplies, greeting cards, convenience products (e.g., beverages, candy, snacks, etc.), health and beauty aids (HBAs), special order services, graduation related merchandise, full-service café, and other services expected from a full-service Campus Store.
- b. Emblematic Clothing And Gifts. The Contractor shall promote and brand UCF by offering a broad selection of emblematic clothing and gifts that comply with the University's licensing requirements, design guidelines, and requirements for branded products. The Contractor shall provide exceptional value to UCF customers by offering high quality products and services at fair prices and multiple price points.

- c. Technology Products. The Contractor shall provide a selection of technology products. Technology products shall include, but not be limited to, computer accessories, computer/technology supplies, etc. The UCF Technology Product Center, operated by UCF is the authorized on-campus Apple re-seller. Contractor shall not sell computers, except that it may sell computer accessories and peripherals.
- d. New Product Lines. The Contractor shall continually expand and introduce new product lines that appeal to UCF customers (e.g., students, faculty, staff, alumni, fans, and visitors) and generate traffic into the Campus Store.
- e. Website/Social Media. The Contractor shall be required to maintain a full-service UCF Campus Store Website. The website will feature a full range of UCF emblematic merchandise. The Contractor shall develop and implement a social media marketing and promotion strategy. To the extent that the Contractor develops its own social media sites (e.g., Facebook, Instagram, Twitter) or integrates with University sites, the Contractor shall be required to keep its posted information up-to-date, refresh its sites frequently consistent with effective social media strategies, and conform to University social media standards and practices.
- f. Graduation Merchandise. The Contractor shall sell graduation merchandise (e.g., diploma frames, announcements, regalia, class rings, etc.) in the Campus Store and at other locations as designated by the University, throughout the year and during graduation.

The Campus Store distributes graduation regalia for all UCF commencements. There are currently three (3) UCF commencements each year.

- g. Licensing Program. The Contractor shall only purchase UCF branded merchandise from vendors who adhere to UCF's Licensing Program requirements.
- h. Vendor Code Of Conduct. The Contractor must have a vendor code of conduct policy. The policy must ensure that all vendors with whom the contractor does business with meet FLA (Fair Labor Association) and WRC (Worker Rights Consortium) standards.

3.5 **Café Services**

- a. Café Services. The contractor shall work cooperatively with UCF/VC to provide Café Services in the Campus Store.
- b. Café Services Products. Café Services products may include coffee, cold and hot beverages, snack foods, healthy options, grab-and-go items, convenience items, etc. The Café should also include a seating area, primarily consisting of outdoor space.
- c. UCF will determine the Café branding. In the case Contractor cannot obtain licensing for the desired brand, UCF and Contractor will mutually agree to a brand.

3.6 **Course Materials**

- a. Agent For The Collection Of Textbook Adoptions. The Contractor shall be UCF/VC's agent for the collection and compilation of the course materials list and for providing course materials to UCF/VC students for the Downtown Campus. The Contractor shall provide course materials, including all required, recommended, or suggested course materials and supplies, including textbooks, coursepacks, software, and materials published or distributed electronically.

- b. University Rights Re: Adoption Data. Textbook adoption data and forms, whether received in paper form, electronically, or otherwise, provided to the Contractor by UCF's and Valencia's Faculty or Staff are the property of the University. The Contractor shall provide textbook adoption data and/or adoption forms to the University within twenty-four (24) hours of the University's request for copies of such adoption data and/or adoption forms. All collected data shall be provided to UCF in an electronic, sortable, format (such as Microsoft Excel or equivalent).
- c. Comprehensive Services for the Valencia College Culinary Program. The Contractor shall provide comprehensive services to support the Culinary program offered by Valencia College including providing required course materials, culinary supplies and uniforms, special orders, and any other products and services related to the Culinary program, and shall track such sales as a separate category from other store sales.
- d. Custom-Published Materials. The Contractor shall provide custom-published materials (i.e., coursepacks), including the securing of copyright clearances in compliance with all copyright laws, production/printing, and sales.
- e. Textbook Rental Program. The Contractor shall provide a full-service textbook rental program.
- f. Digital Course Materials/New Technologies (i.e., e-books, access codes, adaptive learning products, etc.). The Contractor shall provide a digital delivery/new technologies program that addresses the changing types of course materials, including but not limited to, providing digital course materials, digital textbooks, support of course related subscription materials, new technologies to support student success, etc.
- g. Inclusive Access/Course Fee Program. The Contractor shall provide an Inclusive Access/Fee Program at the Campus Store, if required by Valencia College or the University. Inclusive Access/Course Fee Programs must include the ability for students to "opt-out" of the Program.
- h. Platform/E-Reader. In the event the University or Valencia College adopts a specific platform or e-reader, the Contractor shall collaborate with UCF/VC to support the use of the adopted platform or e-reader.
- i. Open Educational Resources ("OER"). The UCF/VC will continue to support initiatives that provide affordable course materials to Students, including but not limited to, UCF/VC-purchased or licensed materials including library resources, materials or emerging technologies, and other OER course materials, as defined by the UCF/VC.
- j. Online Course Materials Ordering. The Contractor's website for the Campus Store shall include, but not be limited to, the ability for customers to order and reserve course materials.
- k. HEOA/Other Laws. The Contractor shall work with the University to help ensure University's compliance with the Higher Education Opportunity Act (HEOA) and all other relevant state, federal, and local laws, rules, and regulations.
- l. HB 7019. The Contractor shall work with the University to ensure compliance with HB 7019 and all other relevant state, federal, and local laws, rules, and regulations.
<https://www.flsenate.gov/Session/Bill/2016/7019>

Contractor's data collection and reporting system/tools must provide, at a minimum, the basic information and reporting capability necessary to allow the University to measure and report its compliance with HB 7019 including, but not limited to, the following:

- i. Provide and retain Historical Data (retain data for the term of contract)
- ii. Provide a report on the number of courses and course sections that were not able to meet the textbook and instructional materials posting deadline for the previous academic year
- iii. Provide a report showing the price of learning materials in each course to determine how much cost varies from course section to course section.
- iv. Provide a report that identifies the specific measures used to reduce the cost of course materials, and "the textbook and instructional materials selection process for general education courses with a wide cost variance."
- v. Provide a report on the textbook and instructional materials for general education courses that have a wide cost variance identified and are high- enrollment courses.

3.7 **Course Materials Affordability / Pricing Policies**

- a. Course Materials Affordability. UCF/VC is committed to making course materials affordable to its Students. The Contractor's course materials pricing policies should be innovative and demonstrate Contractor's commitment to providing affordable course materials. Provide affordable pricing policies/plans for the typical Course Material offerings/categories. See Section 4 and Section 6.
- e. University Audit Rights. The University has the right to audit the Contractor's records, vendor invoices, publisher invoices, etc., to verify adherence to the established pricing policies.

3.8 **Innovative Methods Of Delivering Course Materials**

- a. Textbook Rental Program. UCF/VC is committed to providing a strong textbook rental program in order to reduce the cost of course materials to UCF/VC Students. The Contractor shall make a significant effort to maximize the availability of textbook rentals for UCF/VC Students.
- b. Used Textbook Program. UCF/VC is committed to providing a strong used textbook program in order to reduce the cost of course materials to its Students. The Contractor shall make a significant effort to maximize the availability of used textbooks for UCF/VC Students.
- c. Buyback. The Campus Store shall buy back books from students at not less than 50% of the original textbook retail price for textbooks that have been adopted for an ensuing semester. (i.e., If a textbook was purchased new and has been readopted, then the Campus Store shall pay the student not less than 50% of the original new textbook retail price during buyback. If a textbook was purchased used and has been readopted, then the Campus Store shall pay the student not less than 50% of the original used textbook retail price during buyback.) Textbooks that have not been adopted for an ensuing semester shall be purchased at a minimum of the current wholesale price, established by national used book wholesalers and published in one of the current national used book wholesale buying guides.

- d. Digital Course Materials/Innovative Course Materials Delivery Mechanisms. The Contractor shall present all desirable innovations for the delivery of textbooks and course materials to the University Administration and Faculty and work with the Administration and Faculty to determine the best possible options for the introduction of new technology and delivery mechanisms.
- e. Desk Copies. UCF prohibits the purchase and sale of complimentary/desk copies by the Campus Store.

3.9 **Tender Types / Discounts / Financial Aid**

- a. Tender Types. At a minimum, the Contractor shall accept cash, personal checks, major credit cards, the UCF Campus Card (a.k.a. Knight Cash), Campus Store gift cards, bank debit cards, UCF/VC Department Charges, scholarship charges/vouchers, and financial aid account charges/vouchers. The Contractor shall be solely responsible for all expenses and collection of debts resulting from cash, personal checks, credit cards, and bank debit card transactions.
- b. UCF Campus Card. (a.k.a. Knights Cash). The Contractor shall provide at its sole expense the hardware, software, and interfaces necessary in order to accept the UCF Campus Card and/or another smartcard utilized by UCF in the future, at the Campus Store. The University will reconcile and reimburse the Contractor on a monthly basis for Campus Store Campus Card transactions. The Contractor shall pay a one percent (1%) transaction fee for Campus Card transactions. The Contractor will submit invoices monthly to the University for reimbursement of Campus Card transactions, and will receive reimbursement monthly- net of the 1% transaction fee. The Contractor shall not increase the price of goods and or services to Campus Card customers in order to offset the Campus Card transaction fee.
- c. Financial Aid. The Contractor shall extend UCF/VC Students receiving financial aid credit up to \$600. The Contractor is responsible for any bad debt related to course materials sales purchased with financial aid funds up to the annual cap specified in Section 4.
- d. Department Charges. UCF/VC Departments shall be allowed to charge department purchases at the Campus Store using the UCF or VC Procurement Card (“P-Card”) or by providing an authorized Departmental Budget Code. Contractor will offer a 20% discount on all authorized department purchases (excluding adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids, food snacks, café items, and beverages).
- e. Faculty/Staff Discounts. Contractor will offer all full-time UCF faculty and staff a 10% discount on all purchases at the Campus Stores (excluding adopted textbooks, special orders, sale books, class and alumni rings, computer software, periodicals, discounted merchandise, computer hardware, stamps, health and beauty aids,).

3.10 **Technology**

- a. Technology Investment. The Contractor shall provide state-of-the-art technology (e.g., Campus Store computer system, point-of-sale system, computerized textbook management system, technology necessary to comply with HEOA and HB 7019, alternative technology for textbooks/course materials, etc.) to deliver the desired level of service. The Contractor’s systems shall have the ability to interface with current or future University systems, including but not limited to University’s student information system (People Soft), etc. (Note: The University will not buy out the undepreciated

portion of the Contractor's technology investment at the termination, expiration, or non-renewal of the contract).

- b. The Contractor's system must have the ability to interface with both UCF's and Valencia's "textbook adoption systems", including but not limited to the student information system (People Soft at UCF, and Banner-Canvas at Valencia).
- c. Website. The Contractor shall provide and maintain a website for the UCF Campus Store. The site shall conform to University design guidelines and link to and from the University's website. The Campus Store website shall include, but not be limited to, the ability for customers to order and reserve textbooks, order general books and general merchandise, and the ability for faculty to submit textbook adoptions online. Any links on the UCF Campus Store Website and/or any Advertising that the University may object to shall be immediately removed upon written notification from the University.
- d. PCI Compliance. The Contractor shall comply with UCF's Payment Card Industry Data Security Standard (PCI DSS) Policy.
- e. Europay, Mastercard, and Visa (EMV) Compliance. The Contractor shall ensure that the Campus Store is compliant with EMV standards for authorizing credit and debit card transactions.
- f. Customer Data. Customer data shall not be shared or sold by the Contractor without the express written approval of the customer. The Contractor shall comply with all requirements regarding the secure handling of UCF Data as described in "Secure Handling of UCF Data."

3.11 **Financial Reporting And Payment Terms**

The Contractor agrees to pay the University those payments and/or commissions listed herein (refer to Section 4) and as described below.

- a. A Commission payment calculated as a percentage of Contractor's cumulative "Commissionable Sales", or the minimum annual guarantee, whichever is greater, over the agreed time (i.e., monthly).
- b. If applicable, a Sales Tax payment based on the amount of each Commission payment made by Contractor to the University. The Sales Tax payment is calculated as a percentage of the Commission payment made to the University using the percentage rates set by the Florida Department of Revenue and Orange County, FL at the time the Commission payment is due (currently 6.3%. Refer to Statute 212.08(7)(eee) regarding applicability).
- c. The Commission, and Sales Tax payments are due by close of business (COB) on the last business day of the month that follows the respective period used in the commission calculation. For example, if the Commission is based on a monthly sales period and the commission period being calculate is January 2019, then the Commission for that period would be due by COB February 28, 2019.
- d. For non-recurring payments (such as a one-time repair or utility charge), an invoice will be sent to Contractor. Such payment is considered late if Contractor's payment is not received by Business Services by the close of business on 30th (Thirtieth) calendar day after the "invoice due date" printed on the invoice form.

- e. Basic Utilities: Unless stated otherwise herein, the following Utilities and Services (herein referred to as “Utilities”) are inclusive of the items listed below, and will be billed to Contractor on a monthly basis:
 - i. Trash removal (Non-hazardous trash pickup from a single collection point as designated by the University);
 - ii. Heating, Ventilation, and Air Conditioning (HVAC);
 - iii. Electric (Lighting and convenience);
 - iv. Water (potable & waste);
- f. Additional Utilities: Telephone, Television (cable/satellite), Internet access, connection to UCF’s fiber/Ethernet/network, and any other service or utility not listed above as included in the basic Utilities, are at additional cost and will be the responsibility of the Contractor.
- g. Late payments may be subject to an Administrative Processing Fee of \$25.00 (Twenty-five dollars) per occurrence. In addition, if a payment is over 30 (Thirty) calendar days late, the payment amount owed may then bear interest from the 31st (Thirty-first) day after the payment’s due date and continue until paid at the lesser of (i) twelve (12%) percent per annum or (ii) the maximum interest rate per annum allowed by law. The University may waive the Administrative Processing Fee, and/or the Interest charge, at its sole discretion.
- h. Payments shall be made to the University on a monthly basis via check or electronic funds transfer (EFT). The University shall have the option to select either (i) monthly payments according to the commission schedule, or (ii) monthly payments based on one-twelfth (1/12th) of the minimum annual financial guarantee. Regardless of the payment method selected by the University, payment of any amount due in excess of payments already received shall be made annually, within thirty (30) days following the end of each contract year.
- i. Remit payments to the following address:
UCF Business Services
PO BOX 160055
Orlando, FL 32816
- j. The Contractor shall be solely responsible for the collection of any debts resulting from checks, credit cards, charge cards, debit cards, etc.
- k. Monthly Reporting. On a monthly basis, the Contractor shall submit a detailed sales report and financial report to the University, including sales, website sales, sales by category (for each location and consolidated), non-commissionable sales (with supporting detail), and consolidated sales for the Campus Store (all locations), along with cost of goods sold, gross margin, and expenses by major expense category.
- l. Annual Reporting. On an annual basis, the Contractor shall submit a detailed UCF/VC Campus Store financial statement to the University (for each location and consolidated). At a minimum, the UCF Campus Store financial statement (for each location and consolidated) shall include the following:
 - i. Sales by Category/Department by Location and Consolidated, including commissionable and non-commissionable sales
 - ii. Total Sales

- iii. Cost of Goods Sold
 - iv. Gross Margin
 - v. Personnel Expenses
 - vi. Direct Operating Expenses (itemized by type of expense)
 - vii. Indirect Expenses (e.g., Management Fee, Contractor Overhead Charges)
 - viii. Rent/Commission Paid to the University
 - ix. Profit/Loss
 - x. Dollar Amount of "Retail Textbook Buyback"
 - xi. Dollar Amount of "Wholesale Textbook Buyback"
 - xii. Website Sales
 - xiii. Other data that may be requested by the University
- m. Contractor's Financial Statement. If requested, the Contractor shall provide The University a copy of Contractor's financial statement.

3.12 **Facility Investment**

- a. Facility Investment. Contractor shall provide the capital investment for the build-out of the campus store, and any additional investment that may be needed in future years to reenergize the space and ensure that the store remains a state-of-the-art facility throughout the duration of the contract term. Contractor shall then submit any proposed facility investment amount(s) and plan(s).
- b. Capital Investment. The Contractor's capital investment in the Campus Store facilities must include, but not be limited to, the following:
- Décor items
 - Fixtures
 - Floor treatment
 - Furniture
 - Graphics/signage
 - Merchandise accent lighting
 - Sales tax obligations for capital investments
 - Wall treatment/Slatwall
 - Window treatments
 - Low Voltage (data, phone, cable, A/V, security, POS, etc.)
 - Sales tax obligations for capital investments

3.13 **Facility Build-Out Requirements**

- a. The "White Box" space is anticipated to be available to Contractor on or around March of 2019. Contractor should begin the construction planning/approval process after contract award and be fully mobilized to begin the construction/build-out work as soon as access to facility is granted by the University. Upon UCF providing the completed "White Box" to the Contractor, the Contractor will require 120 days to complete the build-out of the Campus Store facilities.
- b. The University will provide Successful Respondent a "White Box" (a.k.a. Vanilla Shell), facility for use for the Campus Store. This space will be provided in the following state of construction: i.
- Sheet-rock walls installed, taped and primed
 - i. Sheet-rock walls installed, taped and primed
 - ii. Suspended, dropped t-bar ceiling installed
 - iii. Fluorescent 4ft x 2ft lighting fixtures (one fixture per 150-200 square feet)

- iv. Concrete floor slab, broom swept finish
 - v. Basic Electrical: 200-400-amp low voltage electrical service, distributed per code
 - vi. Basic Plumbing: stub outs
 - vii. HVAC distributed at one-ton per 300-350 square feet (depending upon local climate conditions and intended use of space)
 - viii. Fire Sprinkler per code, distributed throughout the space based on intended space use
 - ix. Water, Gas, Cable and Telephone service stubbed to rear of premises
- c. Ownership Of Facility Investment And Fixtures. All capital investments and fixtures in the Campus Store facility shall become the property of the University of Central Florida at the termination, expiration, or non-renewal of the contract. If the contract, or extensions thereto, ends for reasons other than cause (see Section 2.4a) or bankruptcy by the Contractor (see Section 2.4c) prior to the capital investment being fully depreciated, then the University will reimburse the Contractor for the undepreciated portion of the capital investment in the Campus Store facilities, and all capital investments and fixtures shall become the property of the University. If the contract is terminated for cause as outlined in Section 2.4a or for bankruptcy as outlined in Section 2.4c, then the University shall not reimburse the Contractor for the undepreciated portion of the capital investment, and all capital investments and fixtures shall become the property of the University.
- d. Depreciation. The facility capital investment made by the Contractor in the UCF Campus Store facility shall be depreciated on a straight-line basis from the time period beginning when the Campus Store facility is open for business and fully operational (July 1, 2019) and ending (fully depreciated) no later than June 30, 2029, with no interest accumulated.
- e. University Approvals. The facility investment for the Campus Store must meet University of Central Florida's Design, Construction, and Renovation Standards; must be approved in advance by the University; must comply with all procurement and permitting regulations and all laws; and must be coordinated by the Contractor in conjunction with the University. Any third-party Contractor used by the store Contractor to assist with making facility improvements must be approved in advance by the University.
- f. Accounting Of Facility Investment. The Contractor shall provide the University with a full accounting of its facility investment, including copies of invoices paid to vendors for the facility investment. Copies of invoices shall be provided to the University within sixty days from completion of the facility investment, or earlier if requested by the University.
- g. Investment Difference. If the actual amount spent by the Contractor on the facility investment is less than the amount offered in the Contractor's Proposal, then the Contractor shall pay the University the difference between the actual amount spent and the amount offered, payable by July 1, 2024. If the actual amount spent by the Contractor on the facility investment is more than the amount offered in the Contractor's Proposal, then the Contractor shall be solely responsible for all costs necessary to complete the facility improvements.
- h. Design Fees. All store design fees and planning fees associated with Facility Investment shall be incurred solely by the Contractor and the Contractor shall treat all design and planning fees as the Contractor's operating expenses.
- i. Signage. Any proposed exterior signage, banners, etc., must be approved by the University and must adhere to University requirements.

- j. Timing Of Facility Investment. The timing of the facility investment shall be determined by the University in cooperation with the Contractor. Note that the build-out/finishing of the Campus Store must be completed and open for business (with Certificate of Occupancy received) no later than end of July of 2019.

3.14 University Obligations

- a. University Obligations. The University shall provide the Contractor with:
- Campus Store (White Box) of approximately 9,000 square feet retail space and approximately 1,000 square feet “back of house” storage space;
 - Access to campus web services, campus telephone services, and voice answering system at UCF’s standard rate/fee;
 - Security service for the Campus Store provided by UCF in the same manner provided for other UCF buildings.
- b. The University shall maintain, repair, and replace, as necessary, the common areas, and each of the exterior portions and structural portions of the Campus Store building(s)/premises, including, without limitation: the roof and roof supports, footings, foundations, structural supports, columns, exterior walls, bearing walls, retaining walls, floor slab, utility meters, flashings, gutters, downspouts, fire detection and suppression systems; so as to keep the same in good condition and repair.
- c. University shall maintain, repair, and replace, as necessary, all plumbing, pipes, tubes and all other conduits and utility lines leading to or from the Campus Store premises, or leading to or from the building; electrical switches, outlets, circuit breakers, interior lighting fixtures (excluding light bulbs and fluorescent tubes), within the Campus Store premises; all electrical wiring, plumbing, piping, and HVAC components located within the walls, ceilings, and floors; at no additional cost except in the event that such repair or replacement is required due to the negligence of Contractor.

3.15 Contractor Obligations

- a. Contractor Obligations. The Contractor shall provide the following as part of its management and operation of the Campus Store:
- Vehicles. The Contractor shall provide Vehicle(s) necessary (if any) for the operation of the Campus Store.
 - Cleaning and Maintenance. The Contractor shall properly clean and maintain (to the satisfaction of the University) the interior of the Campus Store(s), including the routine cleaning of floors, walls, windows, fixtures, furniture, equipment, etc.
 - Utilities. The Contractor shall be required to pay for utilities expenses at the Campus Store as described in Section 4.4 herein.
 - Emergency Key. The Contractor shall supply an emergency key to be left with UCF Police Department.
 - Internal Security. The Contractor shall collaborate with UCF’s Police Department and the University Administration concerning questions of discipline, enforcing regulations, and internal security and theft control in the Campus Store. The University expects the Contractor's first point of contact with regard to security and safety issues for the Campus Store shall be UCF’s Police Department.

- b. Contractor shall maintain and repair the Campus Store premises in good clean order, condition and repair. Contractor is responsible for the total cost of maintenance and repair of the Campus Store premises including, but not limited to the following items, tasks, and services (collectively referred to as "Maintenance and Repair"):
 1. Daily cleaning of floors, walls, windows, fixtures, furniture, equipment, etc., and other typical custodial services.
 2. Cleaning of ceiling tiles and ducts, as needed;
 3. Repair and replacement of wall finishes/drywall/paint and ceiling tiles, as needed;
 4. Cleaning of floors, including waxing/buffing of hard floor finishes, and the routine washing and stain removal on soft floor coverings/carpeting;
 5. Replacement of light bulbs and florescent tubes;
 6. Repair and/or adjustment of interior doors and hardware, cabinets/cases, millwork, casework, and countertops;
 7. Repair or adjustment of storefront, entrance doors, and gates, including door closing mechanisms and locks;
 8. Contractor owned and installed computer and POS equipment, systems, and related infrastructure.
- c. Contractor may self-manage/self-perform, or outsource those Maintenance/Repair tasks. If outsourcing the work, Contractor shall not use any maintenance/repair company, service provider, or subcontractor on University property that does not meet the minimum insurance coverage criteria set by the University (listed below) and subject to revision by UCF:
 1. Insurance Required: contractors providing services on UCF property shall maintain worker's compensation, property liability, property damage and vehicle insurance during performance of their work. Contractor's liability insurance shall be written for not less than limits of \$100,000 per person, \$500,000 per occurrence. Coverage's shall be maintained without interruption from date of commencement of work until final payment and termination of any coverage required to be maintained after final completion.
 2. UCF will not be liable or held responsible for any actions or claims related or as a result of the relationship between Contractor and said service provider used by Contractor unless such actions or claims are the result of UCF's negligent actions or omissions.
- d. Contractor may request UCF to provide/perform the Maintenance/Repair work with its own staff or have UCF subcontract the Maintenance/Repair services in its behalf, in which case the University, if in its sole discretion agrees to provide/perform the work, will then invoice Contractor for the actual cost of the Maintenance/Repair plus the current administrative fee (a.k.a. "University Auxiliary Overhead" fee), which is calculated as a percentage of the total cost of the repair or service (currently 9% but subject to change). The responsibility to get the work or service performed satisfactorily and in a timely manner remains with Contractor regardless of the party that actually agrees to perform the work or provide the service.
- e. The University reserves the right to inspect Campus Store premises at any time during the Term. In the event University, in its sole reasonable discretion, determines the premises are not being maintained in a satisfactory condition, the University may direct the Contractor to make the necessary repair or correction at its sole expense, to return the premises to satisfactory condition. Such repairs shall be completed within 30 (Thirty) days of written notification, or in accordance with an alternate schedule

that has been mutually agreed to. The premises are considered to be in satisfactory condition when the premises are in the same or better condition as when Contractor moved in (i.e. at Agreement commencement), normal wear and tear excepted. If Contractor fails to make, maintain, or keep the Campus Store premises in good condition or fails to perform the necessary Maintenance and Repairs, and such failure continues beyond 30 (Thirty) calendar days, or beyond the mutually agreed to alternate schedule, the University may, but is not obligated to, perform or hire the necessary contractor to perform the work, and in that event Contractor shall pay University for the costs thereof plus the administrative fee described in 3.16e above.

- f. The Contractor shall, during the Term, repair any damage caused to real or personal property of the University, wherever situated on the University campus, when caused by the intentional, reckless, or negligent acts or omissions of the Contractor's employees, its subcontractors, its invitees, its agents, or of others under Contractor's control and supervision, or at the option of the University the Contractor shall reimburse the University for the cost or repairs thereto and the replacement thereof accomplished by or on behalf of the University.

SECTION 4: BARNES & NOBLE'S PAYMENTS TO UCF

- 4.1 Payment Formula. During each Agreement Year, Contractor shall pay UCF a minimum annual guaranteed payment ("Minimum Annual Guarantee" as hereinafter defined), or the applicable percentage of commissionable sales ("Percentage of Commissionable Sales" as hereinafter defined) of the Campus Store, whichever is greater, according to the following schedule:

Minimum Annual Guarantee:

- For the first Agreement Year (Two Hundred Fifty Thousand Dollars (\$250,000))
- For the second Agreement Year and each subsequent Agreement year, the Minimum Annual Guarantee shall be ninety-five percent (95%) of the actual commissions paid by Contractor to UCF of the immediately preceding Agreement Year.

Percentage Of Commissionable Sales:

- Fifteen and six-tenths of a Percent (15.6%) of Commissionable Sales up to and including Six Million Dollars (\$6,000,000) per Agreement Year, plus;
- Seventeen and one-tenth of a Percent (17.1%) of Commissionable Sales greater than Six Million Dollars (\$6,000,000) up to and including Ten Million Dollars (\$10,000,000) per Agreement Year, plus;
- Eighteen and six-tenths of a Percent (18.6%) of Commissionable Sales greater than Ten Million Dollars (\$10,000,000) up to and including Fifteen Million Dollars (\$15,000,000) per Agreement Year, plus;
- Twenty and one-tenth of a Percent (20.1%) of Commissionable Sales greater than Fifteen Million Dollars (\$15,000,000) per Agreement Year, plus;
- Seven Percent (7.0%) on Pure Digital Course Materials Sales with a gross margin of 20% or less and Inclusive/Course Fee ("First Day") Sales with a gross margin of 20% or less.
- Digital course materials sales with a gross margin greater than 20% and inclusive course fee sales with a gross margin greater than 20% are fully commissionable.
- Full commission rates apply to bundled packages of course materials (e.g., textbook, workbook, passcode/access code for adaptive learning materials, etc., that are bundled together).
- Amounts earned from processing transactions for publishers related to the consignment of their rental property are fully commissionable. Contractor will notify UCF/VC of consignment rental only titles provided by the publisher and adopted by UCF/VC and shall categorically be reported separately on reports. UCF/VC reserves the right to renegotiate the commission structure on this category of sales should it have a material effect.

In any Agreement year which is less than a complete year, and any year in which a termination of this Agreement occurs whether with or without cause, the payments shall be based upon the Percentage Of Commissionable Sales, and the Minimum Annual Guarantee shall not apply.

- 4.2 Annual Donations. During each Agreement Year, Contractor shall provide to UCF annual donations and giveaways ("Annual Donations") of Five Thousand Dollars (\$5,000). Annual Donations shall include marketing, merchandise donations, and giveaways to support UCF/VC's groups, departments, and organizations. Distribution of the Annual Donations shall be mutually agreed upon between Contractor and UCF/VC.
- 4.3 Annual Uncollected Financial Aid Expense. During each Agreement Year, Contractor shall incur an annual uncollected financial aid expense ("Annual Uncollected Financial Aid Expense") of up to Ten Thousand Dollars (\$10,000) for UCF/VC's textbook purchase program.

- 4.4 **Utility Expenses.** During each Agreement Year, Contractor shall reimburse UCF on a monthly basis for utility expenses (“Utility Expenses”) for the Campus Store. Payment for the Utility Expenses shall not exceed \$10,000 annually. Contractor and University shall review Utility Expenses annually and determine any mutually agreed upon changes, if necessary.

Basic Utilities: Unless stated otherwise herein, the following Utilities and Services (herein referred to as “Utilities”) are inclusive of the items listed below, and will be billed to Contractor on a monthly basis: i. Trash removal (Non-hazardous trash pickup from a single collection point as designated by the University); ii. Heating, Ventilation, and Air Conditioning (HVAC); iii. Electric (Lighting and convenience); iv. Water (potable & waste);

Additional Utilities: Telephone, Television (cable/satellite), Internet access, connection to UCF’s fiber/Ethernet/network, and any other service or utility not listed above as included in the basic Utilities, are at additional cost and will be the responsibility of Contractor.

- 4.5 **Department Charges.** UCF/VC Departments shall be allowed to charge department purchases at the Campus Store. Department purchases shall receive a minimum of a twenty percent (20%) discount.
- 4.6 **Faculty / Staff Discounts.** UCF/VC Faculty and Staff shall receive a minimum of a ten percent (10%) discount for purchases at the Campus Store.
- 4.7 **Facility Investment.** Contractor shall invest Seven Hundred Forty-Three Thousand Dollars (\$743,000) (the “Facility Investment”) for the build-out of the UCF Downtown Campus Store*. UCF in collaboration with Contractor will have flexibility in determining the allocation of the facility investment. Responsibility Matrix detailed below.

	UCF/Valencia College Campus Store - Dr. Phillips Academic Commons Project Responsibility Matrix (Design, Construction and Funding)	UCF White Box -	BNCB Interior FF&E
1	White Box A/E Design Services		
2a	Interior Build Out A/E Design services		
2b	Store Planning / Graphic Design		
3	All Site Work: hardscape, landscape, exterior lighting, exterior utilities, etc.		
4	Exterior Envelope: structure, exterior doors, windows, walls, roofs, etc.		
5	Floor Slabs, Floor Penetrations, Polished stained finish in ALL Areas		
6	HVAC (equipment, distribution, balancing, controls, EMS)		
7	Electrical (transformers, switch gear, panels, distribution, j-boxes and outlets)		
8	Conduit, j-boxes and pull string for voice, data and security wiring		
9	UCF phone system, wiring and equipment - turn-key system		
10a	Plumbing (supply, waste, vent, fixtures, faucets, fittings. Rough Ins and Final Hook Ups)		
10b	Restrooms: Turn-Key complete		

11	General Lighting (furnish and install)		
12	Feature Retail Accent Lighting (furnish and install)		
13	Fire Protection (automatic sprinkler system)		
14	Fire Protection: heat and smoke detection, horn/strobes, pull stations		
15	Fire Protection: emergency lighting, illuminated exit signs		
16	Finish Ceiling Assemblies (Limited to Office, Café Workroom, Café Engine and Restrooms.)		
17	Interior Partitions (framing, sheetrock, taped, compounded and primed to receive paint finishes.)		
18	Interior doors, frames and hardware		
19	Interior Finish Painting & Interior Wall Finishes		
20	Bookstore and Café Fixtures and Equipment (Fabricate and Install)		
21	Storefront and Interior Signs / Graphics (Fabricate and install)		
22	Office Furniture and Equipment		
23a	Conduit, j-boxes and pull string for voice, data and security wiring		
23b	Low voltage LAN Cat 6 data and security wiring, terminating and testing		
24	Cafe and Office Furniture		
25	Security Systems		

The Facility Investment made by Contractor shall be depreciated on a straight-line basis from the time period beginning when the Facility Investment is made and ending (fully depreciated) no later than ten years later, with no interest accumulated.

*\$43,000 is for the technology investment by the Contractor and shall not be included in the amount to be depreciated on a straight-line basis.

4.8 Pricing Plan for Course Materials.

New textbooks will be sold at no greater than (i) the publisher's list price or (ii) a 25% gross margin on net priced books, inclusive of restocking fees. Freight fees are not added to textbook prices.

- a. Net priced books are defined as books purchased from publishers that do not have a publisher's suggested list price or when the publisher's discount to the bookstore is less than 20%.

Used textbooks will be priced at 25% less than the new selling price. Select used titles will be further discounted through Contractor's Flex Used Pricing program.

Coursepacks and textbooks purchased from publishers with restrictive or non-returnable text policies or are single use products will be priced at up to a 25% gross margin.

Additional details and programs are provided in Contractor's submittal.

Attachment B

ITN1710NCSA Operation and Management of the UCF Downtown Campus Store

Awarded to Barnes & Noble Booksellers, LLC (Barnes and Noble)

Agreement Overview

Barnes and Noble will design, build-out, operate and manage the UCF Downtown Campus Store. The campus store (9,000 square feet) will provide course materials, branded merchandise, school supplies, convenience items, a branded café, and flexible gathering space.

Barnes and Noble will design a store with a concierge style concept, where minimal space is dedicated to textbooks and course materials. The design will allow students to order their books on-line and select a desired pick-up location which will include any UCF campus location and designated Valencia and Seminole State College locations. Materials will be ready for pick-up or delivery within 24 hours after placing the order.

Contract Term

Design and Build-Out: A Memorandum of Understanding (MOU) was executed, authorizing Barnes and Noble to begin the design of the campus store. The MOU will terminate on or about November 15, 2018 upon the Board of Trustees approval of the final agreement. The design and build-out will continue upon the execution of this agreement and end on or about 120 days from UCF providing the completed white box space.

Operation and Management: The agreement for the operation and management of the campus store will be for ten (10) years, effective on or about July 1, 2019 through June 30, 2029. The University shall have the option to renew the agreement for mutually agreed renewal terms not to exceed two (2) ten (10) year renewals, by providing the Contractor with one hundred twenty (120) days written notice of intent to renew prior to the expiration of the initial term or renewal term.

Financials

Capital Investment: Barnes and Noble will invest \$743,000 for the design and build-out of the campus store (\$43,000 is for the technology investment by Barnes and Noble and will not be included in the amount to be depreciated on a straight-line basis). UCF in collaboration with Barnes and Noble will have flexibility in determining the allocation of the facility investment. The investment will be fully depreciated on a straight-line basis from July 1, 2019 through June 30, 2029, with no interest accumulated.

All capital investments and fixtures will become the property of UCF at the termination, expiration, or non-renewal of the contract. If the contract, or extensions thereto, ends for reasons other than cause or bankruptcy by Barnes and Noble prior to the capital investment being fully depreciated, then UCF will reimburse Barnes and Noble for the undepreciated portion of the capital investment in the campus store facilities, and all capital investments and fixtures shall become the property of the University. If the contract is terminated for cause or for bankruptcy, then the University shall not reimburse Barnes and Noble for the undepreciated portion of the capital investment, and all capital investments and fixtures shall become the property of the University.

If the actual amount spent by Barnes and Noble on the facility investment is less than \$700,000 then Barnes and Noble shall pay UCF the difference between the actual amount spent and the

amount offered, payable by July 1, 2024. If the actual amount spent by Barnes and Noble on the facility investment is more than \$700,000, then Barnes and Noble shall be solely responsible for all costs necessary to complete the facility improvements. No UCF funds will be used to complete the build-out or operate the store.

Commissions: Barnes and Noble will pay UCF a minimum annual guaranteed payment or the applicable percentage of commissionable sales of the Campus Store, whichever is greater, according to the following schedule:

Minimum Annual Guarantee

- For the first agreement year (two hundred fifty thousand dollars (\$250,000)).
- For the second agreement year and each subsequent agreement year, the Minimum Annual Guarantee shall be ninety-five percent (95%) of the actual commissions paid by Barnes and Noble to UCF of the immediately preceding agreement year.

Commissionable Sales

- 15.6% up to \$6.0M
- 17.1% from \$6.0M to \$10M
- 18.6% from \$10M to \$15M
- 20.1% over \$15M
- First Day and eTextbook Sales: 7.0%

Annual Donations: Barnes and Noble will provide to UCF annual donations and giveaways of five thousand dollars (\$5,000). Annual donations shall include marketing, merchandise donations, and giveaways to support UCF/Valencia College's (VC) groups, departments, and organizations. Distribution of the annual donations shall be mutually agreed upon between Barnes and Noble and UCF/VC.

Annual Uncollected Financial Aid Expense: Barnes and Noble shall incur an annual uncollected financial aid expense of up to ten thousand dollars (\$10,000) for UCF/VC's textbook purchase program.

Utility Expenses: Barnes and Noble shall reimburse UCF monthly for utility expenses for the campus store. Payment for the utility expenses shall not exceed ten thousand dollars (\$10,000) annually.

Department Charges: UCF/VC Departments shall be allowed to charge department purchases at the campus store. Department purchases shall receive a minimum of a twenty percent (20%) discount.

Faculty / Staff Discounts: UCF/VC Faculty and Staff shall receive a minimum of a ten percent (10%) discount for purchases at the campus store.

ITEM: FFC-2

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: Chilled Water Services Agreement for Sanford Burnham Prebys Building

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve the Assignment and Assumption of the Chilled Water Service Agreement between Orlando Utilities Commission (OUC) and Sanford Burnham Institute for Medical Research.

BACKGROUND INFORMATION

UCF is set to take over the Sanford Burnham Prebys building December 1, 2018. The existing agreement between OUC and Sanford Burnham commenced December 4, 2008 and has a 30-year term, of which 20 years are remaining. The annual average chilled water costs for the past three years under this agreement have been \$1,328,000. UCF can reasonably expect to incur an additional \$26,600,000 over the next 20 years for chilled water service to the building. This figure is based solely on historic consumption. Escalation, time-value of money, and energy cost rate increases are not considered.

Note that Article I (referencing Exhibit B) in the OUC Chilled Water Service Agreement permits UCF a one-time reduction of contact capacity and opportunity to negotiate a better rate, which is currently being explored. In addition, Article 15 in the agreement gives UCF the option to buy out the contract after 10 years, or cancel the agreement and pay a penalty. Consideration is being given to exploring other financial models.

As the agreement for chilled water must be in place on or before December 1, 2018, we are seeking Board of Trustees' approval of the Assignment and Assumption Agreement to transition chilled water service into UCF's name.

Supporting documentation: Attachment A: Assignment and Assumption of Chilled Water Services Agreement
Attachment B: OUC Chilled Water Service Agreement

Prepared by: Lee Kernek, Associate Vice President for Administration and Finance

Submitted by: Misty Shepherd, Interim Vice President for Administration and Finance

Attachment A

Assignment and Assumption of Chilled Water Services Agreement

1. Parties:

1.1 Orlando Utilities Commission ("Company")

1.2 Lake Nona Land Company, LLC ("Lake Nona")

1.3 Sanford Burnham Prebys Medical Discovery Institute ("SBP"), formerly known as Burnham Institute for Medical Research

1.4 University of Central Florida Board of Trustees ("UCF")

2. Background Facts:

2.1 Company, Lake Nona, and SBP are parties to that certain Chilled Water Services Agreement, dated as of December 5, 2007 (the "Agreement"), which Agreement provides for Company to provide chilled water services to the property located at 6400 Sanger Road, Orlando, Florida 32827 (the "Property").

2.2 SBP was the owner of the building on the Property until August 27, 2018, at which time ownership of the Property and building was transferred to the University of Central Florida Real Estate Foundation, LLC, a wholly owned subsidiary of the University of Central Florida Foundation, Inc., which serves as a direct support organization of UCF.

2.3 Pursuant to a sublease agreement, SBP will continue to occupy all of the Property and building through November 30, 2018, with occupancy transferring to UCF on December 1, 2018 (the "Transfer Date").

2.4 The parties desire to have the Agreement assigned to and assumed by UCF as of the Transfer Date.

3. Agreements:

3.1 As of the Transfer Date, SBP assigns to UCF all of SBP's rights and interests under the Agreement, and UCF accepts that assignment and assumes all of SBP's obligations under the Agreement accruing from and after the Transfer Date.

3.2 Company and Lake Nona hereby consent to and approve the foregoing assignment and assumption of the Agreement.

3.3 SBP will continue to make all required payments accruing prior to the Transfer Date.

3.4 UCF acknowledges and confirms that it has received and reviewed a copy of the Agreement, and that it accepts the terms of the Agreement.

3.5 The parties acknowledges and confirms that there have been no amendments or modifications to the Agreement.

3.6 The parties acknowledge and agree that Lake Nona has already performed all of its obligations under the Agreement, such that Lake Nona has no remaining obligations or liabilities under the Agreement.

4. Address:

For purposes of billing and notices to UCF, the following address shall be used:

University of Central Florida Board of Trustees
6850 Lake Nona Blvd.
Orlando, FL 32827-7408

The Parties hereby mutually agree to the foregoing matters.

Dated as of November __, 2018

Orlando Utilities Commission

By: _____

Name: _____

Title: _____

Lake Nona Land Company, LLC

By: _____

Name: _____

Title: _____

Sanford Burnham Prebys Medical Discovery Institute

By: _____

Name: _____

Title: _____

University of Central Florida Board of Trustees

By: _____

Name: _____

Title: _____

Attachment B

CHILLED WATER SERVICE AGREEMENT

BETWEEN

BURNHAM INSTITUTE FOR MEDICAL RESEARCH

and

ORLANDO UTILITIES COMMISSION

and

LAKE NONA LAND COMPANY, LLC

ORLDOCS 11068085 1

ORLDOCS 11071874 1

EXHIBITS

EXHIBIT "A"	Description of Customer Property
EXHIBIT "B"	Contract Capacity and Service Specifications
EXHIBIT "C"	Central Energy Plant Description
EXHIBIT "D"	CEP Site Plan
EXHIBIT "E"	Prices and Charges for Service
EXHIBIT "F"	Chilled Water System Design Information and Construction & Connection Requirements
EXHIBIT "G"	Entry Road System
EXHIBIT "H"	Map of Lake Nona South Service Area
EXHIBIT "I"	Overall Project Schedule
EXHIBIT "J"	Form of Chilled Water Metering Agreement
EXHIBIT "K"	Chilled Water Distribution System and Fiber Optic Network

CHILLED WATER SERVICE AGREEMENT

THIS CHILLED WATER SERVICE AGREEMENT (this "Agreement") is made and entered into by and among **Orlando Utilities Commission**, a Florida statutory commission, ("Company"), **Lake Nona Land Company, LLC**, a Florida limited liability company ("Lake Nona") and **Burnham Institute for Medical Research**, a 501(c)(3) California nonprofit public benefit corporation ("Customer"), as of the 5th day of December, 2007 (the "Effective Date").

WHEREAS, Company operates and maintains, or will operate and maintain, a district energy system within a portion of Lake Nona South (the "Lake Nona South Service Area", as defined herein) in the City of Orlando, Florida in order, among other things to provide chilled water service to various users as provided herein; and

WHEREAS, Lake Nona is the developer of the Lake Nona Development of Regional Impact (the "Lake Nona Development") and desires to establish a mechanism pursuant to which certain owners or users of property within Lake Nona South Service Area will be able to obtain chilled water service to the Customer Improvements (as defined herein); and

WHEREAS, Customer leases that certain property described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Customer Property"); and

WHEREAS, Customer desires to subscribe for the delivery of Service (as defined herein) from Company, subject to and in accordance with the terms of this Agreement; and

WHEREAS, Lake Nona, Company and Customer desire to enter into this Agreement for the purpose of facilitating the delivery of Service to Customer;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties intending to be legally bound hereby agree as follows:

ARTICLE 1. DEFINITIONS

A. Except as otherwise expressly provided herein, all nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural as the context may require, and any reference to a law, code or regulation shall mean such law, code, or regulation as it may be amended from time to time.

B. The following terms shall have the stated definitions:

1. "Actual Capacity" means the maximum quantity of Service, in Tons, actually provided to Customer for any consecutive sixty-minute period during the applicable billing cycle.
2. "Adversely Affected" means Customer is unable to maintain designed temperature and humidity conditions with its HVAC system when properly

operated as a result of causes other than the actions or inactions of Customer, defects or malfunctions of Customer System.

3. **"Affiliates"** means any natural person or firm, corporation, partnership, association, trust or other entity which controls, is controlled by, or is under common control with a party; for purposes hereof, the term "control" shall mean the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities by contract or otherwise.
4. **"Billing Capacity"** means the greater of: (a) the Contract Capacity, (b) the sum of the Contract Capacity and any Excess Capacity, or (c) the maximum Billing Capacity for the previous eleven (11) Billing Cycles. If it is established to the satisfaction of Company that such Excess Capacity resulted from an isolated, non-weather related anomaly affecting Customer's System which has been corrected and is not likely to recur, then the Excess Capacity will not be included in the Billing Capacity for the next eleven (11) Billing Cycles.
5. **"Billing Cycle(s)"** means the calendar month prior to the month in which a Monthly Statement is delivered by Company to Customer pursuant to **Article 5** hereof.
6. **"Building"** shall mean that certain building to be constructed by Company on the CEP Site to house the components of the Company System, which when completed shall be included within the definition of Central Energy Plant.
7. **"Business Hours"** shall mean a day (other than a Saturday or Sunday) and a time during which banks generally are open in Orlando, Florida for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.
8. **"BTU"** means British thermal unit.
9. **"Capacity Charge"** shall mean one of the components of the total charges for Service paid by Customer to Company hereunder, calculated in accordance with the formula set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference.
10. **"CDD"** shall mean the Boggy Creek Improvement District or any other community development district created pursuant to Chapter 190, Florida Statutes.
11. **"Central Energy Plant"** shall mean the Company System chilled water production facility also referred to as "chilled water plant" and "CEP" as further described in **Exhibit "C"** attached hereto and incorporated herein by this reference.

12. **"CEP Site"** shall mean that certain parcel of real property more particularly described in **Exhibit "D"** attached hereto and incorporated herein by this reference.
13. **"Certificate of Occupancy"** or **"CO"** shall mean the certificate of occupancy for the Central Energy Plant.
14. **"Change in Law"** or **"Change of Law"** shall have the meaning assigned to such term in **Article 5**.
15. **"Commencement of Construction"** shall mean the date upon which Company commences construction of the Central Energy Plant as evidenced by the issuance of a building permit therefor.
16. **"Company Event of Default"** means the meaning as set forth in **Article 13.A** of this Agreement.
17. **"Company System"** means the interconnected combination of chilled water production and distribution components, comprising the system owned and operated by Company within and solely for the benefit of Lake Nona South Service Area in the City of Orlando, Orange County, Florida. The Meter is part of Company System, whether located outside of or in the Customer Improvements.
18. **"Consumption"** means the ton-hours used by the Customer Improvements during the billing period.
19. **"Consumption Charge"** shall mean one of the components of the total charges for Service paid by Customer to Company hereunder, calculated in accordance with the formula set forth in **Exhibit "E"** attached hereto and incorporated herein by this reference.
20. **"Contract Capacity"** means the maximum quantity of Service, in Tons, to be delivered pursuant to the terms hereof during any consecutive sixty-minute period for the Customer Improvements.
21. **"Cure Period"** a period of thirty (30) days following receipt of written notice within which to remedy a default, or such longer period as may be reasonably required to cure such default so long as the defaulting party has commenced and is diligently pursuing said cure, but in no event more than sixty (60) days.
22. **"Customer Event of Default"** means the meaning as set forth in **Article 13.B** of this Agreement.
23. **"Customer Improvements"** means the approximately 175,000 square foot building or buildings to be located within the Customer Property which will receive Service provided by Company pursuant to this Agreement.

24. **"Customer System"** means the interconnected combination of fans, blowers, ducting, dampers, and controls used to distribute and control conditioned air within the Customer Improvements; and the pumps, pipes, valves, fan coils, air handlers, roof-top units, controls, air-cooled back-up chiller as described in **Article 11** and related equipment used to distribute and control chilled water within the Customer Improvements starting from the supply side point of connection of Company to the return side point of connection of Company through which Customer will (a) receive the Service and use the Service for cooling air within the Customer Improvements and return Service to Company and (b) distribute and control the chilled water cooled air into air conditioned portions of the Customer Improvements.
25. **"Differential Temperature Adjustment"** shall have the meaning set forth in **Exhibit "E"** attached hereto and incorporated herein by this reference.
26. **"Energy Delivery Station" or "EDS"** means the equipment owned by Company and located within the Customer Improvements that is necessary to allow the delivery and metering of Service, all as more specifically set forth in **Exhibit "F"** attached hereto and incorporated herein by this reference.
27. **"Entry Road System"** shall mean the road system depicted on **Exhibit "G"** attached hereto and incorporated herein by this reference, together with related utility and drainage facilities as described hereinbelow, all within the right-of-way area to be ultimately approved by, and dedicated to, the CDD and/or the City.
28. **"Excess Capacity"** means the quantity of Service, in Tons, requested in excess of the Contract Capacity.
29. **"Force Majeure"** means any events beyond the control of a party (or its subcontractors and agents) which results in the failure of some performance under this Agreement, including, without limitation, the following: failure of equipment or facilities due to hurricane, tornado, sinkhole, drought, severe storm, flood, earthquake, fire, lightning, epidemic, war, riot, enemy sabotage, civil disturbance, casualty to equipment (unless due to Company's negligence or inaction as it pertains to the maintenance and upkeep of said equipment), inability to obtain and maintain rights-of-way, permits, licenses and other required authorizations from any federal, state or local agency or person for any of the facilities or equipment necessary to provide or receive Service hereunder and restraint, order or decree by any court or public authority. The term **"Force Majeure"** shall not include failure of equipment or facilities due to labor dispute, or curtailment of supply or equipment or other unavailability of equipment or replacement equipment that could have been avoided by prior planning and reasonable efforts of Company. The parties acknowledge and agree that a party's incompetence or failure to deploy adequate resources to meet its obligations hereunder shall not be deemed to constitute a Force Majeure event.

30. **"Franchise Ordinance"** means Ordinance 98-30883-1, adopted by the City of Orlando on July 13, 1998 granting Company an exclusive chilled water service franchise.
31. **"Heat Exchanger"** means those parallel heat exchangers, booster pumps, and related equipment to be supplied by Company as more specifically set forth in Exhibit "F" attached hereto and are necessary to hydraulically separate Company System and Customer's System.
32. **"Lake Nona Event of Default"** means the meaning as set forth in Article 13.C of this Agreement.
33. **"Lake Nona South Service Area"** shall mean that portion of the Lake Nona Development depicted in Exhibit "H" attached hereto and incorporated herein by this reference.
34. **"Master Association"** shall mean the master property owners' association for the development of all or a portion of the properties within Lake Nona South Service Area as determined by Lake Nona.
35. **"Master Utility Infrastructure"** shall include the facilities constructed to the boundary of the CEP Site (or other point of connection agreed to by the Company and Lake Nona) to the standards of the applicable utility with sufficient capacity to provide potable water and waste water for the development and construction of the Central Energy Plant, within the Entry Road System right-of-way and/or utility easements, and facilities for electric power and other utility services with the applicable utility provider.
36. **"Meter"** means the chilled water master BTUH meter and equipment shown in Exhibit "F" attached hereto and incorporated herein by this reference, which is necessary to provide the delivery and metering of Service.
37. **"Operation Date"** means the date on which Company will commence delivery of Service to the Customer and Customer will commence accepting Service from Company. For purposes of this Agreement, the Operation Date shall be December 4, 2008.
38. **"Overall Project Schedule"** means Company's schedule of construction for the Central Energy Plant and related improvements, as set forth in Exhibit "I", attached hereto and incorporated herein by this reference, which schedule shall integrate the schedule of Lake Nona for the Entry Road and the schedule of Customer for the connection to and operation of the Customer System.
39. **"Permits and Approvals"** means the applicable permits, easements, ordinances, licenses, agreements and approvals as to each party as may be necessary in order to allow such party to perform its respective obligations under this Agreement, all in accordance with Article 7 hereinbelow.

40. **"Piping"** means the System chilled water distribution supply and return piping including all appurtenances also referred to as "chilled water piping" and "pipeline" and in accordance with **Exhibit "K."**
41. **"Point of Delivery"** means the point where Service is delivered to Customer, as described in **Exhibit "F"** attached hereto and incorporated herein by this reference.
42. **"Point of Return"** means the point to which Company extends its service line to receive chilled water from Customer, as described in **Exhibit "F"** attached hereto and incorporated herein by this reference.
43. **"Prices and Charges for Service"** has the meaning as set forth in the Section of this Agreement entitled "Prices and Charges for Services."
44. **"Research Use"** means uses for medical, laboratory or research purposes.
45. **"Service"** means chilled water meeting the specifications set forth in **Exhibit "B"** attached hereto and incorporated herein by this reference and made available to the Customer Improvements at the Points of Delivery by Company one hundred (100%) percent of the time during the Term, with such one hundred (100%) percent calculation allowing for short term (fifteen (15) minutes or less), non-consecutive (greater than thirty (30) minutes apart) deviations above 44° degrees Fahrenheit which are inherent to chiller plant operation, interruptions in OUC's delivery of chilled water service caused by or attributable to Customer or the Customer System, Force Majeure events affecting the Company and allowing for planned plant maintenance outages utilizing redundant chiller capacity whenever possible, all in accordance with prudent utility practices as described in this Agreement.
46. **"Superseding Ordinance"** means a subsequent ordinance or agreement between OUC and the City, which supersedes the Franchise Ordinance to the extent it provides: (i) for a thirty (30) year Franchise Ordinance beginning in the year 2008; and, (ii) upon termination of OUC's Service, in whole or in part, under this Agreement, and the City electing not to exercise any Service rights it may have, Lake Nona may provide or secure alternative Service to the Lake Nona Development.
47. **"System"** means Company System and Customer System to be used in combination by Company to provide Service hereunder.
48. **"Term"** has the meaning as set forth in Article 3 of this Agreement.
49. **"Ton"** means a time rate of cooling equal to 12,000 BTU per hour.
50. **"Ton Hour"** means the amount of thermal energy in tons (12,000 BTU) absorbed or rejected in one hour.

51. "Unscheduled Outage" shall mean any System unscheduled Service outage not otherwise permitted under this Agreement or deviation of the Service water temperature from those set forth in Article 5.B. (as applicable), which is caused by something other than a Force Majeure event or action by Customer, and which affects Company's ability to provide Service, and Customer is Adversely Affected by such failure. Properly noticed and scheduled outages or outages caused by Customer shall not be considered Unscheduled Outages.

ARTICLE 2. APPOINTMENT/ACCEPTANCE AND CONDITIONS OF SERVICE

- A. Subject to the terms and conditions as set forth herein and for the Term of this Agreement, Lake Nona hereby designates and appoints Company as the provider for the production and distribution of bulk chilled water to be used by Customer for air conditioning purposes for the Customer Improvements; Company hereby accepts such designation and appointment and agrees to design, construct, commission, operate, and maintain the Central Energy Plant and Piping referred to herein as the Company System.
- B. Company agrees to supply to Customer and Customer agrees to purchase from Company the Service during the Term of this Agreement, subject to and in accordance with the terms and conditions hereof, including the attached Exhibits.
- C. Company, at its expense, shall design, permit, locate, own, construct, install and maintain the Central Energy Plant and all the equipment and Piping not designated as part of Customer System necessary to produce and deliver the Contract Capacity of Service to Customer at the Point of Delivery and to receive return water from Customer at the Point of Return.
- D. Company, at its expense, shall install its Piping up to five (5) feet outside of each of the Customer Improvements. Customer shall install its Piping from five (5) feet outside of the Customer Improvements to Company's Meter located inside of the mechanical room within each Customer Improvement.
- E. Customer, at its expense, shall be responsible for the design, installation, inspection, and testing of the necessary Piping and pipe penetrations into and out of the Customer Improvements as necessary to allow Company to deliver the Service.
- F. Company, at its expense, shall furnish, install, own, operate and maintain a standard Meter as further described in Exhibit "F." The Meter will include such metering equipment as Company deems necessary and/or appropriate to measure and monitor the Service to the Customer Improvements.
- G. As a condition precedent to Company's obligation to provide Service under this Agreement, (1) Customer, at its expense, shall complete all aspects of design, permitting, construction, testing, inspection, and commissioning of Customer System, including without limitation the determination of the air conditioning load, construction and installation of all internal piping, conduit, pumps, and related equipment within the Customer Improvements necessary for Customer to connect to Company's System at the Point of Delivery, Point of Return, Meter, all in accordance with the specifications provided by Company and set forth in

Exhibit "F" attached hereto and incorporated herein by this reference, (2) Customer shall provide Company and its employees, agents, and contractors reasonable access and properly prepared locations on the Customer Property during construction for installation of Company System no less than eight (8) weeks prior to the first day Service is requested to start, (3) Customer shall work in good faith with its landlord, Orange County, Florida, to provide Company easements (in recordable form), licenses, or other rights of access on the Customer Property reasonably necessary to allow Company to perform its obligations hereunder, (4) Customer shall provide (or shall cause its construction manager to provide) Company and its employees, agents, and contractors reasonable access (but in the event of an emergency, then full access) to Company owned equipment for the purposes of operation, maintenance, and inspections, (5) Customer shall agree not to operate, modify, obstruct, or tamper with the Meter or Piping and conduit beyond the Point of Delivery and Point of Return comprising Customer System, (6) Customer, at its expense, shall maintain a dry and adequately ventilated space including power, security, lighting, and access to all Company System equipment, (7) Customer shall provide Company with emergency contact phone, cell, or pager numbers for Customer's System operation personnel, (8) Customer, at its expense, shall agree to properly maintain Customer System to ensure proper operation and compliance with Company standards, (9) Customer shall agree not to modify Customer System in a manner which detrimentally affects Company's ability to provide Service, (10) Lake Nona shall have conveyed the CEP Site to Company via Special Warranty Deed, subject to all matters of record, in accordance with the Overall Project Schedule, at no cost to Company (the "**CEP Site Conveyance**"), and (11) Lake Nona or its Affiliate shall have completed its scope of work under **Article 8.B.1** herein below. Company and Lake Nona acknowledge and agree that the CEP Site Conveyance shall include a deed restriction limiting the use of the CEP Site exclusively to the construction and operation of the Central Energy Plant for providing Service to Customer, as well as other properties within Lake Nona South Service Area, if applicable, and shall include a right of reverter in favor of Lake Nona in the event of a breach of such use restriction. Lake Nona reserves the right to work with Company to expand the services provided on the CEP Site to include hot water, steam, emergency power, etc., if financially feasible.

H. As a condition precedent to Customer's obligation to purchase Service under this Agreement, Company, at its expense, shall (1) complete all aspects of design permitting, construction, testing, inspection, and commissioning of the Central Energy Plant and the Company System, including, without limitation, cooperation with Customer in connection with the determination of the air conditioning load, construction and installation of all internal piping, conduit, pumps, and related equipment within the Customer Improvements necessary for Customer to connect to Company's System at the Point of Delivery, Point of Return, Meter, all in accordance with the specifications provided by Company and set forth in **Exhibit "F"** attached hereto and incorporated herein by this reference, (2) provide Customer and its employees, agents, and contractors reasonable access and information during construction for installation of Customer System, (3) provide Customer and its employees, agents, and contractors information regarding Company owned equipment, including the specifications, operation, maintenance, and inspections thereof, (4) agree not to operate, modify, obstruct, or tamper with Customer System equipment or Piping, (5) provide Customer with emergency contact phone, cell, or pager numbers for Company's operations personnel, and (6) maintain the Central Energy Plant and the Company System in accordance with industry standards to ensure proper operation and compliance with Company standards and compatibility with Customer System.

I. As a condition precedent to each party's respective obligations set forth in **Article 8.B** of this Agreement: (1) the CEP Site Conveyance shall have occurred by the date specified above in **Article 2.G**, and (2) Company, Customer and Lake Nona shall each have obtained its respective Permits and Approvals as provided in **Article 7**.

J. Customer shall install all such Customer System equipment required for Company to provide Service to Customer Improvements in accordance with generally accepted industry practices and in compliance with **Exhibit "B"**. Company shall review the final design of Customer System to ensure compliance with Company standards, and shall inspect Customer System prior to commencement of Service. Company shall promptly advise Customer if any design of Customer System shall not meet Company's standards and Company shall make recommendations to Customer to ensure compliance with Company standards. Company's obligations of review and inspection hereunder shall not subject Company to any liability to Customer. Customer hereby acknowledges that it is relying on its engineers and agents and not Company regarding the final design, installation, operation and maintenance methods of Customer's System and equipment within the Customer Improvements.

K. Beginning with the Operation Date and throughout the term of this Agreement, Customer assumes responsibility for proper maintenance, operation and, if necessary, replacement of Customer System, including the back-up air-cooled system as described in **Article 11**. In the event Customer System is unsafe and represents an imminent threat to persons or property, Company may take reasonable action to prevent damage to persons or property and shall immediately notify Customer of the unsafe conditions and of any such action taken, which action may, if reasonable, include the suspension of the delivery of Service so long as Company promptly notifies Customer.

L. Customer shall give Company not less than 365 days advance written notice of any request for Excess Capacity. If such request is less than 800 tons, Company shall be obligated to provide Excess Capacity, provided: (i) it requires no additional Piping from the existing Company System to the Point of Delivery to serve the Customer, (ii) the CEP is not built out and the Excess Capacity will not result in the CEP exceeding its designed capacity of 14,600 Tons; (iii) the capacity is available within the existing capacity of the CEP and does not require the installation of additional major equipment to provide the increment, and (iv) the Prices and Charges for the Excess Capacity are as set forth in **Exhibit "E"**. If such request is 800 tons or more, Company shall be obligated to provide the requested Excess Capacity, provided: (i) it requires less than 400 feet of Piping from the terminus of the existing Company System to the Point of Delivery to serve Customer; (ii) the CEP is not built out and the Excess Capacity will not result in the CEP exceeding its designed capacity of 14,600 Tons; and (iii) the Prices and Charges for Excess Capacity are as set forth in **Exhibit "E"**. If Company delivers such Excess Capacity, it represents a permanent change in Customer's requirements. The parties agree to amend the Contract Capacity to include such Excess Capacity, which shall thereafter be deemed to be the Contract Capacity hereunder. If the requirements above are not met and the Company elects not to provide the Excess Capacity, such election by Company shall not be a Company Event of Default. In the event Company will not provide Excess Capacity, Company shall notify Customer within thirty (30) days of receipt of Customer's written notice of request. In that event, Customer shall have the right to obtain such Excess Capacity from a third-party source ("Third Party Capacity"). After Customer has utilized the Third Party Capacity, Company shall

thereafter have a right of first refusal to provide subsequent Excess Capacity according to the terms set forth above. Notwithstanding any provision herein, and provided Customer makes payments as required hereunder, Customer shall always have the right to self-produce/generate chilled water for its own cooling needs. The rights and obligations of the Company and Customer with regard to Excess Capacity are limited to Service to the Customer for the Customer Improvements. The Company and Lake Nona do not intend other existing or prospective customers to be bound by this Agreement. Service to other customers within the Lake Nona South Service Area, if any, will be the subject of future agreements between Company, Lake Nona, and such future customers, if any.

M. The Franchise Ordinance granted Company a thirty year franchise. It is the parties' intent for this Agreement, and/or subsequent customer agreements, to have varying terms coterminous with the thirty-year Term of this Agreement, and to provide a mechanism pursuant to which Lake Nona or its assign may undertake the provision of the Service described herein under certain circumstances. Therefore, Company hereby represents and warrants that it shall diligently and in good faith attempt to secure the Superseding Ordinance. In the event Company fails to secure the Superseding Ordinance by the date of issuance of the Certificate of Occupancy, Lake Nona may terminate this Agreement by providing Company written notice of its election to do so, and Lake Nona may purchase Company System in accordance with the terms set forth in Article 15 herein.

N. At the time of the CEP Site Conveyance set forth in Article 2.G, Lake Nona and Company shall enter into a development agreement (the "Development Agreement") that, among other things, establishes:

1. an access easement in favor of the Company over the real property adjacent to the CEP Site that is shown as the "Access Easement Area" on the site plan set forth in Exhibit "D" attached hereto and incorporated herein by this reference (the "CEP Site Plan");
2. a temporary construction easement in favor of the Company to allow Company to construct the roadway/driveway facilities generally depicted within the Access Easement Area on the CEP Site Plan;
3. a utility and roadway easement in favor of Lake Nona over, under and through that portion of the CEP Site that is shown as the "Utility and Roadway Easement Area" on the CEP Site Plan;
4. a drainage easement in favor of Lake Nona over, under and through that portion of the CEP Site that is shown as the "Drainage Easement Area" on the CEP Site Plan;
5. a utility, landscape and multi-use path easement in favor of Lake Nona over, under and through that portion of the CEP Site that is shown as the "Utility, Landscape and Multi-Use Path Easement Area" on the CEP Site Plan;

If Lake Nona desires to include the Access Easement Area and the Utility and Roadway Easement Area within a public right of way, Lake Nona shall have the right to construct road,

utility, drainage and related facilities within the Access Easement Area and the Utility and Roadway Easement Area and then cause those areas to be conveyed to the CDD or dedicated to the public via plat or separate instrument. In that event, Lake Nona shall bear the cost of reconfiguring a portion of the remaining CEP Site to maintain three (3) parking spaces on the remaining CEP Site.

O. Lake Nona will bear the cost of platting the CEP Site and will cause a plat that includes the CEP Site to be accepted and recorded of record on or before the dates set forth in the Overall Project Schedule. Company will fully cooperate in the platting process and will execute the plat and return the original, executed plat to Lake Nona within 10 days after receiving it. If a delay in platting does not cause a delay in delivery of Service or acceptance of Service, such delay shall not constitute a default by Lake Nona.

ARTICLE 3. TERM

A. Customer may change the Operation Date, if later than originally planned, by providing Company written notice of the new Operation Date desired by Customer no later than six (6) months prior to the new date. If Company fails to meet the Operation Date (as such date may be adjusted by Customer above) and fails to establish an alternate plan for Service acceptable to Customer from the Operation Date until Service can be provided, Company shall pay liquidated damages for any such delay in accordance with Subsection 14.G.2 hereinbelow.

B. The term of this Agreement shall be for a period of thirty (30) years, commencing on the Operation Date and terminating on the thirtieth (30th) anniversary of the Operation Date (the "Term"), unless otherwise terminated pursuant to the terms and conditions of this Agreement. At any time following the tenth (10th) anniversary of the Operation Date, this Agreement may be terminated by Customer provided that: (1) Customer has paid Company for the Contract Capacity reserved for the remaining portion of the Term of the Agreement, and (2) written notice of Customer's intent to so terminate this Agreement has been delivered to Company at least one (1) year in advance of the requested date of termination. Not less than thirty (30) months prior to the end of the Term, the parties agree to meet and negotiate in good faith for a period not to exceed six (6) months with respect to an extension of the Term of this Agreement. In the event the parties are able to agree upon an extension of the Term, the parties shall enter into a new agreement not less than twelve (12) months prior to the expiration of the Term and Company shall have a continuing obligation to further extend Franchise Ordinance to cover the extended Term of this Agreement. In the event the parties are unable to agree upon an extension of the Term prior to one (1) year prior to the expiration of the Term, then Lake Nona shall have the right, but not the obligation, to purchase the Company System and Piping from Company in accordance with the terms of Article 15 herein at the expiration of the Term. In the event the Agreement expires, Company shall provide reasonable period of Service after termination which shall include, at a minimum, reasonable time necessary to allow Lake Nona or Customer to do all appropriate permitting and engineering to procure, install and start-up new cooling equipment, and perform other reasonable tasks related thereto.

ARTICLE 4. PRICES AND CHARGES FOR SERVICE

Customer shall pay the "Capacity Charge", the "Consumption Charge" and all other applicable charges and fees for Service as detailed in Exhibit "E" attached hereto and incorporated herein by this reference (the "Prices and Charges for Service"), subject to and in accordance with the terms of this Agreement. Customer shall be liable to Company for the undisputed amounts related to the Service provided under this Agreement and in accordance with the terms hereof.

ARTICLE 5. BILLING

A. Billing and Payments.

1. Company shall bill Customer monthly for Service provided by Company during the prior month. Payment to Company of all undisputed amounts is due by the due date of the bill, which date shall be no sooner than ten (10) days after receipt thereof. Thereafter, an administrative late fee will be charged at the Company's prevailing rate per month on all outstanding balances due to Company and not paid. No dispute as to payments due any party hereunder shall relieve the obligation to pay the undisputed amounts invoiced when due, or Company's obligation to provide Services, subject to later adjustment as mutually agreed upon by the parties for such disputed amounts.
2. Provided Company is capable of providing Service and Customer is capable of receiving Service as of the Operation Date in accordance with the terms of this Agreement, and there exists no Force Majeure event preventing Customer from accepting such Service, the charges for Service shall begin on the Operation Date unless otherwise stated herein.

B. Contract Capacity Adjustments.

1. Except during period in which liquidated damages are assessed pursuant to Article 14.G., if Company is unable to provide Service and there exists no Force Majeure event preventing Company from providing such Service in accordance with the provisions of this Agreement when Customer is capable of accepting Service and Customer is Adversely Affected by the same, then in addition to other remedies provided hereunder, the Capacity Charge on Customer's bill for the applicable month shall be adjusted based on the period and degree to which Service is curtailed or suspended as follows.

Period	Degree	Adjustment
2 to 4 hours	Above 44°F	½ day
4 to 12 hours	Above 44°F	1 day
12 to 18 hours	Above 44°F	1½ days
18 to 24 hours	Above 44°F	2 days

24 hours and above	Above 44°F	2 days + ½ day (for each additional 12 hours)
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One (1) day capacity charge = [(contract capacity x current capacity charge) / 30 days]

2. Except during the period in which liquidated damages are assessed pursuant to Article 14.G or except in the event of Force Majeure, there shall be no adjustment of, or reduction in, the monthly Capacity Charge due to Customer's failure to accept Service during any billing period in which Company was ready and able to supply Customer's Service requirements in accordance with the provisions of this Agreement. There shall be no adjustment of, or reduction in, the monthly Capacity Charge due to (i) a local utilities' failure to provide power or water service to Company System (other than such a failure by Company in its capacity as a provider of such service); (ii) the loss of chilled water from Customer System; (iii) damage to Company System as a result of the negligence or willful actions of Customer.

C. Taxes and Surcharges/Change in Law.

Company represents that at the time of execution of this Agreement, the Service provided hereunder is not taxable under current law, and that there are no other fees payable on the Service, other than the four percent (4%) franchise fee payable to the City of Orlando. The parties acknowledge and agree that the Capacity Charge and Consumption Charge for Customer include the foregoing franchise fee and that Company is responsible for remitting the franchise fee to the City of Orlando. Company hereby indemnifies and holds Customer harmless from and against any claims by the City of Orlando for payment of the franchise fee. Except as set forth in this paragraph, and to the extent required by law, Company shall charge and Customer shall pay all taxes, including any taxes imposed upon the Customer's purchase of the Service which the Company is required to collect. Except as set forth in this paragraph, to the extent permitted by law, Company shall charge and Customer shall pay a surcharge reflecting a proportionate portion of any tax, or any license, occupation, consumption, franchise fee or similar fee imposed by any federal, state or local governmental authority on Service provided by the Company.

D. Change of Law

The Prices and Charges for Service assume a continuation of present laws and regulations and the administration, interpretation and application thereof in substantially the same manner as on the Effective Date of this Agreement. Should any applicable law or regulation (including environmental laws and regulations), or the administration or interpretation thereof by any governmental entity, change in any manner, and to the extent any such change increases or decreases the Company's direct cost of providing the Service (including the deletion of an existing or the imposition of any new tax, fee or surcharge other than federal, state or local taxes based on net income), then Company will adjust the above charges to reflect any such cost increases or decreases, except to the extent that such changes in law are accounted for by the CCI, CPI and EPI adjustments set forth in Exhibit "E". The Company shall be entitled to calculate the annual impact thereof and increase or decrease its Prices and Charges for Service to

recover such added (or deleted) expenses without profit, on an equitable pro rata basis, from all of the Company's customers.

ARTICLE 6. METERING

A. Meters

Company shall furnish, install and maintain necessary consumption meters and associated equipment appropriate at time of installation to meet the Customer's Service requirement as part of the Company Equipment. Throughout the Term, Company will have the right to install and remove test meters in the Customer Improvements at the Company's sole expense. If a Customer requests an installation of any meter in addition to those determined to be appropriate by Company, such Customer shall pay all installation expenses therefore and a monthly charge shall be billed for each such meter as provided in Exhibit "E." Company shall bill Customer based on monthly readings from Company Meter as described in Exhibit "E" or other metering technology as determined to be appropriate by Company. If Customer requests Company to provide separate billing for Service for tenants within Customer Improvements, Customer at its cost shall purchase, install, and maintain BTUH meters and related equipment conforming to Company standards. If Customer desires to meter tenants with chilled water sub-meters, Customer shall enter into a separate Chilled Water Metering Agreement with Company in substantially the form of Exhibit "J" attached hereto and incorporated herein by this reference.

B. Verification of Meter Readings

Company shall inspect the flow and temperature sensing components of the Meter to confirm their operation within manufacturers' specifications at least once every year at Company's sole expense and shall maintain a record of such inspection and make it available for Customer's review upon request. If an inspection establishes the meter is not performing as required, Company shall repair or replace the Meter at the sole cost and expense of Company. Customer may request an additional meter inspection at any time, provided that if the Meter is found to be accurate, Customer will bear the cost of the inspection. If a meter is determined to not be performing as required, Company shall adjust the bill(s) as provided hereinbelow.

C. Bill Adjustments Based on Estimated Use

If the date that any proven meter inaccuracy began cannot be determined, a billing adjustment in the full amount of the over or under charge shall be made (excluding any period of outage or other non-use of Service and taking into account price changes during the period) for one-half of the period between the date of the last prior successful meter test or recalibration and the date of the test disclosing the inaccuracy, but in no case shall such adjustment be for a period greater than twelve (12) months. If a meter fails to provide usable readings, the quantities of Service to be billed for such period will be estimated by Customer and Company based on best engineering practices, including but not limited to one or more of the following:

1. Previous usage history
2. 30-day system average

3. Comparable metered usage of other buildings
4. Average per-day use.

Customer shall pay for Service during such periods based on the estimated amount as calculated pursuant to the foregoing sentence. All billings based on estimated usage shall be indicated on the bill as such.

ARTICLE 7. PERMITS, EASEMENTS, AND REGULATORY AUTHORITY

A. Permits and Approvals

1. The parties agree that, prior to Commencement of Construction or following issuance of the CO, all obligations of Company to perform under this Agreement are contingent upon and subject to Company's ability to secure and maintain all Permits and Approvals required to provide Service. Company hereby represents and warrants that it shall diligently and timely pursue and seek to obtain prior to Commencement of Construction and thereafter maintain, at Company's sole expense, all Permits and Approvals (other than those Customer or Lake Nona must provide) required to construct and operate the Central Energy Plant and to provide Service hereunder. Prior to Commencement of Construction or following issuance of the CO, Company may terminate this Agreement upon prior written notice to Lake Nona and Customer in the event any such Permits and Approvals cannot be secured or maintained despite Company's diligent efforts, which termination will be governed by the provisions of Article 15 herein. Lake Nona and Customer shall reasonably assist and cooperate with Company in connection with the foregoing. Customer shall allow the routing and installation of all reasonable and necessary service lines and equipment within and on the Customer Property consistent with Customer's development plans or existing improvements, all of which shall be subject to Lake Nona's and Customer's prior review and approval. Customer agrees to provide, or, if appropriate agrees to work in good faith with its landlord, Orange County, Florida, to provide, Company all necessary access rights, easements, leases and licenses on Customer Property consistent with Customer's development plans or existing improvements during the term of this Agreement for the purpose of installing such Company lines and equipment at no cost to Company. Lake Nona agrees to provide Company all necessary access rights, easements, and licenses within rights-of-way or other (Lake Nona-owned) property not dedicated to the City and/or CDD within Lake Nona's property consistent with Lake Nona's proposed development plans or existing or proposed improvements during the term of this Agreement necessary to provide service to Customer at no cost to Company. Lake Nona and Customer further agree to execute (or in the event such document is required by be executed by Customer's landlord, Orange County, Florida, Customer agrees to work in good faith to obtain its signature on) such easements, license agreements or other documents consistent with the foregoing as Company may reasonably require to enable Company to perform its obligations hereunder; provided, Lake

Nona and Customer reserve the right to relocate any such access rights, easements or licenses at any time and from time to time, at such party's expense and reimburse Company for any out-of pocket expenses reasonably incurred as a result of the exercise of such relocation right including, but not limited to preliminary design and engineering costs, if any, unless Company is the cause of such relocation, in which case, Company shall bear all costs relating thereto.

2. The parties agree that, prior to Commencement of Construction or following issuance of the CO, all obligations of Customer to perform under this Agreement are contingent upon and subject to Customer's ability to secure and maintain all Permits and Approvals required for Customer to accept Service hereunder. Customer hereby represents and warrants that it shall diligently and timely pursue and seek to obtain prior to Commencement of Construction and thereafter maintain, at Customer's sole expense, all Permits and Approvals required to accept Service hereunder. Prior to Commencement of Construction or following issuance of the CO, Customer may terminate this Agreement upon prior written notice to Lake Nona and Company in the event any such Permits and Approvals cannot be secured or maintained despite Customer's diligent efforts, which termination shall be governed by the terms of Article 15 herein. Lake Nona and Company shall reasonably assist and cooperate with Customer in connection with the foregoing.
3. The parties agree that, prior to Commencement of Construction or following issuance of the CO, all obligations of Lake Nona to perform under this Agreement are contingent upon and subject to Lake Nona's ability to secure and maintain all Permits and Approvals required in connection with its obligations hereunder. Lake Nona hereby represents and warrants that it shall diligently pursue and seek to obtain prior to Commencement of Construction and thereafter maintain, at Lake Nona's sole expense, all Permits and Approvals required in connection with its obligations hereunder. Prior to Commencement of Construction or following issuance of the CO, Lake Nona may terminate this Agreement upon prior written notice to Company and Customer in the event any such Permits and Approvals cannot be secured or maintained despite Lake Nona's diligent efforts, which termination shall be governed by the terms of Article 15 herein. Customer and Company shall reasonably assist and cooperate with Lake Nona in connection with the foregoing.
4. The parties agree that following Commencement of Construction and prior to issuance of the CO, no party shall have the right to terminate this Agreement for any reason whatsoever, except in accordance with Article 14.B. Upon Commencement of Construction, Company shall diligently and timely perform all of its construction obligations hereunder so as to complete the Central Energy Plant and receive the CO as expeditiously as possible.

B. Regulatory Authority

This Agreement is made in all aspects subject to the terms and provisions of the Florida statutes and acts amendatory thereto, and the terms and provisions of any applicable franchise, ordinance, rule, regulation, or statute applicable to Company or the provision of Service hereunder. The parties recognize and acknowledge that Company is subject to the jurisdiction of the City of Orlando, Orange County, the State of Florida, and other governmental agencies. Nothing contained in this Agreement shall be construed as divesting any regulatory body of any of its rights, jurisdiction, powers, or authority conferred by law. Company's obligation to provide Service under this Agreement is expressly conditioned upon receipt and continued validity of such regulatory approvals or authorization as may be required; Company hereby represents and warrants that it shall diligently and timely pursue and/or maintain all such regulatory approvals and authorizations.

ARTICLE 8. CONSTRUCTION OF INFRASTRUCTURE, CENTRAL ENERGY PLANT, AND COMPANY SYSTEM

A. Company System Location

The Central Energy Plant shall be located within the Building on the CEP Site. The Company's Piping shall connect the Central Energy Plant to Customer's Piping at the Point of Delivery and the Point of Return at the Customer Improvements.

B. Scope of Work

1. **Lake Nona's Scope of Work.** Lake Nona or an Affiliate of Lake Nona, shall perform or cause the following obligations to be performed in good faith, diligently and within the times set forth in the Overall Project Schedule:
 - a. **Entry Road System.** Lake Nona shall install or cause to be installed the Entry Road System to the CEP Site. The Entry Road System shall be constructed in accordance with the applicable roadway construction standards of the City and shall be owned by Lake Nona, or conveyed to the CDD, if applicable, and/or shall be dedicated to the City, as and when determined by Lake Nona. Such Entry Road System shall be of the appropriate design and size to accommodate a conventional tractor-trailer.
 - b. **Master Utility Infrastructure.** In connection with the design, permitting and construction of the Entry Road System, Lake Nona shall install or cause to be installed the Master Utility Infrastructure.
 - c. **Drainage System.** Lake Nona shall design, permit, construct, and install a drainage system to serve the Entry Road System and the CEP Site (the "Drainage System"), which shall be integrated into the master drainage system for Lake Nona South Service Area. Lake Nona shall comply with all requirements imposed on Company by the respective water management district and other regulatory agencies with regards to water retention and stormwater permits for the CEP Site.

- d. Assignment of Obligations. Notwithstanding anything contained herein to the contrary, Lake Nona shall have the unilateral right, but not the obligation, to assign any or all of the foregoing obligations to an Affiliate, to the Master Association, and/or to the CDD.

The parties acknowledge and agree that neither Lake Nona nor its Affiliates shall have any obligations other than as specifically enumerated in this Agreement.

2. Company's Scope of Work.

- a. As to Building. Company's scope of work shall consist of all design and construction of the core and shell of the Building suitable for the design, construction, operation, and maintenance of the Central Energy Plant, providing adequate access for the installation of new chillers and associated equipment required for not less than 15,000 tons of total capacity, as well as replacement of existing equipment, of which only the equipment placed on the exterior of the Building, shall be subject to the prior review and approval of Lake Nona. Company's scope of work shall include all professional services, construction, and maintenance required for any exterior surface treatment; structure erected for aesthetic purposes, landscaping, streetscaping, curbing, exterior lighting or any other appurtenance.
- b. As to the Central Energy Plant. Company's scope of work shall also consist of all design, construction, and commissioning services required to furnish a Central Energy Plant according to Company's engineering requirements within the core and shell of the Building. Company's scope of work shall also include the construction of the site underground chilled water distribution system piping and appurtenances from the Central Energy Plant to the Point of Distribution at the Customer Improvements and from the Point of Return at the Customer Improvements.

3. Customer's Scope of Work.

- a. As to Customer Improvements and Customer System. Customer's scope of work shall consist of all planning, design, permitting, approvals, construction, maintenance and operation of the Customer Improvements suitable for the design, construction, operation, and maintenance of the Customer System adequate to accept Service for the Contract Capacity at the Point of Delivery and to return chilled water to the Company System at the Point of Return. Customer's scope of work shall include all professional services, construction, and maintenance required in connection with the foregoing.
- b. Customer's scope of work shall also include those matters enumerated in Subsections 2.G., 2.I. and 2.J.

C. Electrical Utilities for Central Energy Plant.

1. By Lake Nona. Lake Nona shall furnish primary power infrastructure required for the Central Energy Plant, including the primary conduit and cable, within the right-of-way abutting the CEP Site, but specifically excluding transformers and switches.
2. By Company. Company shall install secondary conduit, cable, transformers, switches, and metering appurtenances for the Central Energy Plant from the right-of-way and transformers into the Central Energy Plant space. Temporary construction power and permanent power shall each be available by the dates set forth in the Overall Project Schedule. Company shall be required to reimburse Lake Nona for the prorata cost allocated by Lake Nona to Company for obtaining the temporary power. All power used by the Central Energy Plant equipment, including interior lighting, and outlets shall originate from the transformers designated for the Central Energy Plant. Company (or Lake Nona, if such system is purchased from Company) shall pay local electric utility for all temporary and permanent electric power consumption of the Central Energy Plant.

D. Water and Sewer Utilities for Central Energy Plant.

1. By Lake Nona. Lake Nona shall provide a permanent water service main sized for the Central Energy Plant water consumption within an adjacent non-exclusive utility easement within fifty (50) feet of the CEP Site (with appropriate access between the two sites) by the dates set forth in the Overall Project Schedule. Temporary water shall be provided by Company by drilling a well on the CEP Site, which shall be capped by Company before a CO is issued for the CEP. Lake Nona shall provide a sewer main (and lift station, if required) for the Central Energy Plant sanitary requirements, including cooling tower blowdown. The sewer connection provided by Lake Nona shall be within the adjacent non-exclusive utility easement and within fifty (50) feet of the CEP Site.
2. By Company. Company shall be responsible for the cost of installing water service from the service main to the Central Energy Plant including tapping the main and metering. Company shall pay local water utility for all water consumption and sewer charges for the Central Energy Plant and all impact fees related to water consumption and sewer for the Building, including the Central Energy Plant.
3. Services to and from the Central Energy Plant and Cooling Towers. In connection with its design of the Central Energy Plant, Company shall provide adequate structure and space for the cooling towers. Space requirements shall include adequate space for access and maintenance as well as air flow into and out of the towers. Aesthetic enclosures around cooling towers installed by Company shall be designed to allow adequate airflow to and from the cooling towers. Company shall design and install all electric, makeup water, cooling tower blowdown, condenser water supply and return piping required between the Central Energy Plant and the cooling towers. Cooling tower electrical service shall originate from the Central Energy Plant. Company shall provide aesthetic

enclosures and exterior lighting required for cooling tower maintenance, operation and security at night, which lighting shall be Dark Sky compliant, with each of the foregoing being subject to the prior written approval of Lake Nona.

E. Fire Protection Central Energy Plant. Company shall design, install and maintain fire protection systems necessary for the Building, including the Central Energy Plant.

F. Chilled Water Distribution Piping and Fiber Optic Network Conduit to and from the Central Energy Plant.

1. Company shall construct within non-exclusive utility easements, chilled water distribution piping and fiber optic network conduit from the Central Energy Plant to five (5) feet outside each Customer Improvement. Company shall include chilled water distribution Piping and fiber optic network conduit (for chilled water use only) including pull boxes, and be responsible for coordinating the design of the chilled water distribution piping and fiber optic conduit plan and profile with all other underground utilities. To the extent possible, Company shall use existing rights-of-way easements and shall seek to obtain any additional easements from Lake Nona or third parties. Installation of Company System in a public right-of-way is subject to obtaining the necessary permits which shall be Company's responsibility. Company shall designate locations for isolation valves along the distribution piping and at every building location. Company shall install individual cylindrical valve boxes with lids labeled "CHILL" at every valve location.
2. Company shall design the Chilled Water Piping and Conduit Plan and profile based on the following criteria:
 - a. The chilled water supply pipe shall be on the right facing in the direction of chilled water supply flow from the Central Energy Plant to the respective buildings.
 - b. Final Grade Elevation shall be at least 36" from top of pipe except in the case of a conflict that can only be resolved by raising the Piping, in which case the Piping shall be protected by concrete encasement at a thickness of not less than 8".
 - c. Installation depth shall be no deeper than 60" from bottom of pipe to finished surface grade as depicted on mass grading drawings provided by Donald W. McIntosh Associates at the time of installation. Changes to finish grading by Lake Nona as part of the Site Work (as defined below) resulting in additional cover is acceptable.
 - d. Maintain 18 to 36 inches spacing between outside diameters of pipes (not including insulation).
 - e. Supply and return pipe centerlines shall be at the same elevation. No stacking is permitted.

- f. Chilled water is chemically treated with corrosion inhibitors and is not potable.
- g. Piping and conduit shall not be routed under any structure including signage, terraced landscaping, and pools.
- h. Piping and conduit shall not be routed under any body of water natural or man made or low points that will retain water or any structure design to retain water even if dry during construction.
- i. Fiber optic conduit shall be between the supply and return piping at the pipe centerline elevation except where necessary to bring conduit into a pull box location.
- j. Pull boxes shall be located every 300 feet of length with no more than 4 - 90 degree bends in conduit between pull boxes and at every building connection location. Pull boxes shall not be located in traffic lanes. Company standard for pull boxes are fiberglass enclosures not suitable for traffic loads.
- k. Piping shall be sized to maintain a fluid velocity of less than ten (10) feet per second based on load data provided by Customer and using a fifteen (15) degree F. differential temperature.

G. Temporary Access

Lake Nona shall provide temporary stabilized access to the CEP Site sufficient to allow Company to commence its construction obligations hereunder. Lake Nona may relocate such temporary access in its discretion provided such relocation does not materially and adversely impact Company.

H. Schedule and Communication

The design, permitting, procurement, construction, and commissioning of Company System shall be coordinated by Company with Lake Nona and Customer in accordance with the Overall Project Schedule. Company, Lake Nona and Customer shall cooperate when adjustments to the Overall Project Schedule are required. Company, Lake Nona and Customer, as applicable, shall review the required schedule changes and come to a mutually agreeable revised schedule. No party shall be required to agree to any schedule changes that would result in any labor premium, or materials and equipment expediting or demurrage charges unless necessitated as a direct result of such party's actions or omissions.

The parties acknowledge that complete commissioning of the Central Energy Plant cannot be completed until Customer has completed connection requirements and is ready to place load on the System.

Verbal statements shall not be allowed as communication of direction or information applicable to the terms and conditions of this Agreement. All information exchanges and communications

of a contractual nature shall be in writing. Company, Lake Nona and Customer, as applicable, shall individually designate representatives responsible for exchanging required communications and information with all necessary parties:

I. Time

Construction of Company System by Company and the Entry Road System and CEP Site work ("Site Work") by Lake Nona shall commence as provided in the Overall Project Schedule. The construction time is the period of time allotted in the Overall Project Schedule for the Substantial Completion of the work by Company and the substantial completion of the Site Work by Lake Nona which are to be performed under this Agreement.

Substantial Completion of Company System shall be achieved in accordance with the timing as set forth in the Overall Project Schedule. For the purpose of this Agreement, the phrase "Substantial Completion" of the Company System means the completion of work by or through Company necessary so that Customer may beneficially use the Service for the intended purpose, as certified by each party's project engineer.

Delays in achieving substantial completion by any party within the allotted construction time arising from Force Majeure events shall be considered as periods of excusable delay, and there shall be an equitable adjustment to the construction time.

J. Construction

1. Construction Staging and Office Area.

Lake Nona shall provide a material laydown, parking, and construction office area within reasonable proximity of the CEP Site with vehicle and equipment access to a public right-of-way or private easement or temporary site access road. Temporary power and water shall be made available as provided hereinabove and in the Overall Project Schedule. Company shall provide its own office trailer and pay for temporary power and water service from the local utilities. To the extent the work schedule will reasonably permit it, Company shall work to minimize required laydown area by using just-in-time delivery methods. As directed by Lake Nona, Company shall remove office trailer, disconnect temporary utilities, cap temporary well, remove temporary fire hydrant (and fire line if installed in a temporary nature) and clean-up and restore the area upon completion of construction activities to the reasonable satisfaction of Lake Nona.

2. Construction Site Guidelines.

Company acknowledges and accepts responsibility for ensuring compliance with the terms and conditions of this Agreement by all contractors, subcontractors and employees of Company. In the interest of promoting the security, safety and efficiency of all parties performing construction within Lake Nona South Service Area, Lake Nona may promulgate reasonable rules and guidelines for all construction activities within Lake Nona South Service Area, which may be amended from time to time (the "Construction Site Guidelines"). Company shall post and require each of its employees and each of its

contractors and subcontractors to comply with the Construction Site Guidelines. In the event of violation of any of the terms or conditions of the Construction Site Guidelines by any contractor, subcontractor or employee of Company which is not cured within forty-eight (48) hours of receipt of notice of the violation delivered by Company or Lake Nona (which notices must be simultaneously provided to either Company or Lake Nona, as applicable), Lake Nona shall have the right to remove or cure the violation and charge Company the cost thereof. If Lake Nona presents a reasonable cause as to why any employee of Company or any of its contractors or subcontractors should be removed from the site, Company shall comply with such request.

3. Coordination Meetings and Correspondence.

Each party's contractors shall be included in the other parties' contractors' regularly scheduled coordination meetings and correspondence, as applicable.

4. Permits.

As provided above, Company shall obtain all permits and approvals necessary for construction of the Central Energy Plant, including, without limitation, foundation, building, mechanical, electrical and underground utility permits. Company is a utility and shall self-inspect all chilled water distribution piping and conduit it installs.

5. Payment and Performance Bonds.

Each party to this Agreement shall be required to obtain and maintain or require its prime contractor(s) to obtain and maintain payment and performance bonds with respect to the construction obligations undertaken by each such party pursuant to the terms of this Agreement. Specifically, prior to execution of any construction contract with a prime contractor for the construction obligations provided herein (collectively, as applicable, the "**Construction Contract(s)**"), the party responsible for such work shall furnish payment and performance bonds issued by a surety company licensed in the State of Florida in favor of each of the other parties to this Agreement, on commercially reasonable forms, and meeting the following requirements or the minimum requirements of Chapter 255 of the Florida Statutes, for parties to which it applies, if greater (collectively, as applicable, the "**Bond(s)**"):

a. performance bond in the amount of 100% of the contract price under the applicable Construction Contract.

b. payment bond in the amount of 100% of the contract price under the Construction Contract.

c. the surety company issuing the Bonds shall have a financial strength rating of A or better, and a financial size category of X or higher, as rated by A.M. Best Company.

d. the surety issuing the Bonds shall also be listed with the United

States Department of Treasury for an amount greater than the contract amount at the time of issuance of the Bonds. The applicable contractor, at the time of its execution of its Construction Contract, shall provide, with its Bonds, a copy of the issuing surety's current valid Certificate of Authority issued by the United States Department of the Treasury under § 31, U.S.C. 9304-9308.

e. the attorney-in-fact who executes the Bonds on behalf of the issuing surety shall affix thereto a certified and current copy of its power of attorney, reflecting his/her authority as power of attorney in the State of Florida.

f. the Performance and Payment Bonds shall be recorded simultaneously with the Notice of Commencement for that party's improvements.

Additionally, each party hereto shall take such steps as are reasonably necessary and prudent to cause its construction obligations under this Agreement, to comply with: (a) all applicable laws; (b) all permits, licenses, approvals, entitlements and other governmental authorizations (including certificates of occupancy) required in connection with the ownership, planning, development, construction, use, operation or maintenance of its respective construction obligations, as applicable; and (c) the requirements of all Bonds.

ARTICLE 9. LIMITATION OF LIABILITY

A. Injury or Damage

No party shall be liable for any injury or damage to the extent (1) caused by another party's negligence or misconduct, or (2) caused by another party's failure to properly operate and maintain its System.

B. No Warranty

COMPANY DOES NOT GIVE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE ADEQUACY, SAFETY OR OTHER CHARACTERISTICS OF THE DESIGN OF CUSTOMER SYSTEM OR ANY ASSOCIATED STRUCTURES, EQUIPMENT, WIRES, MAINS, PIPES, VALVES, APPLIANCES, OR OTHER DEVICES OWNED, LEASED, INSTALLED OR MAINTAINED BY CUSTOMER, OR ASSUME ANY OBLIGATION AS TO THE DESIGN, OPERATION OR MAINTENANCE OF CUSTOMER'S SYSTEM EVEN IF COMPANY INSPECTS CUSTOMER'S DESIGN, INSTALLATION, OR OPERATION OF SUCH SYSTEM FOR COMPATIBILITY WITH COMPANY SYSTEM AND COMPANY STANDARDS.

To the extent Company secures a warranty on any component of Company System from its Contractor or any of their sub-contractors, vendors or suppliers, Company shall assign said warranty to Lake Nona in the event Lake Nona purchases Company System prior to the expiration of said warranty.

C. Customer Comfort Level

Company shall have no responsibility within the Customer Improvements for temperature comfort levels, which are controlled and determined by Customer. Customer shall promptly notify Company of any concerns about the quantity or quality of Service received.

D. No Consequential Damages

It is specifically agreed and understood that no party will be responsible to any other party for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits, loss of use, opportunity costs, and any other damages at common or statutory law) arising out of this Agreement or anything done in connection herewith, including but not limited to:

1. Customer's failure to accept, or Company's failure to deliver, Service at any time; or
2. any condition on Company's System or Customer's System which is imminently likely to endanger life or property; or
3. the construction, engineering, repair, inspection, supervision, testing, protection, operation, maintenance, replacement, use or ownership of any party's improvements, equipment and/or facilities.

This Article shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

E. Limitations on Government Liability

Nothing in this Agreement is to be considered as a waiver of immunity or limits of liability of Company for actions in tort beyond any statutorily 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 State statute, and nothing in this Agreement inures 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.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES, DISCLAIMER AND AFFIRMATIVE OBLIGATIONS

A. Representations and Warranties. As a material inducement to Customer and Lake Nona to enter into this Agreement and to consummate the transactions contemplated hereby, Company hereby represents and warrants to Lake Nona and Customer that the following representations and warranties are true and correct as of the Effective Date and shall remain true and correct throughout the Term of this Agreement:

1. Company has been duly incorporated or organized and is a validly existing statutory commission under the laws of the State of Florida.

2. Company has full statutory power to own and operate the Company System and to conduct its operations and has full statutory power to enter into this Agreement and to carry out its obligations hereunder.
3. This Agreement has been duly authorized, executed and delivered by Company and constitutes a valid and binding agreement of Company, enforceable against Company in accordance with its terms.
4. The authorization, execution and delivery of this Agreement by Company and the performance of its obligations under this Agreement by Company as of the Effective Date do not: (i) require the consent, approval, authorization, order, registration or qualification of, or filing with, any governmental authority or court, or body or arbitrator having jurisdiction over Company or its assets or properties, except for such ordinary consents, approvals, authorizations, orders, registrations or qualifications of, or filings with, any governmental authority in connection with the construction or operation of the Central Energy Plant, or (ii) conflict with, result in a breach or violation of, or constitute a default under: (a) any contract, indenture, mortgage, deed of trust or loan or credit agreement, note, lease, or other agreement or instrument to which Company is a party or by which Company or any of its properties is bound; or (b) any statute, rule or regulation or any judgment, order or decree of any governmental authority or court or any arbitrator applicable to Company.
5. No legal or governmental proceedings or investigations to which Company is a party or to which the property of Company is subject are pending or, to the actual knowledge of Company, threatened that could substantially and materially impair or preclude Company's performance under this Agreement.
6. Company is not: (i) insolvent; (ii) left with unreasonably small capital with which to engage in its anticipated operations; or (iii) incurring debts or other obligations beyond its ability to pay such debts or obligations as they become due.
7. No proceeding in anticipation of merger, amalgamation, consolidation, liquidation or dissolution of Company, or the sale of all or substantially all of the assets of Company is pending or threatened.
8. To the best of its current knowledge, Company has not received written notice of material noncompliance by Company, and, Company is in material compliance, with all federal, state, local and foreign laws, statutes, ordinances, rules, regulations, decrees, orders, and permits applicable to the operation of Company's facilities.
9. Services provided by Company and delivered to Customer under this Agreement are intended for HVAC applications, which shall meet the specifications set forth in Exhibit "B" attached hereto and incorporated herein by this reference.
10. Company shall comply with all applicable laws, rules, regulations, permits and industry safety standards in the performance of its obligations herein.

B. Disclaimer. Except as specifically provided in this Agreement, Services are delivered and sold to Customer hereunder "as is" and no warranties or guarantees are given regarding the quality of the Services, either statutory, express or implied. EXCEPT AS PROVIDED IN THIS AGREEMENT, COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SERVICES. Company shall monitor the chilled water in its System for corrosion and adequate treatment consistent with cooling industry practices and standards. Other than as specifically provided herein, no other warranties are applicable to this Agreement or to the Service provided herein.

C. Company's Affirmative Obligations.

1. The parties acknowledge and agree that the Central Energy Plant is being constructed to provide an initial capacity of 3,950 Tons at a Capacity Price of \$38.90 per month per Ton (the "Rate Per Ton"), as adjusted pursuant to Exhibit "E". If during the Term of this Agreement, the capacity of the Central Energy Plant is increased to 6,000 Tons, whether by Customer's increased usage or other customers' usage, the Rate Per Ton shall be reduced by \$2.00 per Ton. If during the first ten (10) years of the Term of this Agreement, the capacity of the Central Energy Plant is increased to 8,000 Tons, whether by Customer's increased usage or other customers' usage, the Rate Per Ton shall be reduced by \$4.00 per Ton.
2. Unless specifically required in order for Company to meet its Contract Capacity service requirements on the System through the end of the Term, Company shall not make any significant capital improvements to the Company System during the last five years of the Term of this Agreement without the prior written consent of Lake Nona, which consent shall not be unreasonably withheld.

ARTICLE 11. LEASE OF BACK-UP CHILLERS TO BURNHAM INSTITUTE.

In an effort to provide additional back-up to the laboratory and data center at the Burnham Institute premises, the Company shall lease a 200 Ton air-cooled system to Burnham Institute during the Term of this Agreement, for one and no/100 dollar (\$1.00), subject to the terms and conditions of a separate lease agreement to be entered into by the parties prior to the Operation Date.

ARTICLE 12. TEMPORARY DISCONTINUANCE OF SERVICE.

A. Company will at all times provide a regular and uninterrupted supply of Service on a twenty-four (24) hour a day basis in accordance with this Agreement. Company may temporarily curtail or discontinue the supply of Service: (1) if Customer System is imminently dangerous or defective to the point which threatens to damage property or injure persons, or (2) in the event of a Force Majeure that prevents Company from providing Service. In the event of a temporary curtailment or discontinuance under (1) or (2) above, Company shall use reasonable efforts to provide prior written or verbal notice to Customer; provided, in the case of verbal notice, Company shall promptly provide written notice confirming such verbal notice. Written notice from Company shall include a detailed description of the reason for such temporary

curtailment or discontinuance. If the temporary curtailment or discontinuance is under (1) above, Customer shall cure the noted deficiency within the Cure Period, which shall run from the date of written notice. Any such suspension under this Article shall not be deemed a Company Event of Default.

B. Company may temporarily curtail or discontinue, to the minimum extent necessary, the supply of Service to Customer if it becomes necessary to maintain, repair, replace or change Company System on or off the Customer Improvements. Except in the case of emergencies, Company shall provide reasonable prior written notice and such regular maintenance, repair, changing of equipment or replacement shall be coordinated with Customer to minimize the effect of the Service interruption. Company shall endeavor to complete these services with minimal impact to the Service.

ARTICLE 13. DEFAULTS

A. Company Default

Except for a temporary curtailment or discontinuance under Article 12.A above, any one of the following events shall constitute a "Company Event of Default":

1. Company shall fail to supply Service to the Customer Improvements (from the Company System or by any alternate service, including but not limited to portable air cooled chiller(s)) for a period of forty-eight (48) consecutive hours; or
2. Company shall fail to supply Service to the Customer Improvements (from the Company System or by any alternate service, including but not limited to portable air cooled chiller(s)) for a period of seventy-two (72) cumulative hours over a seven day period; or
3. Company shall fail to comply with any other material provision of this Agreement, including, without limitation, Company's failure to secure, maintain and comply with all permits, easements, ordinances, licenses, agreements and approvals required hereunder to allow Company to provide Service hereunder, and failure to cure or remedy that default within the designated cure period for such default or, if none is provided, then within the general Cure Period;
4. Company failure of performance, beyond the applicable cure period, of any material provision of the Franchise Ordinance or Superseding Ordinance or a termination thereof for any reason.

B. Customer Default

Subject to the occurrence of a Force Majeure event, any one of the following events shall constitute a "Customer Event of Default":

1. Customer shall fail to pay any undisputed amounts set forth in a bill for Service rendered or other charges incurred under this Agreement for a period of thirty (30) days after receipt of the invoice therefore; or
2. Customer shall fail to comply with any other material provision of this Agreement and shall fail to cure within the Cure Period.

C. Lake Nona Default

Subject to the occurrence of a Force Majeure event, any one of the following events shall constitute a "Lake Nona Event of Default":

1. Lake Nona shall fail to comply with any material provision of this Agreement and shall fail to cure within the Cure Period. A delay in Lake Nona's obligations as set forth in Article 8 of this Agreement shall not be deemed an Event of Default to the extent such delays are caused by unexcused delays by Company

D. Cure Period

In the event no time period for cure is specified hereunder, the Cure Period shall apply.

E. Several Liability

In the event of a default of this Agreement by a party, liability for each such default shall remain with the party, and such liability shall be several, but not joint, with the other parties.

F. In the event that any of the parties hereto agree in writing to modify the terms of this Agreement, those parties shall be bound by the terms of the modification and shall not use such terms as a basis for declaring an Event of Default.

ARTICLE 14. TERMINATION AND OTHER REMEDIES

A. General

Subject to the limitations specifically provided herein, each remedy under this Agreement shall be cumulative and in addition to any other remedy provided hereunder, or available at law or in equity including, without limitation, the remedy of specific enforcement. The failure of a party to insist on strict performance of any provision under this Agreement, or to take advantage of any right hereunder shall not be construed as a waiver of future violations of such provision or right. In the event of a termination, the terminating party hereunder shall exercise such right by written notice to the other parties in accordance with the notice provisions of this Agreement.

In the event the Agreement terminates, Company shall provide a reasonable period of Service after termination which shall include, at a minimum, reasonable time necessary to allow Lake Nona or Customer to do all appropriate permitting and engineering to procure, install and start-up new cooling equipment, and perform other reasonable tasks related thereto.

B. Termination. Termination of this Agreement shall only occur as follows:

1. After the issuance of the CO and upon the occurrence of an uncured Event of Default, or in the event that Liquidated Damages have been in place against a defaulting party for more than ninety (90) days, the non-defaulting party may terminate this Agreement; provided that, in either event, Lake Nona or its assigns shall have the option to buy out the Company System in accordance with Article 15 herein.
2. Lake Nona or Customer may terminate this Agreement prior to the issuance of the CO in the event the Company fails to: (i) perform its construction obligations in accordance with the Overall Project Schedule, subject to the Cure Period; provided that, Company shall have the option to revise the Overall Project Schedule so long as Company can reasonably demonstrate to the satisfaction of Customer and Lake Nona that the CO can still be achieved prior to the expiration of the ninety (90) day Liquidated Damages period; or (ii) secure the Superseding Ordinance by the date of issuance of the CO. In either event, Lake Nona or its assigns shall have the option to buy out the Company System in accordance with Article 15 herein.
3. Company may terminate this Agreement prior to the issuance of the CO in the event of an uncured Customer Event of Default which has resulted in Liquidated Damages pursuant to Article 14.G for a period of more than ninety (90) days.

C. Customer Event of Default: Discontinuation of Service

In the event of a Customer Event of Default which has not been cured during the Cure Period, Company may discontinue Service until such default is cured. Service shall not be recommenced until and unless Customer shall have cured any Customer Event of Default, and paid all undisputed amounts due for Service supplied by Company prior to discontinuance and the cost of Service disconnection and reconnection more particularly described on Exhibit "E".

D. Company Event of Default: Alternative Service

1. If a Company Event of Default occurs hereunder which interrupts Service, then Company, at its sole cost, but subject to the normal Prices and Charges for Service as set forth herein, and subject to any rate reduction under Section 5.B.1., shall provide alternate Service (either by means of temporary chillers or otherwise) to Customer until either (1) normal Service is re-established or (2) Customer secures a replacement system, which shall occur within a reasonable time after Company's Event of Default.
2. If a Company Event of Default occurs, and Lake Nona or its assign exercises its option to buy out the Company System, Lake Nona or its assign shall assume all obligations of Company under this Agreement, and Customer shall continue to be obligated to receive Service under this Agreement by Lake Nona or its assign.

E. Removal of Company System

Upon termination of this Agreement due to a Customer Event of Default or Lake Nona Event of Default, except in the case of a buy out of the Company System as provided herein, Company shall have the right to remove all or part of Company System located on Customer Property or Lake Nona's property, or both, at its own expense and restore such property to its preexisting condition to the reasonable satisfaction of Customer and Lake Nona as to each party's respective property, whereupon Company shall have no further liability or responsibility for any such equipment abandoned.

F. Survival of Obligations

All obligations of a party that arose or accrued prior to the termination of this Agreement (including, without limitation, the obligation of Customer to pay any amounts outstanding for Service supplied to Customer prior to termination or credits due Customer by Company) shall survive the termination hereof and remain the liability of such party.

G. Liquidated Damages for Untimely Performance

1. If Company is ready and able to provide Service to the Point of Delivery and Customer fails to accept Service on the Operation Date (absent a Force Majeure event), and all conditions precedent to such Service have been satisfied, Customer, as a liquidated damage and not a penalty, shall pay for capacity in Company System at the rate of \$30,800 per month, until the earlier of ninety (90) days or such time as Customer is able to commence accepting Service as set forth herein. In the event that Customer is unable to accept Service for a period greater than ninety (90) days from Operation Date, Customer shall pay the Capacity Charge as set forth in Exhibit "B" as a liquidated damage, beginning ninety (90) days following the Operation Date.
2. If Customer is ready and able to accept Service at the Point of Delivery and Company fails to provide Service on the Operation Date (absent a Force Majeure event), and all conditions precedent to such Service have been satisfied, Company, as a liquidated damage and not a penalty, shall pay to Customer \$30,800 per month, until such time as Company is able to commence providing Service as set forth herein.
3. If Company and/or Customer is ready and able to provide and/or accept Service to or from the Point of Delivery and the Point of Return, as applicable, and Lake Nona fails to perform its obligations hereunder (absent a Force Majeure event) and all conditions precedent to such Service have been satisfied, and such failure is the direct cause of Company's and/or Customer's inability to provide or accept Service in accordance with the terms of this Agreement, as applicable, Lake Nona, as a liquidated damage and not a penalty, shall pay to Company \$30,800 per month until the earlier of (a) such time as Company and/or Customer is able to commence providing or accepting Service, as applicable, as set forth herein, or (b) such time as Lake Nona's failure to perform its obligations hereunder is no longer the direct cause of Company's and/or Customer's inability to provide or accept Service in accordance with the terms of this Agreement.

ARTICLE 15. BUY OUT OF COMPANY SYSTEM

A. In the event of a buy out of the Company System and Piping from Company (including any portions not yet incorporated into the Central Energy Plant but required to complete construction) as provided for elsewhere in this Agreement, the price and terms shall be as follows:

1. Upon Lake Nona or its assign exercising such option, Company shall transfer and assign to Lake Nona, the Company System and Piping, on an "as-is, where-is" basis with no warranty other than as set forth herein, together with all plans, specifications, contracts and warranties relating thereto. Prior to Lake Nona's exercising such option, Company, at the request of Lake Nona, shall provide Lake Nona with all information requested by Lake Nona which is reasonably necessary to assist Lake Nona in making its decision as to whether to exercise such option and shall fully cooperate with Lake Nona in this regard. In such event, Customer shall fully assist and cooperate with Lake Nona, and Company shall assign, and Lake Nona or its assign shall assume, and shall be deemed to have succeeded to the rights and obligations of "Company" under this Agreement.
2. Company shall transfer and convey the CEP Site and Building to Lake Nona or its assign, without charge, at the time of the foregoing purchase, free and clear of all liens and encumbrances, and shall transfer and assign any and all easements, licenses, contracts, agreements and other rights benefiting the CEP Site and/or necessary for the delivery of the Service contemplated herein, the operation and maintenance of the Central Energy Plant and the performance of all other obligations hereunder. To the extent contracts and agreements are not freely assignable, Company shall use its best efforts to obtain such assignments or use its best efforts to assist Lake Nona in obtaining new agreements with conditions as favorable as those afforded to Company.
3. Customer and Company shall cooperate fully in connection with the transfer of the Company System and Piping and shall execute such documents as may be reasonably necessary or desirable to effectuate the purchase and transfer of the Company System, the Piping and the CEP Site. Additionally, Company shall not object to and shall fully support Lake Nona or its assign in connection with any further amendment or acknowledgment that may be necessary or desirable in connection with the Franchise Ordinance or the Superseding Ordinance to effectuate the purchase or operation of the Central Energy Plant as envisioned herein.
4. For purposes of this Article, Company shall obtain and deliver to Lake Nona an audited statement setting forth the depreciated book value of the Company System, Building and Piping as of the date that is one year prior to the expiration of the Term (the "Book Value") or as of January 1 of the year in which Lake Nona elects to exercise its option in accordance with the terms of this Agreement and Generally Accepted Accounting Principles, as applicable (the "Audited Statement"). Lake Nona shall have ninety (90) days from receipt of the Audited

Statement within which to determine whether it will purchase the Company System and Piping based upon the Company's determination of the Book Value; provided, in the event Lake Nona reasonable disagrees with the Company's determination of the Book Value, Lake Nona, at its expense, may have a nationally recognized accounting firm conduct an independent inventory and audit to determine the Book Value (the "Audited Book Value"), which audit must be completed within said ninety (90) day period. If there is a material difference in the Book Value determinations, the Company and Lake Nona's independent accounting firm shall work in good-faith to resolve such difference and establish an agreed-upon Book Value. If they are unable to agree, the parties shall mutually agree upon a second nationally recognized accounting firm to review the respective Book Value determinations (including all supporting documentation) and shall arrive at a Book Value which shall be binding on all parties. The cost of the second national accounting firm shall be equally apportioned between the Company and Lake Nona. In the event Lake Nona elects to purchase the Company System and Piping, the sale and purchase shall be consummated prior to the expiration of the Term at a time and place selected by Lake Nona.

ARTICLE 16. FORCE MAJEURE

No party shall be considered to be in default in respect of any obligation hereunder (other than the obligation to pay amounts due to the other party under or pursuant to this Agreement) to the extent such failure of performance shall be due to a Force Majeure event. The party affected by a Force Majeure event shall give notice to the other parties within five (5) days of the commencement of non-performance due to a Force Majeure event identifying the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect. The non-performing party shall use its reasonable best efforts to remedy its inability to perform, but no party shall be obliged to settle or resolve a labor difficulty or to hire substitute labor on terms unacceptable to that party.

ARTICLE 17. INSURANCE

All insurance required hereunder shall be primary to any and all other insurance coverage and shall not contribute with similar insurance in effect by the other party.

A. Company or its contractor or subcontractor(s) agrees to provide or cause to be provided, at its sole cost, during the Term of this Agreement (for items (i) and (ii)) and prior to the start of construction (for items (iii) and (iv)) the following insurance: (i) commercial general liability insurance or self insurance, on a per occurrence basis, in the amount of not less than \$1,000,000/\$3,000,000 bodily and personal injury and \$1,000,000 property damage, (ii) workers' compensation insurance in accordance with legal requirements, including employer's liability insurance in the amount of \$1,000,000 per occurrence, (iii) builder's risk insurance on an "all risk" basis for full replacement value, and (iv) excess liability insurance on an occurrence basis covering claims in excess of the foregoing with a \$5,000,000 limit. Within ten (10) days

after the Effective Date, Company or its contractor or subcontractor(s) shall furnish a certified copies of all insurance policies to Customer and Lake Nona, naming Customer and Lake Nona as additional insureds to the extent their respective interests arise under this Agreement and endorsed to provide a minimum of thirty (30) days advance written notice of cancellation, renewal or material change to Customer and Lake Nona before such changes in status are effective. Additionally, Company's builder's risk and property policy shall waive the insurance company's rights of subrogation against Customer and Lake Nona.

B. Customer agrees to provide or cause to be provided, at its sole cost, during the Term of this Agreement, adequate property insurance for loss or damage (a) by fire and all other risks embraced by standard "extended coverage" endorsements, (2) by sprinkler leakage, and (3) from explosion of high pressure steam boiler, air-conditioning equipment, pressure vessels, motors or similar equipment, as well as commercial general liability insurance in the amount of not less than \$1,000,000/\$3,000,000 bodily and personal injury and \$1,000,000 property damage. The insurance required to be maintained by Customer shall name Company and Lake Nona as additional insureds as their interests may appear and shall include a waiver of subrogation in favor of Company and Lake Nona during the Term of this Agreement.

C. Each party shall, upon the request of the other, from time to time, provide reasonable evidence of the coverage required under this section, showing the requesting party's insured status.

ARTICLE 18. PLEDGE OR ASSIGNMENT

Except as provided in this Article, no party may pledge or assign its rights hereunder (except to Customer's lender in connection with any financing, or to any party's Affiliate, or in the case of Lake Nona to the CDD which shall be permitted with only written notice to the other parties) without the prior written consent of the other parties, which consent shall not be unreasonably withheld, conditioned or delayed. Company, at any time, or from time to time, may assign or pledge for the benefit of any lender, mortgagee and/or bond trustee, any or all of its rights hereunder. Customer and Lake Nona shall cooperate as reasonably requested by Company to secure financing and satisfy requests of Company's lenders. In the event of an assignment to CDD, CDD may at any time, or from time to time, assign or pledge for the benefit of any lender, mortgagee and/or bond trustee, any or all of its rights hereunder. Company, Customer and Lake Nona shall cooperate as reasonably requested by CDD to secure CDD financing and satisfy requests of CDD's lenders. Notwithstanding the foregoing, no party shall be required to subordinate its rights under this Agreement in connection with any such financing without being granted a covenant of nondisturbance. This Agreement shall not be terminated, modified or changed by a party hereto except in the manner (if any) permitted, and subject to the conditions (if any) imposed by each unit assignment or pledge. This Agreement shall be binding on the parties' successors and assigns in accordance with its terms.

ARTICLE 19. GOVERNING LAW

This Agreement shall be construed in accordance with and shall be enforceable under the laws of the State of Florida. Any dispute arising hereunder shall be resolved by a court of competent jurisdiction residing in Orange County, Florida.

ARTICLE 20. NOTICES

All notices and communications under this Agreement shall be in writing and shall be given by: (i) hand delivery; (ii) certified mail, return receipt requested (postage prepaid); (iii) reliable overnight commercial courier (charges prepaid); or (iv) facsimile (with confirmation of transmission) to each of the parties as follows:

To Customer: Burnham Institute for Medical Research
Vice President, Information Technology and Facilities
10901 North Torrey Pines Road
La Jolla, California 92037
Attn: William W. Zondler
Telephone: (858) 646-3155
Telecopy: (858) 646-3171

With a copy to: Shutts & Bowen, LLP
300 South Orange Avenue, Suite 1000
Orlando, Florida 32801
Attn: Jennifer Tobin, Esq.
Telephone: (407) 423-3200
Telecopy: (407) 425-8316

Customer Emergency Contact:
Burnham Institute for Medical Research
Vice President, Operations and Administration
8669 Commodity Circle, 4th floor
Orlando, Florida 32819
Attn: Cyril Doucet
Telephone: (407) 745-2051
Telecopy: (407) 745-2001

To Company: Director, Chilled Water Services
Orlando Utilities Commission
500 South Orange Avenue
P.O. Box 3193
Orlando, Florida 32802
Attn: Erick Rocher, P.E.
Telephone: (407) 236-9678
Telecopy: (407) 236-9628

With a copy to: OUC Legal Department
500 South Orange Avenue
Orlando, Florida 32801
Attn: Carlos L. Woody, Staff Attorney
Telephone: (407) 423-9148
Telecopy: (407) 236-9616

Company Emergency Contact:

[name and 24 hour cell/pager number]
Aaron Fagen, Operations and Maintenance Manager
Mobile: 407-947-1200
Company Service Dispatch: 407-823-9150
24-Hour Emergency Respond Pager: 407-807-5421

To Lake Nona: Lake Nona Land Company, LLC
9801 Lake Nona Road
Orlando, Florida 32827
Attention: James L. Zboril, President
Telephone: (407) 816-6598
Facsimile: (407) 438-0207

With a copy to: Broad and Cassel
390 North Orange Avenue, Suite 1400
Orlando, Florida 32801
Attention: Deborah H. Johnson, L.L.C.
Telephone: (407) 839-4282
Facsimile: (407) 650-0920

Tavistock Corporation
9350 Conroy Windermere Road
Windermere, Florida 34786
Attention: Rasesh Thakkar, Senior Managing Director
Telephone: (407) 909-9911
Facsimile: (407) 909-9911

Building Manager for Access to Customer Improvements:

[name and 24 hour cell/pager number]

Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) days after the date first deposited in the United States mail; (iii) if by overnight courier, on the date shown on the courier's receipt as the date of actual delivery; and

(iv) if by facsimile, on the date shown on the confirmation of transmission. A party may change its address by giving written notice to the party as specified herein.

ARTICLE 21. SEVERABILITY

If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

ARTICLE 22. ATTORNEYS FEES.

In the event that any party finds it necessary to employ an attorney to enforce any provision of this Agreement or institute any legal action arising out of this Agreement or related to the subject matter hereof, regardless of whether the action is based in contract, tort, statute, or any other basis, the predominantly prevailing party will be entitled to recover from the other part(ies) its reasonable attorneys' fees and costs incurred in connection therewith (including costs of collection), at both trial and appellate levels; including bankruptcy proceedings, in addition to any other remedies to which such party may be entitled. The requirement to pay the predominantly prevailing party's reasonable attorneys' fees and costs will survive any termination of this Agreement.

ARTICLE 23. ENTIRE AGREEMENT; COUNTERPARTS

This Agreement and the Exhibits attached hereto and incorporated herein by reference constitute the entire agreement between the parties with respect to the matters contained herein. All prior oral or written agreements with respect thereto are superseded hereby and each party confirms that it is not relying on any oral or written representations or warranties of the other party except as specifically set forth herein. This Agreement may be simultaneously executed in several identical counterparts, each of which shall be an original and all of which shall constitute one and the same instrument. The parties agree that this Agreement may be signed by facsimile transmission and such facsimile shall be deemed to be original signatures. In the event of any contradictory elements within the entire agreement, the body of the Agreement shall take precedence over the Exhibits attached hereto.

ARTICLE 24. AMENDMENTS

No amendment or modification hereof shall be binding unless in writing and duly executed by the affected parties.

ARTICLE 25. CONTINUING COOPERATION

The parties agree that they will, at any time and from time to time after the date hereof, upon request of any other party, do, execute, acknowledge and deliver, or will cause to be done,

executed, acknowledged and delivered, all such further documents and assurances as may reasonably be required for the assuring and confirming of the transaction contemplated herein, provided that the same do not impose any additional liability or additional costs on such party beyond that provided in this Agreement.

ARTICLE 26. REASONABLENESS

Unless a party is given the right to make a decision within its sole discretion by this Agreement, all decisions shall be made based on a standard of reasonableness and with due consideration to the position of the other party.

ARTICLE 27. TIME IS OF THE ESSENCE

Time is of the essence as to all time periods set forth in this Agreement.

ARTICLE 28. WAIVER OF JURY TRIAL

Each party expressly waive any right to a trial by jury with respect to any litigation arising hereunder or related in any way to the subject matter hereof, irrespective of whether the legal action is based on contract, tort, statute or any other legal or equitable basis.

ARTICLE 29. DISPUTE RESOLUTION

A. If a dispute arises between the parties relating to this Agreement, the parties agree to use the following alternative dispute resolution ("ADR") procedure prior to a party filing a lawsuit related hereto:

1. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.
2. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral") to act as a mediator. If the parties are unable to agree on the Neutral within twenty (20) days, they shall seek assistance in such regard from the CPR Institute for Dispute Resolution, Inc. ("CPR"). The fees of the Neutral and all other common fees and expenses shall be shared equally by the parties.
3. Unless the parties mutually establish their own procedure, the mediation shall, at the election of the initiating party, proceed in accordance with either CPR's Model Procedure for Mediation of Business Disputes or Chapter 44, Florida Statutes.
4. The parties shall pursue mediation in good faith and in a timely manner. In the event the mediation does not result in resolution of the dispute within sixty (60) days, then, upon seven (7) days' written notice to the other party either party may pursue any and all available equitable or legal remedies.

ARTICLE 30. CONDUCT OF PARTIES

Any obligation, prohibition or standard of conduct imposed on a party hereunder shall equally apply to all of its Affiliates, agents, employees or contractors performing any of its obligations under this Agreement.

ARTICLE 31. EDUCATIONAL PROGRAMMING OPPORTUNITIES

Company and Lake Nona shall cooperate from time to time to market chilled water services to prospective customers and to provide educational opportunities within the community as to details of the construction and operation of the Central Energy Plant and the benefits of chilled water service, by creating and providing educational programs, which may include, without limitation, site visits to the Central Energy Plant; provided, the foregoing shall not disrupt or interfere in any way with Company's operation of the Central Energy Plant or its delivery of Service under this Agreement.

ARTICLE 32. DRAFTING CONSTRUCTION

Neither the form of this Agreement, nor any language herein, shall be interpreted or construed against either party hereto as the sole drafter thereof.

ARTICLE 33. LIMITATION ON ACCESS

The parties acknowledge that Customer intends, among other things, to conduct biomedical research within the Customer Improvements, and that Customer is required to comply with a variety of laws, regulations, grant restrictions and other agreements with respect to the safety, confidentiality and security of its research operations. Company agrees that if it enters onto the Customer Property or into the Customer Improvements (which it agrees it shall only do in accordance with the terms of this Agreement), it shall comply with the reasonable restrictions upon such entry imposed by Customer to protect the safety, confidentiality and security of Customer's operations. In no event shall Company have any rights to view or copy any proprietary materials, including but not limited to research protocols, processes and/or results.

ARTICLE 34. RECORDING

Neither this Agreement nor a memorandum thereof may be recorded in the public records of any county within the State of Florida.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[SIGNATURES CONTAINED ON FOLLOWING PAGES]

"COMPANY"

ORLANDO UTILITIES COMMISSION

By: 

Kenneth P. Ksionek
General Manager & CEO

Date: December 7, 2007

Approved as to form and legality.
OUC Legal Department
DATE: 12-06-07 BY: chw

ORLDOCS 11068085 1
ORLDOCS 11071874 1

"CUSTOMER"

Burnham Institute for Medical Research,
a 501(c)(3) California nonprofit public
benefit corporation

By: *Karin Eastham*
Name: Karin Eastham
Title: Executive VP and COO

Date: December 5, 2007

[CORPORATE SEAL]



"LAKE NONA"

LAKE NONA LAND COMPANY, LLC,
a Florida limited liability company

By: 

James L. Zboril, as its President

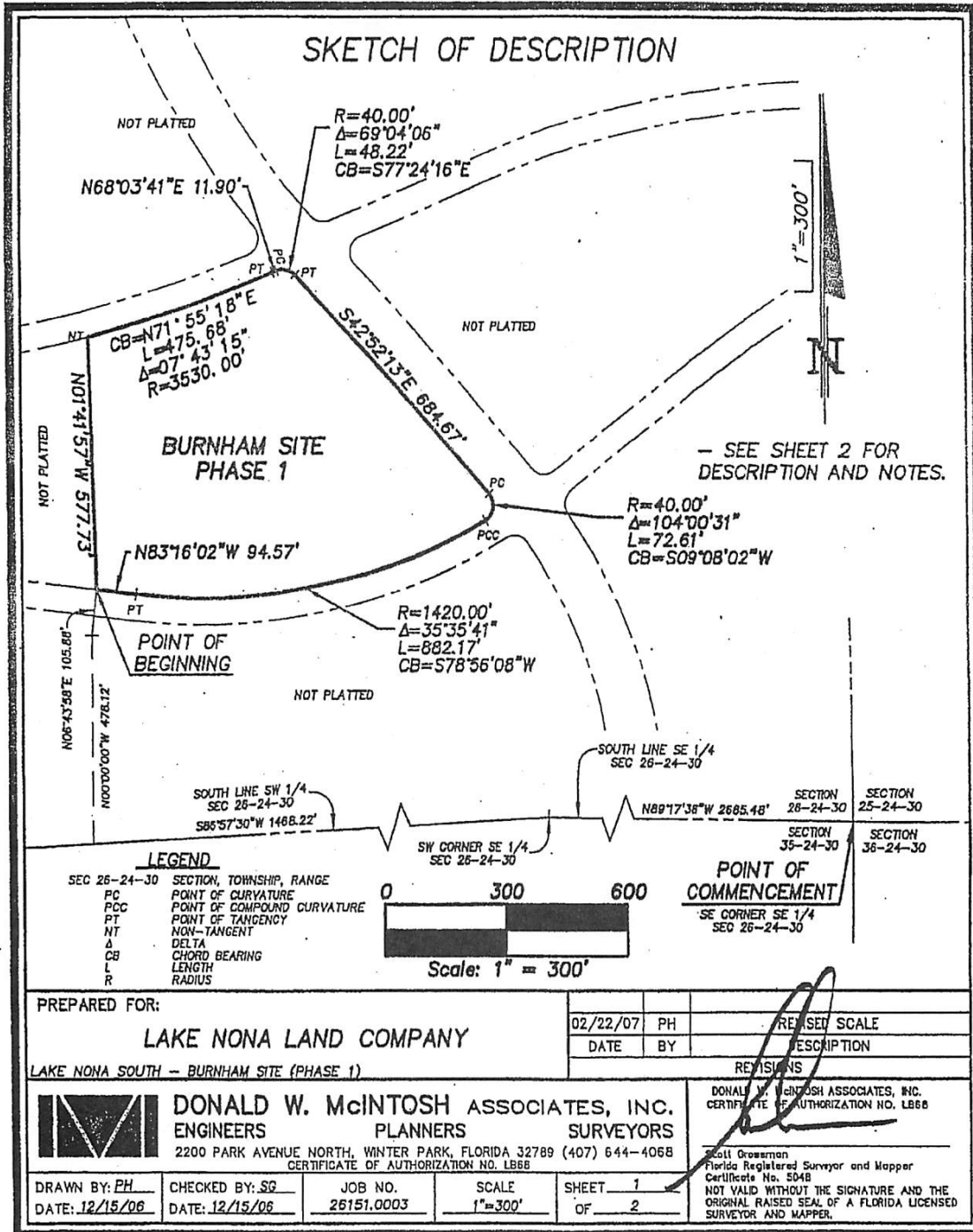
Date: December 5, 2007

EXHIBITS

EXHIBIT "A"	Description of Customer Property
EXHIBIT "B"	Contract Capacity and Service Specifications
EXHIBIT "C"	Central Energy Plant Description
EXHIBIT "D"	CEP Site Plan
EXHIBIT "E"	Prices and Charges for Service
EXHIBIT "F"	Chilled Water System Design Information and Construction & Connection Requirements
EXHIBIT "G"	Entry Road System
EXHIBIT "H"	Map of Lake Nona South Service Area
EXHIBIT "T"	Overall Project Schedule
EXHIBIT "J"	Form of Chilled Water Metering Agreement
EXHIBIT "K"	Chilled Water Distribution System and Fiber Optic Network

EXHIBIT "A"

DESCRIPTION OF CUSTOMER PROPERTY



Printed: Thu 22-Feb-2007 - 10:07AM
F:\Pro\2006\26151\5dwg\soe\Burnham Site.dwg

CS# 06-698

SKETCH OF DESCRIPTION

DESCRIPTION:

That part of Section 26, Township 24 South, Range 30 East, Orange County, Florida, described as follows:

Commence at the Southeast corner of the Southeast 1/4 of said Section 26; thence N89°17'38"W along the South line of the Southeast 1/4 of said Section 26 for a distance of 2685.48 feet to the Southwest corner of said Southeast 1/4 of said Section 26; thence S86°57'30"W along the South line of the Southwest 1/4 of said Section 26 for a distance of 1468.22 feet; thence N00°00'00"W, 478.12 feet; thence N06°43'58"E, 105.88 feet to the POINT OF BEGINNING; thence N01°41'57"W, 577.73 feet to a point on a non-tangent curve concave Northerly having a radius of 3530.00 feet and a chord bearing of N71°55'18"E; thence Easterly along the arc of said curve through a central angle of 07°43'15" for a distance of 475.68 feet to the point of tangency; thence N68°03'41"E, 11.90 feet to the point of curvature of a curve concave Southerly having a radius of 40.00 feet and a chord bearing of S77°24'16"E; thence Easterly along the arc of said curve through a central angle of 69°04'06" for a distance of 48.22 feet to the point of tangency; thence S42°52'13"E, 684.67 feet to the point of curvature of a curve concave Westerly having a radius of 40.00 feet and a chord bearing of S09°08'02"W; thence Southerly along the arc of said curve through a central angle of 104°00'31" for a distance of 72.61 feet to the point of compound curvature of a curve concave Northerly having a radius of 1420.00 feet and a chord bearing of S78°56'08"W; thence Westerly along the arc of said curve through a central angle of 35°35'41" for a distance of 882.17 feet to the point of tangency; thence N83°16'02"W, 94.57 feet to the POINT OF BEGINNING.

Containing 12.000 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

SURVEYOR'S NOTES:

- This is not a survey.
- Bearings based on the South line of the Southeast 1/4 of Section 26, Township 24 South, Range 30 East, Orange County, Florida, being N89°17'38"W, an assumed meridian.
- Lands shown hereon were not abstracted for rights-of-way, easements, ownership or other instruments of record by this firm.
- No title opinion or abstract of matters affecting title or boundary to the subject property or those of adjoining land owners have been provided. It is possible there are deeds of record, unrecorded deeds or other instruments which could affect the boundaries or use of the subject property. The lands described hereon may be subject to easements and restrictions not shown hereon.
- This Sketch of Description does not depict any easements of record that may be within or adjoining the lands described hereon.

PREPARED FOR:

LAKE NONA LAND COMPANY

LAKE NONA SOUTH - BURNHAM SITE (PHASE 1)



DONALD W. MCINTOSH ASSOCIATES, INC.
ENGINEERS PLANNERS SURVEYORS

2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
CERTIFICATE OF AUTHORIZATION NO. LB68

DRAWN BY: PH	CHECKED BY: SQ	JOB NO.	SCALE	SHEET
DATE: 12/14/06	DATE: 12/14/06	26151.0003	NA	2
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EXHIBIT "B"

CONTRACT CAPACITY AND SERVICE SPECIFICATIONS

I. CONTRACT CAPACITY

Contract Capacity of Chilled Water 1400 Tons.

The Customer shall commence payment of the contract capacity on the Operation Date.

If at any time after the first anniversary of the Operation Date, Customer determines that the Contract Capacity is greater than Customer's annual maximum consecutive sixty (60)-minute capacity, Customer may request, as a one time option, that Company reduce the Contract Capacity. Any such request must be in writing, and upon receipt of such request, Company shall study Customer's cooling requirements by evaluating parameters such as the building's occupancy, actual capacity versus ambient dry bulb and wet bulb temperatures, and any other information. Upon completion of Company's study, Company shall adjust the Contract Capacity, if warranted, based upon Company's findings, with the following conditions:

In no event, however, shall the Contract Capacity be adjusted to an amount less than the greater of: (a) 1260 Tons, or (b) ninety (90%) percent of the original established Contract Capacity). Notwithstanding the foregoing, if Customer has grossly overestimated the Contract Capacity, or if Customer institutes measurable energy conservation measures which reduce the Actual Capacity by more than ten (10) percent, and if Customer or Company finds an existing Company Customer or an acceptable new customer and Company is able to resell all or a portion of Customer's overestimated amount of Contract Capacity to such existing or new customer, Company shall, upon Customer's request reduce during the resale period Customer's Contract Capacity by such resold amount of the Contract Capacity. Customer must submit a written request for Company's approval of a buyer for all or portion of Customer's overestimated amount, and such approval will not be unreasonably withheld. Company will use reasonable efforts to resell all or a portion of such overestimated amount of Contract Capacity; however, Company is not obligated to make such resale. As a condition precedent to Company's agreement to reduce Customer's Contract Capacity, Customer will pay all reasonably and actual costs (so long as such costs do not exceed the capacity rate to be paid by Customer), which are incurred in connecting any buyer of such capacity to Company's System.

CHILLED WATER SERVICE SPECIFICATIONS

Subject to the other terms and conditions of this Agreement, Company shall supply chilled water to Customer at the Point of Delivery between the temperatures of 39 and 42 degrees F.

Subject to the other terms and conditions of this Agreement, Company shall maintain a positive differential pressure between the Point of Delivery and Point of Return. The expected maximum pressure is 150 psig.

Maintaining high differential temperature between the chilled water supply and the chilled water return is critical to the efficient and economical operation of Company System. Customer shall

design, construct, and, operate Customer System in a manner that results in fifteen (15) degree F differential temperature between the Point of Delivery and Point of Return. Pursuant to **Exhibit "F,"** if such differential temperature is not 15° F, then a Differential Temperature Adjustment as computed pursuant to **Exhibit "E"** hereto will apply to the monthly billing.

ORLDOCS 11059119 1
ORLDOCS 11059235 1

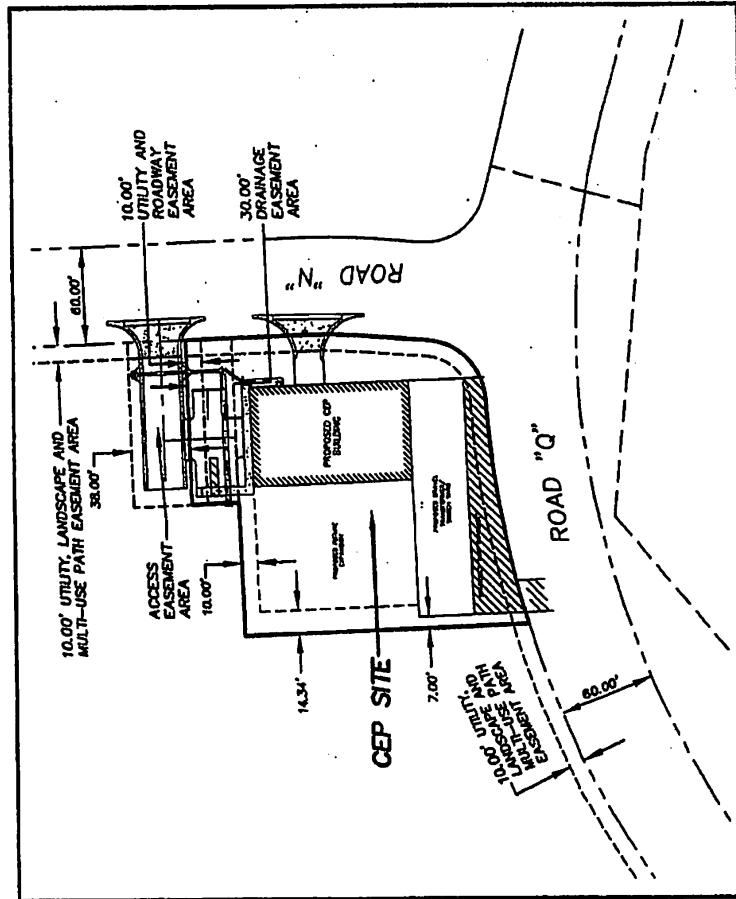
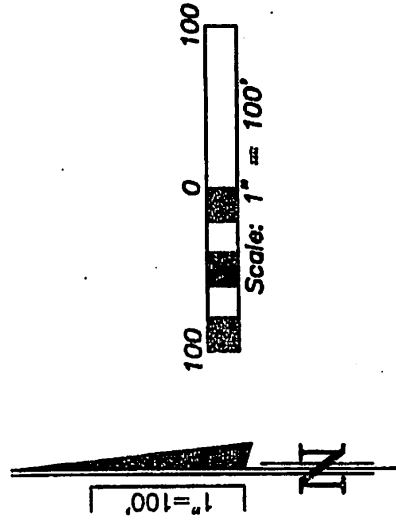
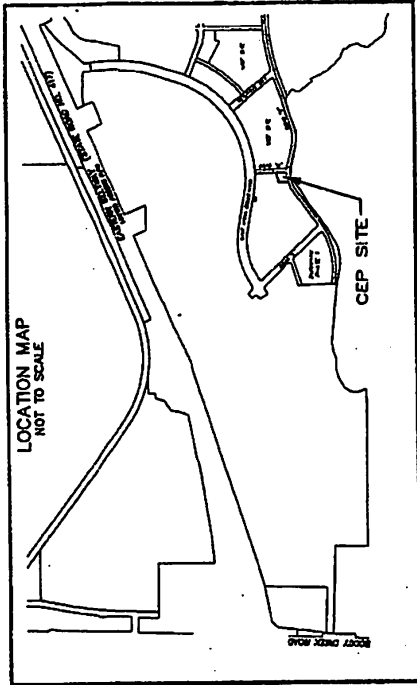
EXHIBIT "C"

CENTRAL ENERGY PLANT DESCRIPTION

General Chilled Water System Description: The chilled water system will initially consist of four water-cooled centrifugal chillers installed in pairs in a series counter-flow arrangement. The initial four chillers will have a production capacity of 5,300 Tons when producing 39°F water with a 15°F differential. Future phases add four additional pairs of water-cooled centrifugal chillers with a cooling capacity of 2,650 Tons each pair. The build out capacity of the plant is 15,900 Tons of cooling. The chillers have variable volume primary chilled water pumps to circulate chilled water in the primary distribution loop. The primary chilled water pumps will be equipped with adjustable frequency drives (AFD) and will be controlled to match the District Load. A minimum flow bypass between the primary and return is utilized to ensure that the minimum flow through the operating chillers is maintained.

ORLDOCS 11059119 1
ORLDOCS 11059235 1

EXHIBIT "D" **LAKE NONA SOUTH** **CENTRAL ENERGY PLANT** **SITE PLAN**



November 28, 2007 (REV-3)

DONALD W. MCINTOSH ASSOCIATES, INC.
ENGINEERS
PLANNERS
SURVEYORS
 2200 PARK AVENUE NORTH, WINTER PARK, FLORIDA 32789 (407) 644-4068
 CERTIFICATE OF AUTHORIZATION NO. LB68

Plot Date: Tue 04-Dec-2007 - 04:30PM
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EXHIBIT "E"

PRICES AND CHARGES FOR SERVICE

PRICES FOR SERVICE:

CAPACITY PRICE

Thirty-eight Dollars and Ninety Cents (\$38.90) per month per Ton of chilled water cooling. The Capacity Price shall be adjusted monthly for changes in the CCI as set forth in this Exhibit "E". This Capacity price of \$38.90 per Ton of chilled water consumed is effective as of November 30, 2007.

CONSUMPTION PRICE

The Consumption Price has two components:

1. **Basic Consumption Price:**
\$0.059 per Ton Hour of chilled water cooling consumed, adjusted monthly for changes in CPI and EPI as set forth in this Exhibit "E." This basic consumption price of \$0.059 per Ton Hour of chilled water consumed is effective as of November 30, 2007.
2. **Adjustable Consumption Price:**
\$0.036 per Ton Hour of chilled water cooling consumed, adjusted monthly for changes in the CPI and EPI and the Differential Temperature Adjustment as set forth in this Exhibit "E.". This adjustable consumption price of \$0.036 per Ton Hour of chilled water consumed is effective as of November 30, 2007.

CHARGES FOR SERVICE

CAPACITY CHARGE: The Capacity Charge is calculated monthly as:

Billing Capacity x Adjusted Capacity Price

Adjusted Capacity Price = Capacity Price x [0.25 + (CCI Adjustment x 0.75)].

CONSUMPTION CHARGE: The Consumption Charge is calculated monthly as:

Consumption x [Basic Consumption Price + (Adjustable Consumption Price) x (Differential Temperature Adjustment)] x [(Electric Price Adjustment) x 0.90 + (CPI Adjustment) x 0.10.]

DIFFERENTIAL TEMPERATURE ADJUSTMENT The Differential Temperature Adjustment is an incentive for efficient performance and is based upon Company district cooling system differential temperature as measured at the supply and return of Company Meter as shown in Exhibit "F." The design differential temperature between the supply water and return water is 15° F.

The Differential Temperature Adjustment shall be calculated as:

$[15^{\circ}\text{F} / (\Delta T)]$

ΔT is the weighted average differential temperature between Company chilled water supply water and return temperatures during the billing period.

LOST WATER CHARGE The Lost Water Charge shall be the actual cost to Company of replacing water and chemicals.

METER CHARGE: The meter charge is Fifty and No/100ths Dollars (\$50.00) per month and will be added to Customer's bill as a Customer Charge.

CCI ADJUSTMENT: "CCI" means the Construction Cost Index for a 20 City national average as published by the engineering News-Record, a McGraw Hill Company for the most recent month for which such index has been published. If the publication of CCI is discontinued, the parties will use a revised or replacement index that is similar to the discontinued CCI. "Base CCI Index" means the CCI Index as of December 1, 2007.

CPI ADJUSTMENT "CPI" means the Consumer Price Index for All Cities, Urban Wage Earners and Clerical Workers published by the Bureau of Labor Statistics, U. S. Dept. of Labor (or comparable successor index) for the most recent calendar month for which such index has been published. If the referenced index is discontinued, the National CPI (or comparable successor index) shall be utilized. If the publication of CPI is discontinued, the parties will use a revised or replacement index that is similar to the discontinued CPI. "Base CPI Index" means the CPI Index as of January 1, 2007.

The CPI Adjustment shall be: The greater of (Current CPI Index)/(Base CPI Index) and 1.00.

ELECTRIC PRICE ADJUSTMENT "Electric Price Index" or "EPI" means the Orlando Utilities Commission ("OUC") rate, or upon "deregulation", the published index for the lowest applicable rates available to customers of OUC for Central Florida or an index computed from the published lowest applicable rates available to customers of OUC, Progress Energy Florida, Inc., Florida Power & Light Company and Tampa Electric Company. If the selected index is discontinued, a comparable successor index shall be agreed to and utilized.

The Base Electric Price Index ("Base EPI") means the EPI Index as of April 1, 2007. The Electric Price Adjustment will be applied with each rate change or index adjustment.

The "Electric Price Adjustment" shall be: (Current EPI)/Base EPI)

NON PAY RECONNECTION CHARGES: Service charge for non-pay activity is \$85.00 per event. The charge amount shall be subject to Company's current policy at the time of the event.

EXHIBIT "F"

**Chilled Water System Design Information and Construction & Connection
Requirements**

Contents

- I. OUC District Chilled Water Operating Parameters**
- II. OUC Supplied Equipment**
- III. Customer Point of Connection Requirements & Construction Coordination**
- IV. Cleaning and Flushing Requirements**
- V. Building HVAC Chilled Water Components & Controls Recommendations**
- VI. OUC Supplied Equipment - Figures 1-7**

**OUC Chilled Water Services
District Chilled Water System
Design Information
And
Construction & Connection Requirements**

The Customer is advised to contact OUC Chilled Water Services at the earliest stages of project development for design review and construction coordination. OUC Chilled Water Services requires a half-size set of MEP, Civil, and Architectural drawings including site plan showing grade elevation, location of mechanical room, and structure elevations. The Customer shall be responsible for determining the air conditioning load (tonnage) and ensuring the building HVAC chilled water system is designed to function with the OUC Chilled Water Services District Chilled Water System as well as all applicable codes and industry standards. The Customer shall be responsible for ensuring the building chilled water system is prepared for installation of OUC supplied equipment and connection to the OUC chilled water system.

I. OUC District Chilled Water System Operating Parameters

A. District Chilled Water Temperature

OUC's District Chilled Water Systems are operated to maintain 40-42 deg F supply water temperature to the Point of Connection. If heat exchangers are required to de-couple the systems, allowance must be made for approach temperature limitation; use 42-44 deg F supply temperature on the building side of the heat exchangers.

B. Differential Temperature (delta T)

OUC's District Chilled Water Systems are designed to operate with a 15 deg F differential temperature (delta T). The Customer is advised that the Chilled Water Service Agreement will typically include a penalty should the monthly average delta T drop below 15 deg F, and will typically include a credit if the monthly average delta T is greater than 15 deg F. Depending on the project requirements, OUC's Chilled Water Master BTUH Meter is designed to offer a limited degree of control of the OUC District Chilled Water delta T. However, this control scheme will raise the Customer's chilled water supply temperature. OUC does not recommend a chilled water supply temperature in excess of 44 degrees F.

C. District Supply and Return Pressure

OUC's District Chilled Water Systems operate based on the difference in the supply and return pressure at the most "hydraulically remote" location (Point of Connection) within the District. The OUC Chilled Water System controls continuously survey each site and adjusts the Central Energy Plant chilled water supply pump discharge pressure to maintain a minimum of 1 psid between OUC supply and return at the most hydraulically remote site. The actual location of the

most hydraulically remote site may vary due to location, variable load at different points on the system, and the addition of load as new customers are tied into the District.

1. Supply Water Pressure & Pressure Class:

OUC's District Chilled Water Piping Systems are 150 PSI CLASS. OUC attempts to maintain the lowest supply pressure possible to minimize pumping energy. Therefore, OUC will not guarantee that there will be sufficient supply pressure to "pump the building". The Customer must ensure that pumps are installed and sized to ensure adequate flow at all load conditions. However, as the air conditioning load on the District increases, overall system pressure will increase to ensure adequate flows throughout the District. The Customer must ensure that the building side pressure does not exceed the design pressure rating of the building piping and HVAC components. Pressure regulating devices, if necessary, shall be installed downstream of the OUC Master Chilled Water BTUH Meter equipment. Use of PVC piping and components are prohibited.

2. Return Water Pressure:

Return pressure is maintained at a set static pressure based on a pre-determined elevation, i.e., the return pressure is maintained to ensure that there is a positive pressure at the highest point of the return side of the chilled water system of a selected building. Once this elevation is set, OUC will not alter it. This elevation varies by District. Please contact OUC Chilled Water Services to determine the elevation for your project. The pressures stated below are typical and subject to change:

For Downtown Orlando:

Return Pressure 85-90 psig Supply Pressure: 86-125 psig
Limiting Elevation: 272 ft. above sea level – CNL Tower

For International Drive:

Return Pressure 47 psig Supply Pressure: approx 75 psig
Limiting Elevation: 214 ft. above sea level – Lockheed Martin Tower

For New Districts:

Contact OUC Chilled Water Services Engineering

Supply Pressures will vary with the use of Pressure Reducing Valves. Customer shall consult with OUC regarding minimum supply pressure prior to specifying pumps for the Customer System.

3. De-Coupling:

In general, if the elevation of the highest point of the building chilled water system is to be above the set elevation for the District, de-coupling will be required. This is accomplished by the use of 2 – 60% capacity plate and

frame heat exchangers with 2 – 60 % OUC supply side booster pumps, or, if the height of the building does not result in a return pressure greater than 120 psi, pressure-reducing valves may be utilized. Please contact OUC Chilled Water Services to determine the requirements for your project.

II. OUC Supplied Equipment

The Customer shall provide adequate space and conditions for all OUC Supplied Equipment. The Customer shall maintain a dry, secure location for the OUC equipment. The Customer shall allow access to the equipment for maintenance at any time and provide keys and combinations necessary for access. Equipment space shall be provided with adequate ventilation and drainage. Conditioning of the space is highly recommended to prevent condensation. The following is a brief description of typical metering and auxiliary equipment supplied and installed by OUC:

A. Standard Chilled Water Master BTUH Meter (Figure 1)

This arrangement is used when the elevation of the highest point in the building chilled water system is less than the highest elevation specified for the District. The equipment includes a flow meter, temperature sensors, control valve, and an electronic "Control Package" computer. The instrumentation and control valve are installed in the piping between the Customer System pumps and the Points of Connection and Return.

B. Chilled Water Master BTUH Meter with Pressure Reducing Valves (PRVs) (Figure 2). May be used on intermediate height buildings as described in section I.C.2. Installation is same as a Standard Meter with pressure reducing valves on the supply and return lines.

C. Chilled Water Master BTUH Meter w/ Heat Exchangers & Booster Pumps. (Figures 3-6). Will be used when complete de-coupling is required.

1. Schematic (Figure 3)
2. 8" (937 Ton) Typical layout and Equipment Schedule (Figure 4a-c)
3. 10" (1500 Ton) Typical layout and Equipment Schedule (Figure 5a-c)
4. 12" (2400 Ton) Typical layout and Equipment Schedule (Figure 6a-c)

The Heat Exchanger design and space requirements are project specific. Customer shall provide OUC with load information prior to determining the space available for the Heat Exchangers. OUC will provide the Customer with a preliminary submittal based on the load information provided by the Customer. OUC will submit the arrangement to the Customer so the space requirements can be determined. OUC requires that all components be located adjacent to one another with at least two (2) feet of clearance on all sides for maintenance access and two (2) feet of clearance overhead. Some electrical gear is mounted

on the OUC supplied equipment. Clearance for OUC electrical gear shall conform to applicable codes.

The Customer is advised that the heat exchanger equipment (if required) will add significant weight to the building structure depending on size. Total operating weight may be on the order of 20-50 tons. Space requirements may be as large as 30ft x 20ft area and 11ft clearance. OUC requires locating this equipment on the ground floor (slab on grade) away from any residential or commercial space and under no circumstances shall electrical breakers and switchgear for the building be located in the same room.

If heat exchangers are required, the Customer shall be required to maintain the building chilled water system chemistry and make-up water supply. The Customer shall be required to reimburse OUC for the cost of cleaning the heat exchangers should the Customer fail to maintain the required parameters resulting in fouling of the heat exchanger plates.

The Customer shall continuously monitor and maintain the following chemistry parameters:

Nitrates: 800-1200 ppm

Total Fe < 1ppm

Conductivity and pH consistent with local domestic supply (320 mho pH 7.8)

D. Chilled Water Master BTUH Meter Electronics Layout (Applicable to All Master Meter Arrangements) - (Figure 7). Customer has specific responsibilities regarding this installation described in Section III.

III. Customer Point of Connection Requirements & Construction Coordination

A. Pipe Installation "Point of Delivery and Point of Return": OUC Chilled Water Services will typically install chilled water supply and return piping from a point nearest the existing District Chilled Water System Piping located in the Right-of-Way or existing easement (if allowed) to a point 5 feet from the Customer's building foundation assuming the connection points are relatively close to the property line. Extended pipe runs greater than ten (10) feet on the property as well as campus and/or multiple building connection requirements must be reviewed by OUC Chilled Water Services on a case-by-case basis to determine feasibility prior to entering into an agreement. The Customer shall install all piping from 5 feet from the foundation to the building mechanical room (including conduit as described in III.B). Customer shall install welded steel, coated, and insulated piping from mechanical room to the Point of Connection and Return in accordance with OUC standards. Point of Connection and Return shall be at a depth of no less than 3 feet from top of pipe and no more than 6 feet

to bottom of pipe. OUC will furnish and install the piping and equipment that makeup the Chilled Water Master BTUH Meter and Heat Exchanger.

B. Conduit for Fiber Optic Link: The Customer shall install a 2" conduit designed for fiber optic cable along with the Customer installed chilled water supply and return piping to the Point of Delivery and Return. The Customer shall ensure proper fittings and adequate junction boxes/hand-holes are available to facilitate cable installation. OUC will install the fiber optic cable and make the necessary terminations.

C. Power: The Customer shall provide dedicated/clean 110 Volt AC power for the DDC controller (Control Package Computer) for interface to the Chilled Water Master BTUH Meter. The Customer shall provide 460V/3phase power and service connection for Heat Exchanger Booster Pumps if they are required. Load (amp rating) requirements for Heat Exchanger Booster Pumps are project specific. All power connections must be installed and energized prior to initiation of chilled water service.

D. Location of Chilled Water Master BTUH Meter Electronics: The Customer shall provide a location on a wall within 10 feet of the Master Meter location for the Electronics Package. VFDs for Customer Pumps shall be mounted at least 10 feet away from the Electronics Package (See Figure 7).

E. Construction Schedule and Coordination: OUC Chilled Water Services requires specific schedule information and construction coordination in order to ensure timely delivery of chilled water and to ensure the Central Energy Plant has adequate capacity. Dates for the following milestones are required:

1. Commencement of Site Preparation.
2. Phase of Construction for Heat Exchanger Installation (if required).
3. Chilled Water Required for Dry-In & Conditioning.
4. Certificate of Occupancy.

The Customer shall incorporate the installation of OUC installed piping and equipment into the project's site utility plan, construction drawings, and schedule. OUC shall be allowed to use the construction contractor's Maintenance of Traffic (MOT) wherever possible at no cost to OUC. Installation of piping and equipment on the project site by OUC shall occur during normal working hours.

The Customer shall provide use of the site construction crane if required to off load and set into place all Chilled Water Master BTUH Meter equipment including heat exchangers at no cost to OUC.

F. Cleaning and Flushing & Chilled Water Account Setup: OUC Chilled Water Services has specific cleaning and flushing requirements that shall be completed by the Customer prior to the initiation of chilled water service.

These requirements are described in detail in Section IV. The Customer shall establish a Chilled Water Billing Account prior to the initiation of chilled water service.

IV. Cleaning and Flushing Requirements

OUC requires compliance with the following minimum cleaning and flushing procedures. These procedures are necessary to ensure the proper operation of the Customer's chilled water system and to prevent contamination of the OUC Chilled Water System and equipment. These requirements are based on typical and accepted industry practices. It shall be the Customer's ultimate responsibility to communicate these requirements to the building design engineers and construction contractors. It is recommended that the Customer contact OUC Chilled Water Services and Metering representatives during the initial phases of design and prior to construction to discuss and coordinate the required activities.

Recirculating cleaning chemical through OUC metering and heat exchanger equipment is prohibited. The Customer shall install the necessary bypass piping, valves, and flushing connections.

OUC WILL NOT INITIATE CHILLED WATER SERVICE UNTIL THE FOLLOWING REQUIREMENTS ARE MET:

- Specifications and requirements of the Chilled Water Service Agreement and Chilled Water Metering Agreement (if applicable) are met.
- The Customer's chilled water piping system has passed local permitting authority inspection.
- The Customer or Customer's Contractor has established a Chilled Water Billing Account with OUC.
- The Chilled Water System Cleanliness and Treatment Certification Documentation has signed by the General Contractor Superintendent and has been submitted to OUC for review and acceptance.
- The Building Chilled Water System is filled with clean water. If heat exchangers are used, the building chilled water system shall be treated to maintain required chemistry parameters.
- If the Customer desires to place the building chilled water system into service in phases, provisions for cleaning and flushing the later phases must have been made and approved by OUC. Provisions for flushing for later phases must be determined prior to construction.

CLEANING PROCEDURE:

1. The Customer shall be responsible for pre-operational chemical cleaning and flushing of the entire building chilled water system piping including branch piping to individual fan coil units, air handlers, instrumentation connections, drains, vents, and dead end runs prior to the initiation of chilled water service by OUC. The Customer shall utilize the services of a qualified chemical treatment contractor to supply chemicals, conduct chemical additions, monitoring, and treatment certification. If heat exchangers are installed for de-coupling, they shall be by-passed during the cleaning and flushing process. The Customer shall use clean potable water from the local domestic water supply for all cleaning, flushing and filling operations.
2. The Customer shall not allow untreated water to remain in any carbon steel/black iron chilled water piping longer than 24 hours. If 24 hours has elapsed prior to the initiation of chilled water service, all affected piping shall be treated with corrosion inhibitor or completely drained. The piping to be placed into service shall be completely full of clean or properly treated potable water prior to initiation of chilled water service. Corrosion inhibitor is already added to the OUC Chilled Water System. It may not be necessary for the Customer to add corrosion inhibitor if all requirements are met so there is no delay between the completion of the cleaning and flushing process and the initiation of chilled water service (this does not apply for projects using heat exchangers).
3. The Customer shall be responsible for ensuring all startup strainers are in place on the building chilled water pumps as well as any other startup strainers recommended by HVAC component manufacturers. The Customer shall be responsible for removing all startup strainers and cleaning and inspecting permanent strainers.
 - a. OUC recommends that components that are prone to fouling such as, but not limited to, coils, control valves, and balance valves be removed/bypassed during the initial flushing process. This is a requirement should submeters be installed.
 - b. OUC recommends that startup strainers installed on the building chilled water pump suction diffusers remain in place until the entire building chilled water system has been placed into service and is completely supplied via the OUC Chilled Water System under full flow conditions. The startup strainers should be cleaned and inspected frequently until removed. The Customer is responsible for the cleaning, inspecting, and removal of the startup strainers.
4. Complete circulation of the chilled water system must be achieved during the cleaning and flushing procedure. A flow rate resulting in a minimum velocity of 4 ft/sec shall be maintained to ensure that the cleaning chemicals will work properly.

- a. All manual, motorized (electrical and pneumatic), and thermostatic operated valves if installed shall be fully open during the circulation process. All dead end runs shall be looped together with piping not less than 1/3 the size of the clean end run. This loop piping shall remain in place until cleaning is complete and the chilled water system is certified as clean.
5. A minimum of 1-1/2" ball valve is to be permanently installed in the low point of chilled water system for the purpose of flushing the system as necessary and described elsewhere. Upon completion of all flushing, the drain valve shall be plugged to prevent drainage of the system during operation.
6. Cleaning Chemical: The chemical used for cleaning shall be a detergent and dispersant designed to remove deposition from construction, such as pipe dope, loose grease and oils, most loose mill scale, and other extraneous materials. The pre-cleaning detergent shall contain effective penetrants, emulsifiers, peptizers, dispersants, wetting agents, corrosion inhibitors to protect metals that are reactive in an alkaline environment, and shall be safe to handle and use. Effectiveness of the product shall be such that the water need only be at ambient temperatures.
 - a. The cleaning chemical shall be Nalco 2567 or OUC approved equal. The Customer shall submit in writing the proposed alternate chemical to OUC Chilled Water Services.
 - b. Add cleaning chemical treatment manufacturer's recommended dosages of chemicals based on the building system volume.
 - c. Circulate cleaning chemical for 48 hours.
 - d. The building chilled water system shall then be drained from the lowest point in the system with make-up water fed to the system on a continuous basis. During the draining process, the building chilled water circulating pumps shall be in continuous operation to prevent settling of debris loosened by the pre-cleaning detergent.
 - e. Circulation and draining shall continue until the total alkalinity, conductivity, clarity, and pH of the water in the building chilled water system is equal to the makeup water used for filling.
 - f. The Customer is cautioned to ensure temperature and pressure in the system during flushing does not cause rupture disc or relief valves, etc., to open as a result of increased temperature in the chilled water system, as a result of the recirculation process.
 - g. Clean and inspect all strainers. Replace damaged strainers.

7. **Certification:** After the system is cleaned and flushed, the Customer shall submit **Chilled Water System Cleanliness and Treatment Certification Documentation** to OUC for review and acceptance. This documentation shall be prepared by a qualified chemical cleaning/treatment contractor.

The Customer shall provide documentation of the Cleanliness and Treatment consisting of the following:

- Name of chemical cleaning contractor
- Estimated system volume
- Location of sample points.
- Chemicals used.
- Date/Time chemical cleaning is initiated and completed.
- pH, total alkalinity, and conductivity of makeup water.
- pH, total alkalinity, conductivity, Fe concentration (less than 1 ppm), and clarity of chilled water system after flushing.

The Customer's Contractor Superintendent shall sign the Certification. OUC shall maintain the right to independently verify the condition of the chilled water within the premises. OUC will submit sample results of the OUC chilled water system upon request.

8. If carbon steel/black iron piping is not ready for operation within 24 hours of the initiation of OUC Chilled Water Service, the Customer shall either treat the affected portions of the system with 25-100 ppm **Nalco 2513 (NO SUBSTITUTES)** corrosion inhibitor or completely drain the affected portions of the system. Service to portions of the system that have been cleaned and flushed and are ready to be placed into operation can be initiated if the out of service piping is isolated with all isolation valves locked in the closed position and all other requirements for the initiation of chilled water service are met.
9. Should the Customer desire to place the building chilled water system's main supply and return headers into operation in phases, the Customer shall provide means to isolate the operational phases from the phases under construction. **Cross contamination of dirty water and cleaning chemicals shall not be permitted.** The Customer is responsible for cleaning each phase in accordance with the requirements herein including separate certification documents for each phase.
- a. If branch piping for future individual fan coil units and/or air handlers are not to be placed into service immediately, the Customer shall lock closed the isolation valves. The Customer shall contact OUC Chilled Water Services to coordinate placing the individual units into service. If the affected piping is not corrosion resistant, it shall be drained or treated with corrosion inhibitor.

- b. The Customer shall conduct a thorough flush of the branch piping with clean potable water. **DO NOT FLUSH NEW PIPING VIA THE CHILLED WATER SYSTEM.** If Chilled Water Meters are to be installed, a spool piece in place of the meter shall be installed during the flushing process. The Customer shall flush until the exiting water is clear. The new piping shall be treated with Nalco 2513 corrosion inhibitor or drained if it is to be left idle for greater than 24 hours.
- c. For installations without heat exchangers, OUC will allow filling of new piping via the OUC Chilled Water System only for small sections of branch piping that have been properly flushed with clean domestic water. It is assumed the building chilled water system supply and return headers are already in service and the sections of piping have been left idle until the required tenant configuration has been determined. **The Customer shall contact OUC Chilled Water Services prior to filling the new piping via the building chilled water system.** Any in service piping that has been deadheaded shall be momentarily flushed via the building chilled water system to remove accumulated sediment and debris.

V. Building HVAC Components & Controls Recommendations

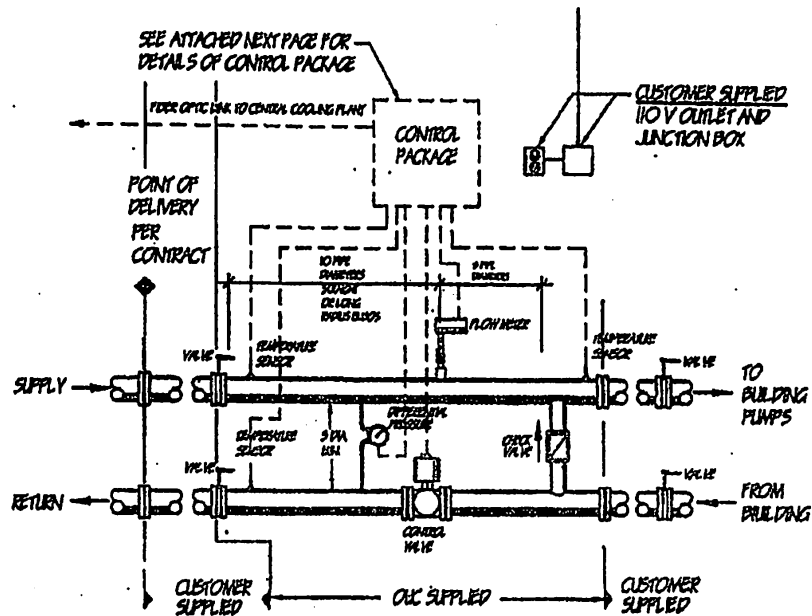
OUC strongly recommends the use of high quality components to ensure the building HVAC chilled water system performs as required and is compatible with district cooling. Special consideration must be given to ensure that the building system is designed to maintain a minimum 15 degree F delta T as well as adequate cooling for temperature and humidity control.

- Use 18 degree F delta T rated coils in fan coil units and air-handlers.
- Use 2-way control valves and pressure independent flow limiting devices, or a single device which accomplishes the same result to ensure that manual balancing or bypass of cold chilled water around any fan coil/air handling unit cooling coil is eliminated.
- Use 3-way control valves only as necessary to ensure minimum pump flow and/or building supply header temperature requirements. Ensure chilled water meter (if applicable) is installed relative to the 3-way valve on piping for fan-coil/air handling unit so that only actual consumption is measured.
- Control valve bodies should be rated for at least 150 psi if building system is coupled directly to the OUC Chilled Water District. A pressure-reducing valve may be required due to OUC's higher operating pressures.
- Do not use PVC piping for chilled water under any circumstances.

- Install strainers with integral blow-down hose connection upstream of all fan-coil/air handling chilled water components including individual chilled water meters if applicable. Ensure mesh size is adequate to protect all components from fouling.
- Ensure building HVAC automation controls are capable of controlling variable speed drive pumps and flow control devices for ALL load conditions to maintain 15 degree delta T and adequate building temperature and humidity control.
- Ensure there is sufficient turndown and/or recirculation available on the pumps for minimum load conditions.
- Ensure building HVAC automation controls are programmed to close chilled water control valves when fan-coil/air handling units are not in use. Ensure thermostat settings for unoccupied spaces are adequate for proper humidity control.
- Ensure Differential Pressure is monitored in the proper location by the building HVAC automation system to control chilled water pump VFDs. The differential pressure set point and monitoring location shall be determined by the Customer's engineer.
- Routinely flush system components and inspect for proper operation.
- Maintain proper chemistry and makeup water parameters if de-coupled from the OUC system with heat exchangers.

VI. **OUC Supplied Equipment - Figures 1 – 7 (drawings are intended to show typical arrangements and are not to scale)**

CHILLED WATER BTU METER (MASTER)



CUSTOMER SHALL PROVIDE ALL PIPING, PUMPING AND OTHER EQUIPMENT REQUIRED TO DISTRIBUTE CHILLED WATER WITHIN PREMISE

THIS PLAN IS SCHEMATIC ONLY
ACTUAL METER STATION WILL BE MODIFIED TO MATCH BUILDING CONDITIONS AND / OR DESIGN
PIPING CAN BE VERTICAL OR HORIZONTAL

PULL METER SIZES
PIPE SIZED FOR (CONTRACT CAPACITY + 20%)
LENGTH OF METER IS 15 FEET MINIMUM
NOTE: LENGTH OF PIPE CHASE TOTAL OF VERTICAL AND HORIZONTAL PIPE WITH LONG RADIUS ELBOWS

SIZE	LENGTH
6" PIPE (551 TONS)	7'-6" LENGTH
8" PIPE (897 TONS)	10'-0" LENGTH
10" PIPE (1500 TONS)	12'-6" LENGTH
12" PIPE (2400 TONS)	15'-0" LENGTH

Figure 1

Figure 1 (Chilled Water Master BTUH Meter)

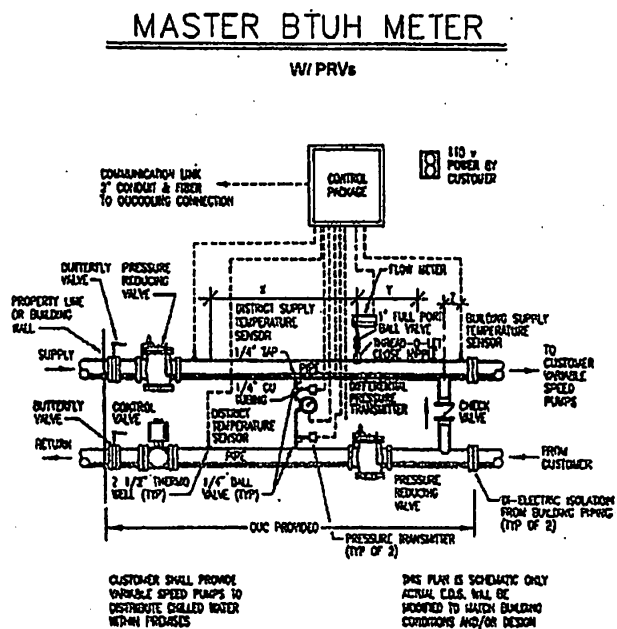


Figure 2

Figure 2 (Master Chilled Water BTUH Meter with PRVs)

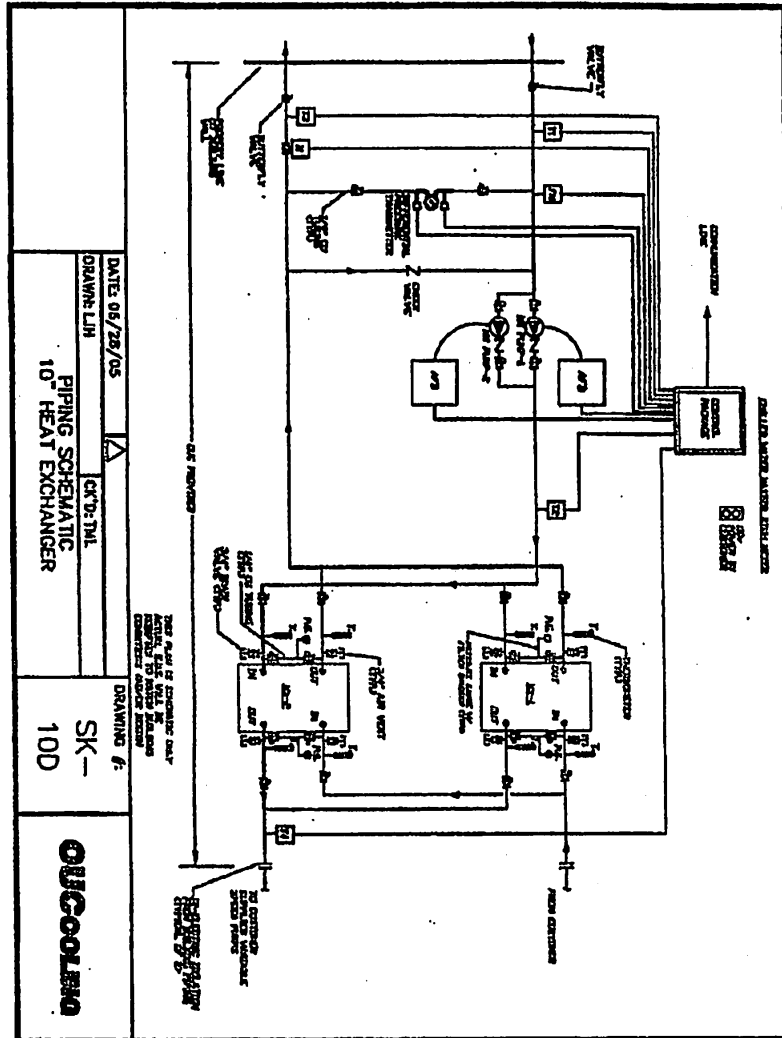


Figure 3 (Heat Exchanger Equipment Schematic)

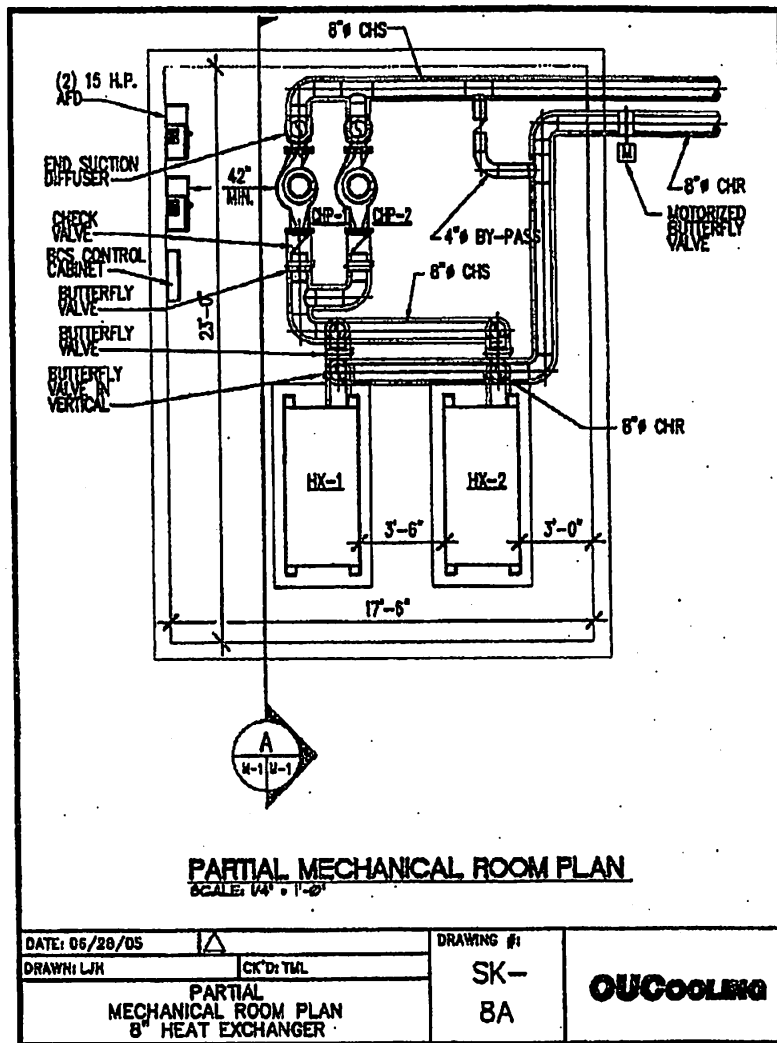


Figure 4a (8" Heat Exchanger Plan View)

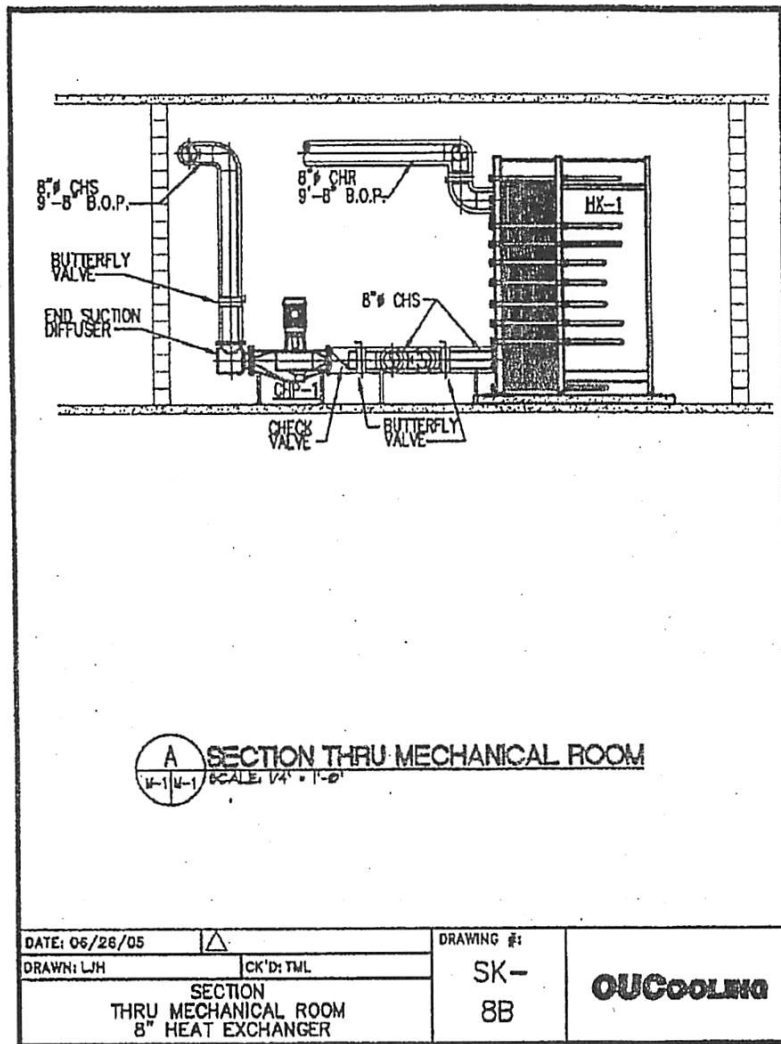


Figure 4b (8" Heat Exchanger Section View)

[illegible]

Figure 4c (8" Heat Exchanger Equipment Schedule)

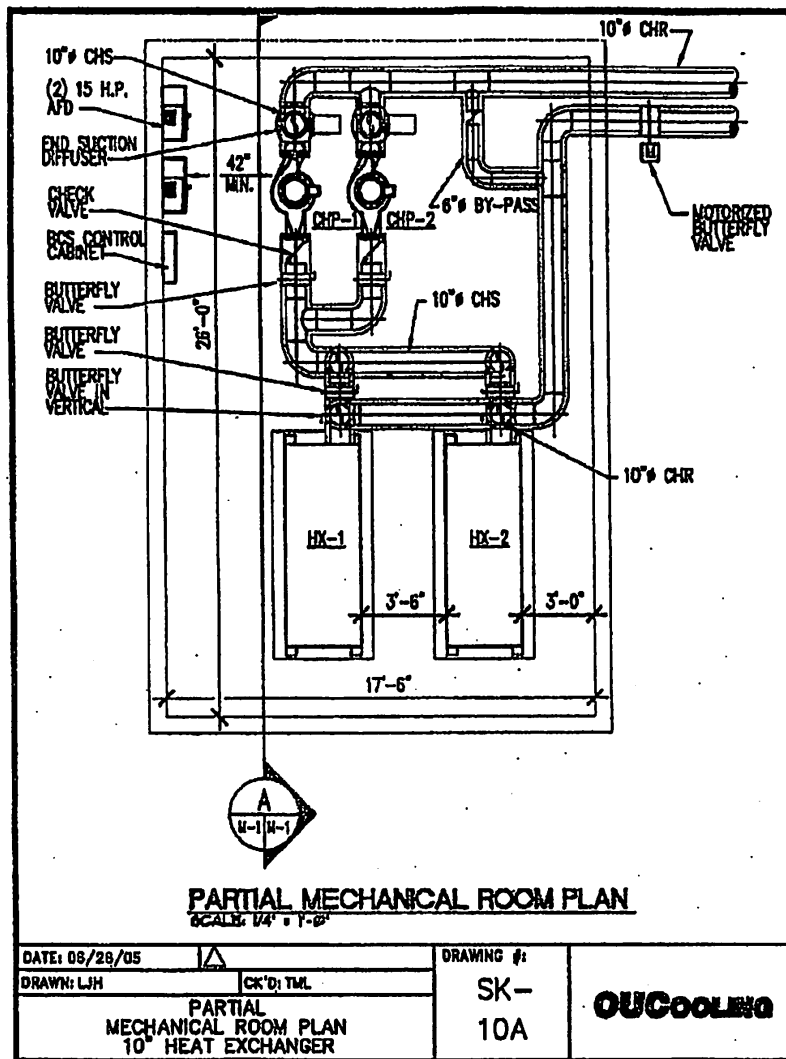


Figure 5a (10" Heat Exchanger Plan View)

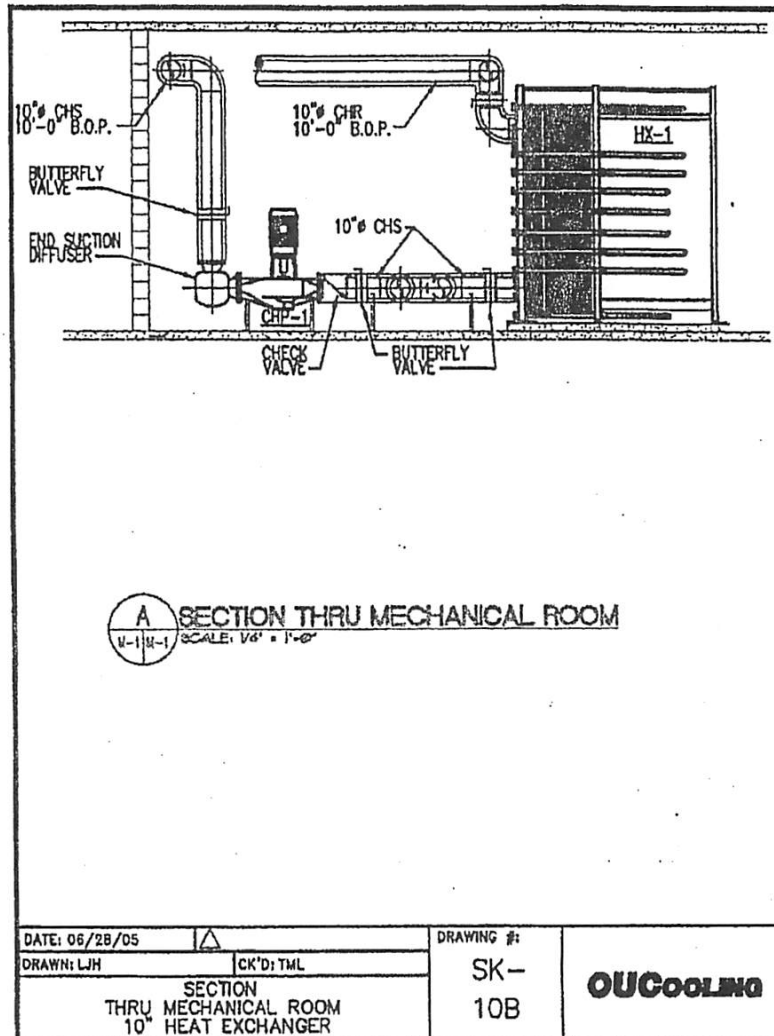


Figure 5b (10" Heat Exchanger Section View)

[illegible]

Figure 5c (10" Heat Exchanger Equipment Schedule)

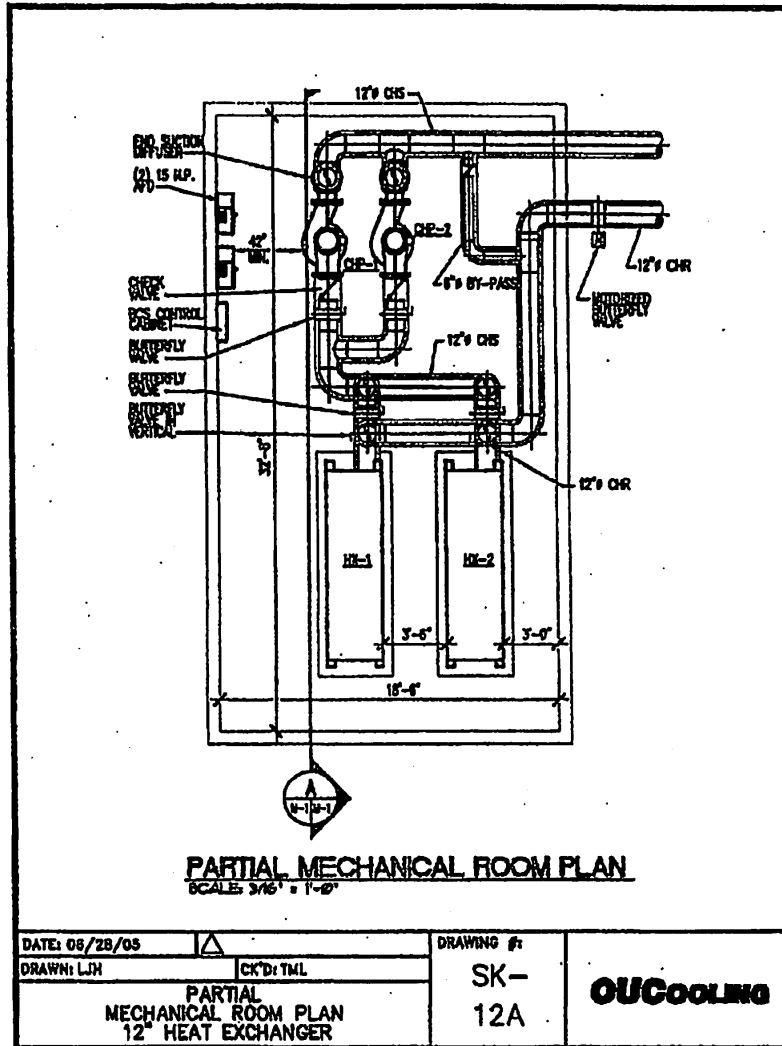


Figure 6a (12" Heat Exchanger Plan View)

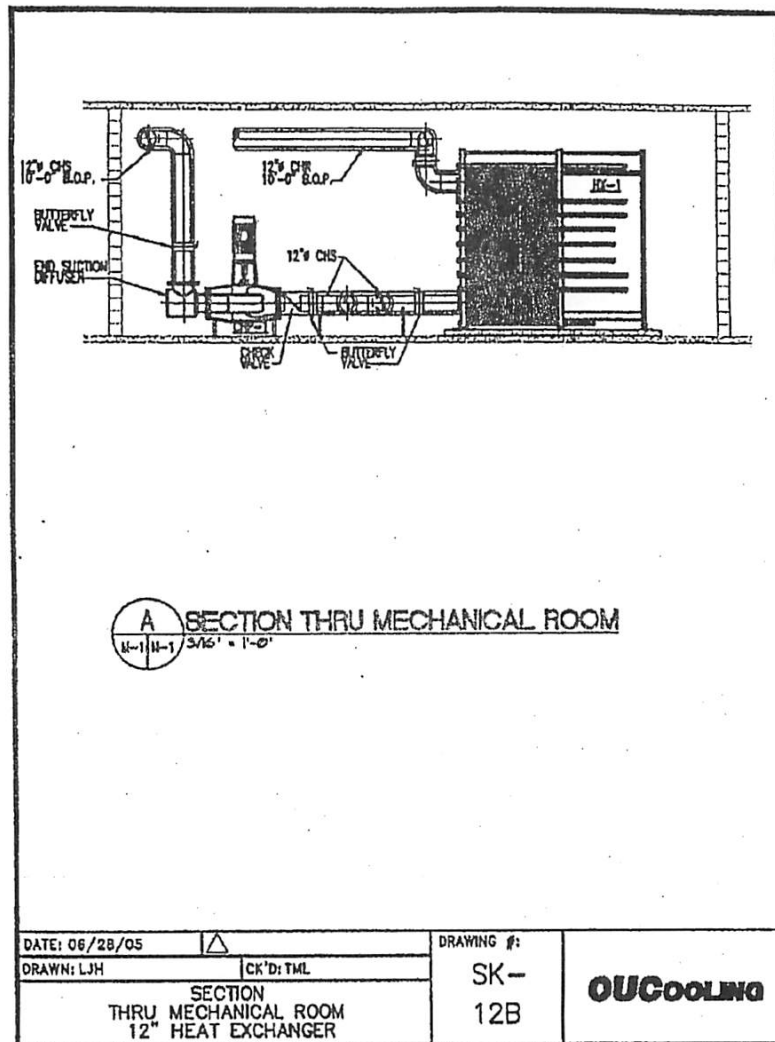


Figure 6b (12" Heat Exchanger Section View)

[illegible]

Figure 6c (12" Heat Exchanger Equipment Schedule)

CONTROL PACKAGE
FOR
CHILLED WATER BTU METER (MASTER)

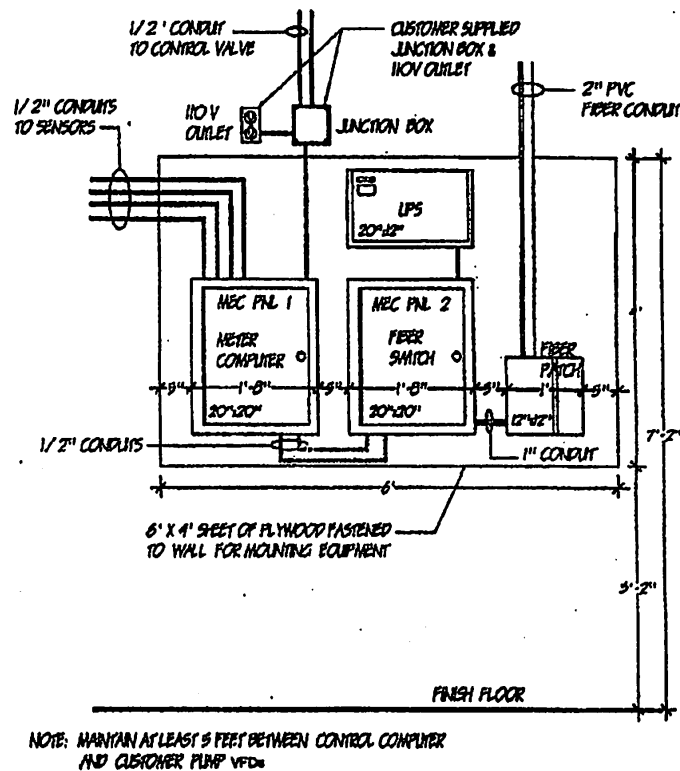


Figure 7

Figure 7 (Electronics Control Package Arrangement)

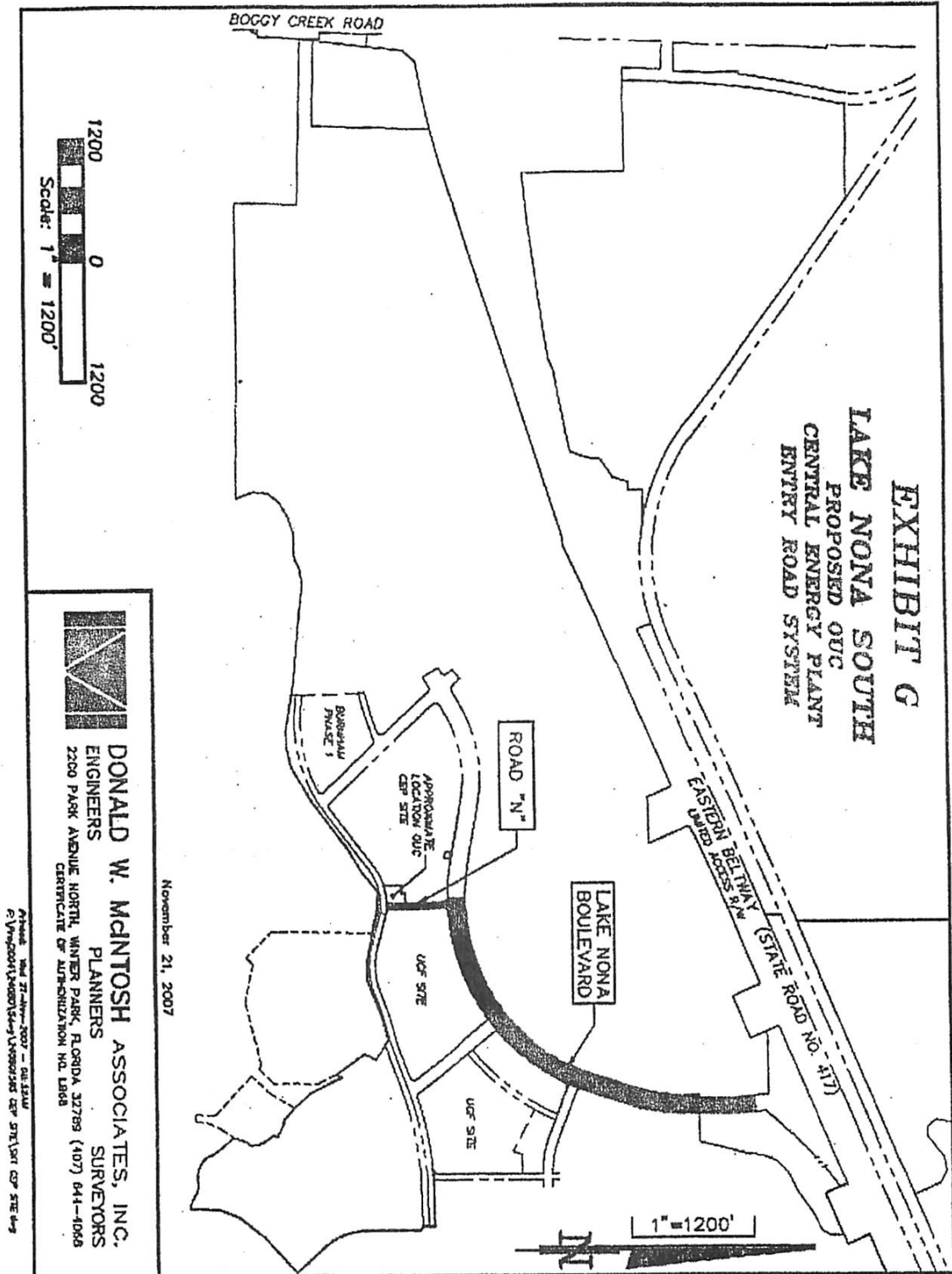
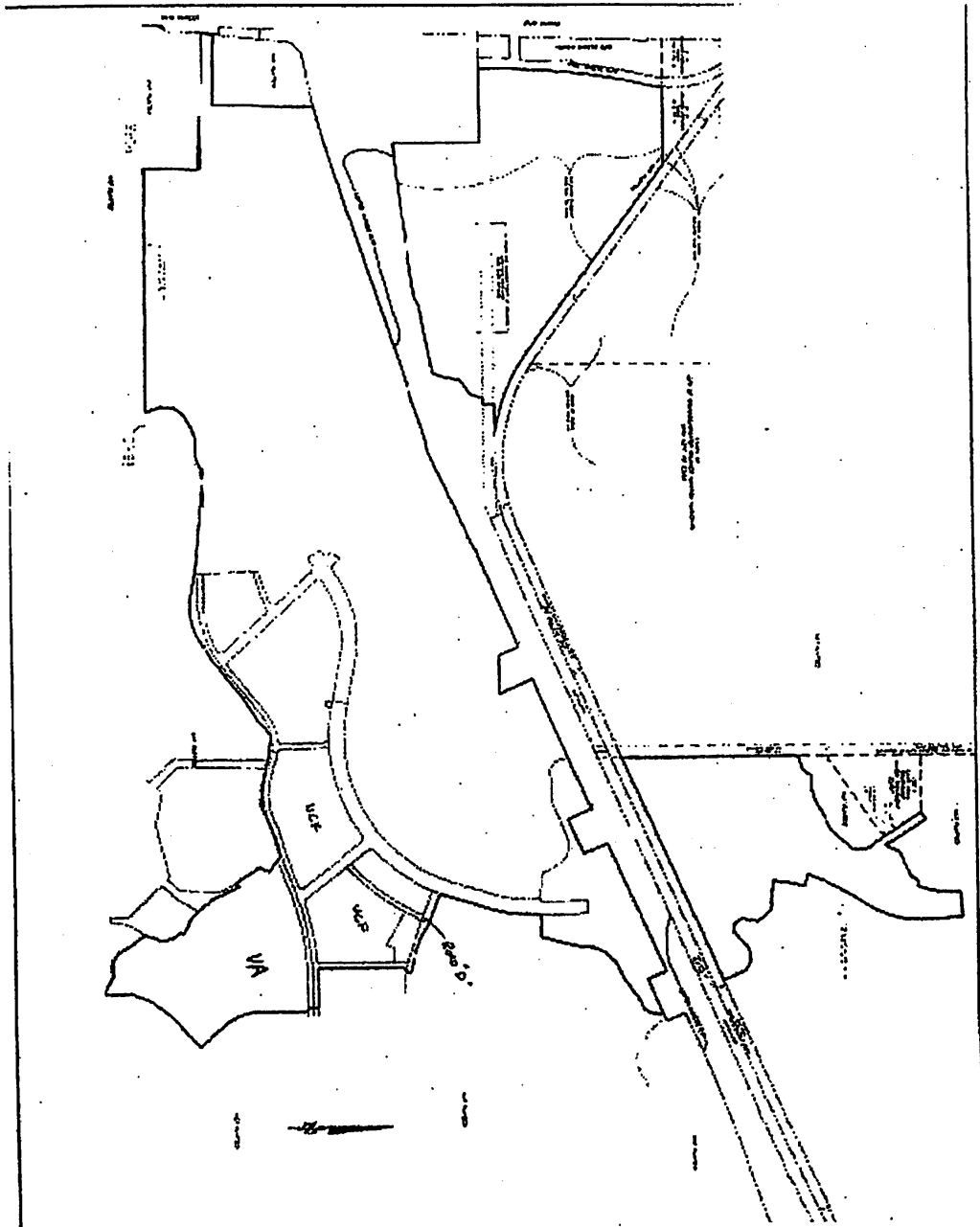


EXHIBIT "H"

MAP OF LAKE NONA SOUTH SERVICE AREA



ORLDOCS 11059119 1
ORLDOCS 11059235 1

EXHIBIT "T"

OVERALL PROJECT SCHEDULE

Construction Milestones

Lake Nona

- | | |
|---------------------------------|-------------------|
| • Convey CEP Site to Company | January 17, 2008 |
| • Temporary power | March 9, 2008 |
| • Fire Hydrants in service. | May 12, 2008 |
| • Master Utility Infrastructure | September 6, 2008 |
| • Entry Road System | October 15, 2008 |
| • Drainage System | October 15, 2008 |
| • Plat of the CEP Site Recorded | November 13, 2008 |

Company

- | | |
|---|-------------------|
| • Central Energy Plant released for construction. | December 30, 2007 |
| • South Florida Water Management permit approved. | February 4, 2008 |
| • Utility Coordination complete. | February 10, 2008 |
| • Temporary Certificate of Occupancy. | October 15, 2008 |
| • Permanent power. | October 16, 2008 |
| • Substantial completion. | November 10, 2008 |
| • Owner acceptance. | December 4, 2008 |

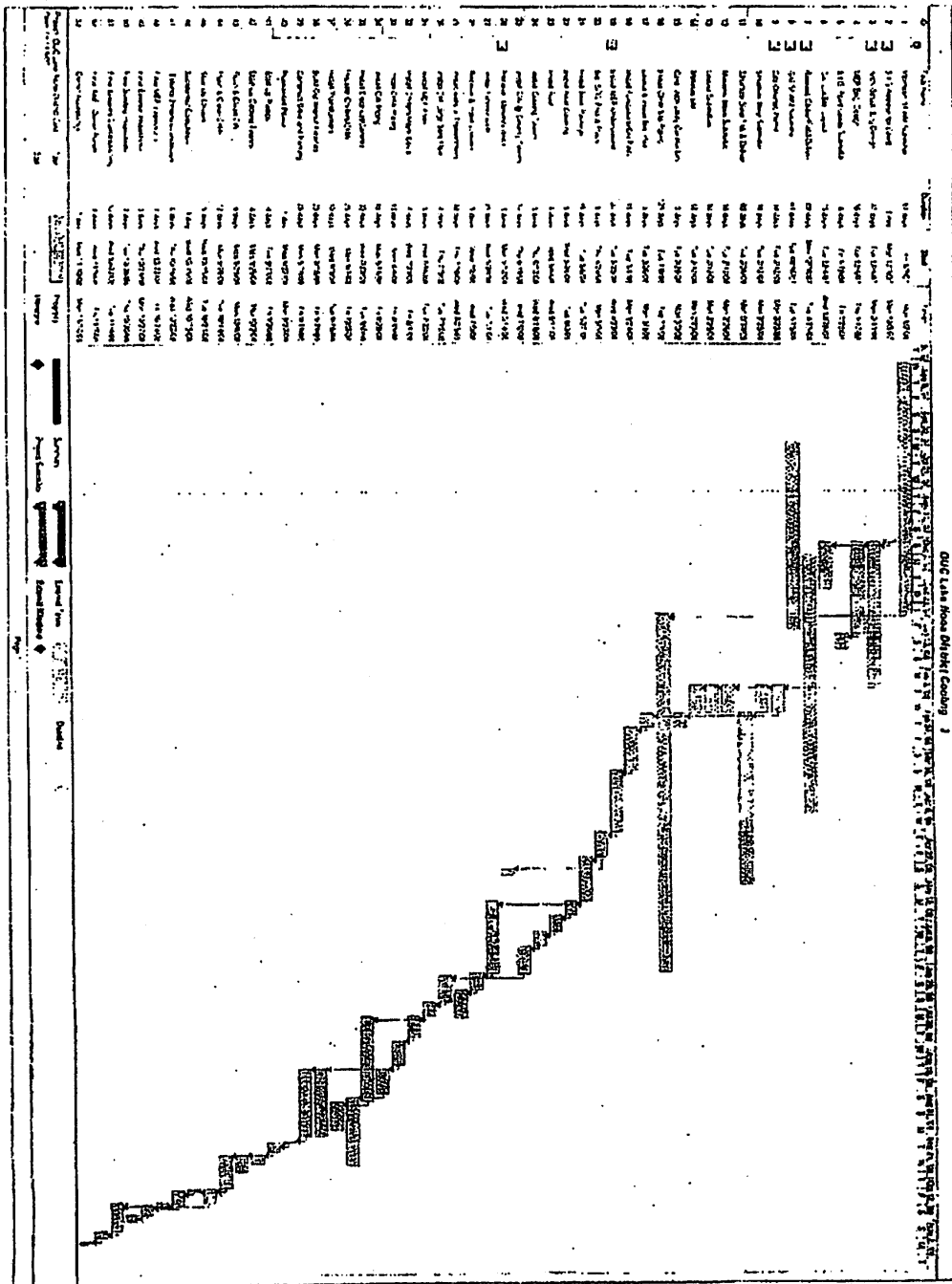


EXHIBIT "J"

Form of Chilled Water Metering Agreement

**ORLANDO UTILITIES COMMISSION
RETAIL CHILLED WATER METERING SERVICE AGREEMENT**

THIS RETAIL CHILLED WATER METERING SERVICE AGREEMENT (the "Agreement") is made and entered into effective as of this ____ day of _____, 2006 (the "Effective Date"), by and between **ORLANDO UTILITIES COMMISSION**, a municipal utility chartered under the laws of the State of Florida (hereinafter "OUC") and _____ (hereinafter "CUSTOMER").

DEFINITIONS

1. **ACCOUNT** - The CUSTOMER OR OCCUPANT (as applicable) contracting with OUC for RETAIL CHILLED WATER METERING SERVICES and all of the associated properties and SUBMETERS for which that party has assumed responsibility to pay OUC for services rendered under this Agreement.
2. **AMR** - Automatic meter reading equipment.
3. **BUY-OUT FEE** - Shall have the meaning set forth in Section 3.3.
4. **CHILLED WATER SERVICE AGREEMENT** - The agreement between OUC and CUSTOMER for chilled water service to the Premises.
5. **CUSTOMER** - shall mean the legal entity that owns the Premises receiving chilled water service and is responsible for paying the CUSTOMER BILL.
6. **CUSTOMER BILL** - A bill provided to the CUSTOMER equal to the Master Meter Bill minus the sum of the Cooling Consumption Charges on all the OCCUPANT bills.
7. **MASTER METER BILL** - A monthly bill provided by OUC for delivering chilled water service to the entire PREMISES.
8. **OCCUPANT** - A leaseholder or owner of an individual residential, commercial, or other designated property within the PREMISES.
9. **OUC** - ORLANDO UTILITIES COMMISSION, a municipal utility chartered under the laws of the State of Florida

10. OUCooling - A district energy system owned, operated and maintained by OUC that generates, transmits and distributes chilled water service to the POINT OF DELIVERY.
11. POINT OF DELIVERY - Chilled water service shall be provided up to the POINT OF DELIVERY, as provided for in the Chilled Water Service Agreement between the CUSTOMER and OUCooling.
12. PREMISES - shall have the meaning set forth in Recital 1 below.
13. RATE SCHEDULE - OUC's published rates for applicable utility services, as such may be amended by OUC from time to time.
14. RETAIL CHILLED WATER METERING SERVICES - Services to be provided by OUC under this Agreement which include the provision of SUBMETERs and automatic meter reading (AMR) equipment, and the associated reporting and billing of the CUSTOMER and OCCUPANTS for applicable fees and chilled water usage.
15. SUBMETER - A water meter installed by CUSTOMER in a residential or commercial unit or other private or public space within the PREMISES for the purpose of billing the ACCOUNT holder for their chilled water usage.

RECITALS

1. The CUSTOMER owns real property within Orange County, Florida (the "PREMISES") described in Exhibit "A" attached to and incorporated in this Agreement.
2. The CUSTOMER proposes to develop residential and/or commercial units upon the PREMISES which will become independent ACCOUNTS with OUC.
3. The CUSTOMER desires to obtain RETAIL CHILLED WATER METERING SERVICE within the PREMISES for individual ACCOUNT holders in conjunction with the delivery of chilled water service to the PREMISES.
4. OUCooling exclusively provides chilled water service to the area in which the PREMISES are located.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and Agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledge by the parties hereto, the CUSTOMER and OUC hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. PROVISION OF SERVICES BY OUC. Subject to the terms and conditions of this Agreement, and payment in accordance with this Agreement, OUC shall provide the following RETAIL CHILLED WATER METERING SERVICES to the PREMISES:

2.1. Metering of PREMISES. OUC shall own, operate, maintain and repair the master meter(s) as stipulated in the CHILLED WATER SERVICE AGREEMENT. OUC shall provide individual SUBMETERS, AMR, and related equipment so the CUSTOMER can install the SUBMETERS (at a location within each residential or commercial unit of the PREMISES and all other air handlers as designated by the CUSTOMER and approved by OUC); provided however that CUSTOMER shall install shut-off valves on each side of the SUBMETER. CUSTOMER is responsible for insuring sufficient space is provided to allow the proper installation and servicing of the SUBMETERS and related equipment. The location of such SUBMETERS will be determined by CUSTOMER, taking into consideration manufacturer's recommendations, CUSTOMER's need for access to service the equipment and the Chilled Water Metering Standards set forth in Exhibit "C" hereto. OUC may require that any proposed meter location be moved if in OUC's opinion, such location would negatively affect the access or reading of the SUBMETER or operation of the chilled water system. SUBMETER locations above the ceiling are not acceptable to OUC. The initial cost to the Customer for SUBMETERS are set forth in Exhibit "B" and based on CUSTOMER'S current estimate of the number of SUBMETERS needed for the PREMISES. Any future change in the required number of SUBMETERS shall be addressed through an Addendum to this Agreement.

2.2. Meter Reading. OUC agrees to read the master meter(s) and each SUBMETER monthly.

2.3. Billing. OUC agrees to bill each ACCOUNT separately for RETAIL CHILLED WATER METERING SERVICES (and, subject to the terms of each separate agreement with OUC for such services) electric, water and wastewater service (as applicable) as a part of each monthly bill from OUC. Each ACCOUNT will be billed monthly based upon the applicable prevailing rate for RETAIL CHILLED WATER METERING SERVICES during the term of this Agreement until proper termination under Section 6. Failure by the CUSTOMER or OCCUPANT to pay said monthly bill in full may result in termination of some or all OUC services to the CUSTOMER or OCCUPANT (as applicable) which are covered by the unpaid bills. The bills shall be rendered and collected in accordance with OUC's rates, fees, charges, and policies, as modified from time to time, and will include additional charges as specified in this Agreement. The CUSTOMER is not responsible for uncollectible bills that OCCUPANTS fail to pay, except for the Buy-Out Fee if assigned to CUSTOMER under Section 3.3. Each OCCUPANT ACCOUNT shall be put in CUSTOMER's ACCOUNT upon OCCUPANTS' discontinued service.

2.4. Equipment Warranty. Each SUBMETER under three (3) inches and associated AMR equipment shall be warranted against defects in materials and workmanship for one (1) year from the date of delivery to CUSTOMER. If a SUBMETER

or associated AMR equipment malfunctions during the 1-year warranty period for any reason other than (a) tampering by CUSTOMER, OCCUPANT or third parties, (b) damage by CUSTOMER, OCCUPANT, or third parties or (c) insurable risks, OUC will provide a replacement free of charge for CUSTOMER to install. After such 1-year warranty period, SUBMETERS and associated AMR equipment shall be repaired or replaced by CUSTOMER at its own cost with substantially similar equipment meeting OUC's operating specifications and which is compatible with the OUCooling chilled water system specifications. Tampering with any SUBMETER or AMR equipment is prohibited. OUC shall have the absolute right to charge and collect a fee, plus material costs, from the OCCUPANT or CUSTOMER (as applicable) for any theft investigation resulting from tampering as applicable.

SECTION 3. PAYMENT FOR SERVICES. In addition to payment by CUSTOMER and OCCUPANTS of all applicable rates, fees, and charges as specified above, the CUSTOMER and OCCUPANTS agree to pay the following:

3.1. CUSTOMER Accounts. Prior to the CUSTOMER receiving the Certificate of Occupancy (CO), the CUSTOMER will pay for all chilled water service to the PREMISES under the CHILLED WATER SERVICE AGREEMENT based on the MASTER METER BILL. After the CO is issued, the CUSTOMER agrees to have each anticipated individual residential and commercial OCCUPANT'S ACCOUNT set up in their (the CUSTOMER's) name once the SUBMETER is set. All such ACCOUNTS shall remain in CUSTOMER's name until such time the applicable OCCUPANT sets up an individual ACCOUNT in their (the OCCUPANT's) name. The CUSTOMER agrees to pay OUC for all OCCUPANT ACCOUNTS under CUSTOMER's name (both prior to the establishment of an OCCUPANT ACCOUNT and after an OCCUPANT ACCOUNT is closed) and the CUSTOMER BILL.

3.2. Cooling Service Charge. The CUSTOMER agrees that OUC may charge and that it (the CUSTOMER) shall contractually require each OCCUPANT to pay the Cooling Service Charge set forth in Exhibit "B" for each SUBMETER covered under the OCCUPANT's ACCOUNT. The Cooling Service Charge to the OCCUPANT shall not be the responsibility of the CUSTOMER unless there is no OCCUPANT to charge. The CUSTOMER agrees that OUC may charge and the CUSTOMER shall pay a Cooling Service Charge for each SUBMETER not in a OCCUPANT space or otherwise covered by a OCCUPANT's ACCOUNT. The Cooling Service Charge is in addition to the monthly Cooling Consumption Charge set forth in Exhibit "B". Cooling Service Charges and Cooling Consumption Charges may change from time to time as determined by OUC.

3.3. SUBMETER Ownership; Buy-out Fee. OUC shall at its cost procure the initial SUBMETERS and AMR equipment and upon delivery to CUSTOMER, SUBMETERS and AMR equipment shall become the property of the CUSTOMER; provided, however, that if at any time prior to the seventeenth (17th) year of the term of this Agreement an event of termination under Section 6 of this Agreement occurs, OUC shall be entitled to declare all unamortized and unpaid SUBMETER and AMR equipment procurement costs for the affected SUBMETERS due and payable by

CUSTOMER (the "Buy-Out Fee"). CUSTOMER shall be billed for the Buy-Out Fee for all such SUBMETERS under the Master Meter Bill..

SECTION 4. CUSTOMER RESPONSIBILITIES.

4.1 Installation of Equipment; Design and Operating Standards. The CUSTOMER shall be responsible for the cost, design, installation, operation and maintenance of the pipes and related accessories desired or necessary for the distribution of chilled water from the POINT OF DELIVERY into and including the CUSTOMER'S PREMISES, including but not limited to the SUBMETER, shut-off valves, and strainers. The CUSTOMER agrees that all such facilities and system designs must be compatible with the OUCooling system operational requirements and must also comply with the OUC Chilled Water Metering Standards (Exhibit "C"). The CUSTOMER shall install strainers with integral blow-down hose connection installed upstream of chilled water SUBMETERS (Exhibit "C"). The SUBMETER shut-off valves are defined as the valves used to turn on or cut off the flow of chilled water (Exhibit "C"). The CUSTOMER agrees to maintain and operate the air conditioning equipment under their control properly to help maximize system operating efficiency, which would include at a minimum the replacement of all air handler filters on a quarterly basis and provide filters to OCCUPANTS who want to replace them more frequently. The CUSTOMER shall establish a "facility standard" and require that all air handlers in the PREMISES are designed to deliver the same temperature differential (Delta T), including those that are in common or commercial spaces.

4.2 Failure to Maintain Equipment. CUSTOMER shall at all times during the term of this Agreement maintain all SUBMETERS, AMR, shut-off valves and strainers in good working condition. The CUSTOMER is responsible for repairing, maintaining, and fixing any broken SUBMETERS, AMR equipment, and SUBMETER shut-off valves at its expense, exclusive of warranties, past the POINT OF DELIVERY. The CUSTOMER is responsible for flushing the chilled water pipes before the SUBMETERS are installed by using "bridges" in the place of SUBMETERS during the flushing procedure set forth in the OUC Chilled Water Metering Standards, Exhibit "C". Upon discovery of CUSTOMER'S failure to maintain the SUBMETER shut-off valves or strainers in an operable manner, OUC shall notify CUSTOMER of said failure and CUSTOMER shall repair or replace said SUBMETER, AMR, shut-off valves or strainers. Failure to repair or replace the SUBMETER, AMR, shut-off valves or strainers within 30 days after notice may result, at OUC's option, in the termination of this Agreement.

4.3 Changes to Equipment. In the event the CUSTOMER makes any changes to its chilled water distribution system and as a result, (a) OUC must make changes to its master metering equipment, or (b) the operating parameters of the CUSTOMER'S SUBMETERS, or AMR equipment require OUC to alter its then current means of providing services under this Agreement, then CUSTOMER shall be responsible for the related fees (on a time and materials basis) and pay such fees within 30 days after invoice from OUC. Further, the chilled water facilities within the CUSTOMER'S PREMISES are not part of the OUCooling system.

4.4 No Responsibility for CUSTOMER Facilities. CUSTOMER agrees that OUC does not, by virtue of services performed under this Agreement, become liable for the chilled water or the chilled water distribution system downstream of the POINT OF DELIVERY, including the SUBMETERS, AMR equipment, strainers, and SUBMETER shut-off valves. The CUSTOMER is solely responsible for any damage to the CUSTOMER'S or OCCUPANT'S property resulting from chilled water.

SECTION 5. INCORPORATION OF RULES. This Agreement adopts and incorporates by reference all of the provisions of OUC's applicable Rate Schedules, and OUC's Chilled Water Service Policies, as such Schedules and Chilled Water Service Policies may be changed from time to time. If any provision of this Agreement is inconsistent with any provision of any applicable Rate Schedule or associated riders, the provisions of the Rate Schedule or associated riders shall prevail.

SECTION 6. TERM OF AGREEMENT.

6.1 Term of Agreement. This Agreement shall become effective on the Effective Date and shall remain in effect, unless earlier terminated under Section 6.2 below, for five (5) years from the Effective Date. The Agreement may be renewed by mutual consent of both parties for additional five- (5) year term(s) if, within sixty (60) days prior to the expiration of the applicable five-year term, either party requests in writing that this Agreement be extended an additional five-year term. If the party receiving any such notice accepts such request in writing within thirty (30) days after receipt thereof, then this Agreement shall be extended for an additional five years from the date upon which this Agreement would have then expired. If OUC chooses not to renew after the initial 5 year term for any reason other than a CUSTOMER Event of Default, then OUC will provide Customer with an automatic five (5) year term extension before termination can occur. If the Agreement is renewed, the CUSTOMER shall be required to replace the batteries in the AMR equipment within 60 days of renewal unless an extension is agreed in writing by OUC. Such replacement work shall be performed by CUSTOMER per manufacturer's specifications.

6.2 CUSTOMER Default. Any one of the following events shall constitute a "CUSTOMER Event of Default":

(a) CUSTOMER shall fail to pay any bill for services rendered or other charges billed under this Agreement for a period of thirty (30) days after the due date of the invoice therefore; or .

(b) CUSTOMER shall fail to comply with any other material provision of this Agreement and shall fail to cure that default within thirty (30) days after notice and written demand by OUC to cure the same or such longer period reasonably required to cure such default.

OUC shall be entitled to terminate this Agreement upon the occurrence of a CUSTOMER Event of Default.

SECTION 7. ACCESS TO PREMISES. CUSTOMER hereby grants to OUC, its employees, agents and contractors, and OUC, its employees, agents and contractors shall, at all reasonable hours, have a non-exclusive license of free access to the PREMISES (consistent with the rights of OCCUPANTS) for: (a) any purpose necessary or appropriate to allow OUC to provide the RETAIL CHILLED WATER METERING SERVICES and the delivery of chilled water contemplated under this Agreement and (b) the exercise of any rights secured to, or the performance of any obligations imposed on it by this Agreement. OUC will use its reasonable efforts not to disrupt the operations of the CUSTOMER'S business while using such access rights. The CUSTOMER shall provide a representative to accompany OUC personnel while performing their duties associated with this Agreement, including escort into individual OCCUPANT's premises during normal business hours, unless an emergency calls for access without such an escort.

SECTION 8. LIMITATION OF LIABILITY; DISCLAIMER OF CONSEQUENTIAL DAMAGES.

8.1 Injury or Damage. OUC shall not be liable for any injury or damage (a) resulting in any way from or arising in connection with the use of the RETAIL CHILLED WATER METERING SERVICES by Customer, OCCUPANTS or by third parties or (b) caused by CUSTOMER's or OCCUPANT'S negligence or misconduct, or (c) caused by CUSTOMER's or OCCUPANT'S failure to properly operate and maintain the chilled water system past the POINT OF DELIVERY.

8.2. Limitation of Liability; No Consequential Damages. Notwithstanding any other provision of this Agreement to the contrary, in no event shall OUC be responsible to CUSTOMER under this Agreement for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith. This disclaimer shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise. The total aggregate liability of OUC under this Agreement shall not in any event exceed an amount equal to the Cooling Service Charges paid by CUSTOMER to OUC under this Agreement during the term year in which such OUC liability arises.

8.3 CUSTOMER Indemnity. CUSTOMER hereby assumes all risk of and responsibility for, any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses, in connection therewith, made brought or obtained on account of loss of life or property, or injury or damage to the person or property of any person or persons, which arise out of or result from (a) any negligence or misconduct of OCCUPANTS, CUSTOMER, or any agent, employee, affiliate, director, partner, or member of CUSTOMER or PREMISES condominium association in the use, operation or maintenance of the chilled water facility after the POINT OF DELIVERY (including the SUBMETER, AMR, shut-off valves and strainers) (b) unauthorized tampering with or operation of SUBMETERS, AMR, SUBMETER shut-off valves or strainers by any of them, or (c) use by CUSTOMER of SUBMETERING for allocation of chilled water billing

or any other of its purposes, except to the extent that such loss, injury, expense, claim or damage is caused by any OUC negligence or misconduct, or that of its agents, employees, directors, officers, representatives or the like.

SECTION 9. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee thereof.

SECTION 10. NO WAIVER. Any failure at any time by OUC or CUSTOMER to enforce a provision of the applicable RATE SCHEDULE or the conditions of this Agreement, shall not constitute a waiver by such party of said provision.

SECTION 11. AMENDMENTS. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

SECTION 12. SUCCESSORS AND ASSIGNS; DISCLAIMER OF THIRD PARTY BENEFICIARIES. This Agreement is solely for the benefit of and shall be binding upon CUSTOMER and OUC, and their respective successors and assigns. OUC shall cause this Agreement to be recorded in the records of the Orange County Clerk's office, within 30 days of full execution of this Agreement.

SECTION 13. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 14. AUTHORITY TO EXECUTE AGREEMENT. The signature of this Agreement by any person on behalf of CUSTOMER shall be deemed a personal warranty by that person that he or she has the full power and authority to bind any corporation, partnership, or any other business entity for which he or she purports to act hereunder.

SECTION 15. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Should suit be filed for any reason arising out of this Agreement, the parties agree that venue for such action shall lie only in the courts with jurisdiction over such matters in Orange County, Florida, or the United States District Court for the Middle District of Florida, Orlando Division. Nothing herein shall prevent the parties from pursuing their legal rights associated with nonperformance under this Agreement including instituting legal action seeking: (1) any remedies of specific performance, injunctive relief and declaratory relief available at equity; and/or (2) any money damages available at law. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue

influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement. The parties shall have the right to specifically enforce the terms and conditions of this Agreement by an action for specific performance. In the event legal action is brought to enforce any party's rights hereunder, including the rights of a Customer, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether incurred at trial or on appeal, from the non-prevailing party.

SECTION 16. NOTICES. Any notice provided to another party concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail, return receipt requested, or by overnight delivery service, e.g. Federal Express, Purolator, DHL, etc., to the respective address of each party as set forth below, as such address may be hereafter amended by written notice to the other party:

OUC: Orlando Utilities Commission
Attn: Vice President of Customer's Connection Department
P.O. Box 3193
Orlando, Florida 32802

CUSTOMER: _____

(If left blank, notices sent to any **CUSTOMER** shall be sent to the current billing address on file with OUC for the **ACCOUNT** at the time of any such notice.)

SECTION 17. INCLUSION INTO CUSTOMER LEASES OR ASSOCIATION COVENANTS. **CUSTOMER** agrees to include a clause in each of its **OCCUPANT** leases or its association covenants binding the **OCCUPANT** to the terms of this Agreement by incorporating the following provision:

" Retail Chilled Water Metering Service. The (Landlord, Developer, Owner, or Association) has entered into the Retail Chilled Water Metering Service Agreement with the Orlando Utilities Commission ("OUC"), a copy of which is attached hereto, and has notified the **OCCUPANT** of the existence and requirements of this Agreement. **OCCUPANT** hereby acknowledges the existence of this Agreement and agrees to comply with applicable terms contained therein, including without limitation **OCCUPANT'S** requirements to timely pay all bills, refrain from damaging or otherwise tampering with **SUBMETERS** and metering equipment, and OUC's right of access. **OCCUPANT** acknowledges and agrees that it must enter into and establish its own individual account with OUC in order to receive chilled water service in its premises. Each **OCCUPANT** premises shall be metered and the air handler evaporator coils shall be designed to provide the same temperature differential (Delta T) and comply with the facility standard."

SECTION 18. DELINQUENT BILLS; TERMINATION OF SERVICE. Bills are due when rendered, and if not paid within 17 days thereafter become delinquent, and any service rendered on the OUC bill may be discontinued in accordance with OUC's policies to the individual OCCUPANT(S) then delinquent. Service shall be restored only after OUC has received payment for all past due bills, tampering fees and reconnect charges from the OCCUPANT. There shall be no liability of any kind against OUC for the discontinuance of any service to a OCCUPANT for that occupant's failure to pay its bills on time. There shall be no liability of any kind against the CUSTOMER for the failure of a OCCUPANT to pay their bills on time.

IN WITNESS WHEREOF, OUC and CUSTOMER have caused this Agreement to be executed in duplicate in their names by their respective duly authorized officials, as of the day and year first above written.

ORLANDO UTILITIES COMMISSION

ATTEST:

By: _____
Name: Sharon L. Knudsen
Title: Assistant Secretary
Date: _____

By: _____
Name: Kenneth P. Ksionek
Title: General Manager, CEO
Date: _____

Approved as to form and legality
OUC Legal Department

DATE: _____
By: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by Kenneth P. Ksionek, General Manager, CEO of Orlando Utilities Commission, known to me to be the person described herein and who executed the foregoing.

Signature of Notary Public

(Print Notary Name
My Commission Expires: _____
Commission No.: _____
☐ Personally known, or
☐ Produced Identification
Type of Identification Produced

AFFIX NOTARY STAMP

CUSTOMER: _____

SIGNED, SEALED, AND DELIVERED
IN THE PRESENCE OF:

X _____

Print Name: _____

By: _____

Name: _____

Title: _____

Date: _____

X _____

Print Name: _____

[CORPORATE SEAL, IF APPLICABLE]

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, of _____, known to me to be the person described herein and who executed the foregoing.

Signature of Notary Public

(Print Notary Name

My Commission Expires: _____

Commission No.: _____

☐ Personally known, or

☐ Produced Identification

Type of Identification Produced

AFFIX NOTARY STAMP

Exhibit "A"

Parcel ID #

Legal Description:

PROPERTY / PREMISE LOCATION INFORMATION

Premise Name:

Premise Address:

City, State, Zip:

BILLING INFORMATION

Billing Contract Name:

Billing Address:

City, State, Zip:

Billing Contact Name:

Billing Contact Phone:

Federal Tax ID:

ADDITIONAL ACCOUNT INFORMATION TO BE FILLED BY OUC

Customer Number:

Premise Number:

Work Request No:

EXHIBIT B – insert scanned price sheet

Exhibit "C"

OUC CHILLED WATER METERING
STANDARDS



Revision 9-23-05

Contents

- I. Chilled Water Meter Installation Requirements**
- II. Cleaning and Flushing Requirements**
- III. Figures 1 and 2 Installation Diagrams and Example Photos**

OUC Chilled Water Metering Standards

I. Installation Requirements

The Customer shall ensure the SUBMETERS are installed so that consumption readings and maintenance can be accomplished:

OUC shall have access to all SUBMETERS to allow both inspection of the meter and repair of the ERT Module (remote read unit). If possible meter shall be located in a common area that can be easily accessed. ERT Module shall be mounted vertically (arrow upwards). A 110 volt power connection is required on each floor where the meter/ERT units are to be located along with a 18 in x 24 in space on the wall next to the power connection for meter/ERT reading equipment. A phone line on the first and every 7th floor where SUBMETERS are located shall be installed by the Customer. OUC will establish and maintain the phone line account.

The meter shall not be located behind, above, or below any structure or equipment that will hinder access or the ability to visually read and maintain the meter without the aid of a ladder or mirror. Maintain at least 3 inches of clearance all around the meter with at least 3 feet of access space on one side.

Meter locations hidden by removable panels shall have a tag identifying the location of the meter.

The meter shall be installed no lower than 18 inches from the floor and no higher than 72 inches from the floor.

The Customer shall install strainers with integral blow-down hose connection installed upstream of SUBMETERS. The Customer shall ensure isolation valves are installed on each side of the meter. All SUBMETERS, piping, and other HVAC components shall be sufficiently insulated to prevent condensation. Provisions for containing water within the meter and adjacent piping shall be provided.

The Customer shall provide a detailed listing of all metering requirements including quantities, flowrates, air-handler/fan-coil unit locations (floor & unit number), and equipment ID numbers.

The Customer shall provide to OUC a detailed schedule including dates and quantities of SUBMETERS required. Note: The schedule for the release of SUBMETERS shall be consistent with the completion of the Cleaning and Flushing Requirements in Section II. OUC will not release SUBMETERS for installation until the sections of piping where the SUBMETERS are to be installed

have been cleaned, flushed, and Certification Documentation has been submitted and approved by OUC.

II. Cleaning and Flushing Requirements

OUC requires compliance with the following minimum cleaning and flushing procedures. These procedures are necessary to ensure the proper operation of the Customer's chilled water system including SUBMETERS and to prevent contamination of the OUC Chilled Water System and equipment. These requirements are based on typical and accepted industry practices. It shall be the Customer's ultimate responsibility to communicate these requirements to the building design engineers and construction contractors. It is recommended that the Customer contact OUC chilled water services and Metering representatives during the initial phases of design and prior to construction to discuss and coordinate the required activities.

OUC WILL NOT INITIATE CHILLED WATER SERVICE OR RELEASE SUBMETERS FOR INSTALLATION UNTIL THE FOLLOWING REQUIREMENTS ARE MET:

- Specifications and requirements of the chilled water service Agreement and chilled water service Agreement are met.
- The Customer's chilled water piping system has passed local permitting authority inspection.
- The Customer or Customer's Contractor has established a Chilled Water Billing Account with OUC.
- The Chilled Water System Cleanliness and Treatment Certification Documentation has been signed by the General Contractor Superintendent and has been submitted to OUC for review and acceptance.
- The Building Chilled Water System is filled with clean water. If heat exchangers are used, the building chilled water system shall be treated and monitored to maintain required chemistry parameters.
- If the Customer desires to place the building chilled water system into service in phases, provisions for cleaning and flushing the later phases must be made. Provisions for flushing for later phases must be outlined and communicated to OUC prior to construction.

PROCEDURE:

1. The Customer shall be responsible for pre-operational chemical cleaning and flushing of the entire building chilled water system piping including branch piping to individual fan coil units, air handlers, instrumentation connections, drains,

vents, and dead end runs prior to the initiation of chilled water service by OUC. The Customer shall utilize the services of a qualified chemical treatment contractor to supply chemicals, conduct chemical additions, monitoring, and treatment certification. If heat exchangers are installed for de-coupling, they shall be by-passed during the cleaning and flushing process. The Customer shall use clean potable water from the local domestic water supply for all cleaning, flushing and filling operations.

2. The Customer shall not allow untreated water to remain in any carbon steel/black iron chilled water piping longer than 24 hours. If 24 hours has elapsed prior to the initiation of chilled water service, all affected piping shall be treated with corrosion inhibitor or completely drained. The piping to be placed into service shall be completely full of clean or properly treated potable water prior to initiation of chilled water service. Corrosion inhibitor is already added to the OUC Chilled Water System. It may not be necessary for the Customer to add corrosion inhibitor if all requirements are met so there is no delay between the completion of the cleaning and flushing process and the initiation of chilled water service (this does not apply for projects using heat exchangers).
3. The Customer shall be responsible for ensuring all startup strainers are in place on the building chilled water pumps as well as any other startup strainers recommended by HVAC component manufacturers. The Customer shall be responsible for removing all startup strainers and cleaning and inspecting permanent strainers.
 - a. OUC recommends that components that are prone to fouling such as, but not limited to, coils, control valves, and balance valves be removed/bypassed during the initial flushing process. Note: SUBMETERS shall not be installed in piping that has not been cleaned and flushed. A spool piece shall be installed in the SUBMETER location until the cleaning and flushing procedure has been completed (See Figure 2).
 - b. OUC recommends that startup strainers installed on the building chilled water pump suction diffusers remain in place until the entire building chilled water system has been placed into service and is completely supplied via the OUC Chilled Water System under full flow conditions. The startup strainers should be cleaned and inspected frequently until removed. The Customer is responsible for the cleaning, inspecting, and removal of the startup strainers.
4. Complete circulation of the chilled water system must be achieved during the cleaning and flushing procedure. A flow rate resulting in a minimum velocity of 4 ft/sec shall be maintained to ensure that the cleaning chemicals will work properly.
 - a. All manual, motorized (electrical and pneumatic), and thermostatic operated valves if installed shall be fully open during the circulation process.

All dead end runs shall be looped together with piping not less than 1/3 the size of the dead end run. This loop piping shall remain in place until cleaning is complete and the chilled water system is certified as clean.

5. A minimum of 1-1/2" ball valve is to be permanently installed in the low point of chilled water system for the purpose of flushing the system as necessary and described elsewhere. Upon completion of all flushing, the drain valve shall be plugged to prevent drainage of the system during operation.
6. **Cleaning Chemical:** The chemical used for cleaning shall be a detergent and dispersant designed to remove deposition from construction, such as pipe dope, loose grease and oils, most loose mill scale, and other extraneous materials. The pre-cleaning detergent shall contain effective penetrants, emulsifiers, peptizers, dispersants, wetting agents, corrosion inhibitors to protect metals that are reactive in an alkaline environment, and shall be safe to handle and use. Effectiveness of the product shall be such that the water need only be at ambient temperatures.
 - a. The cleaning chemical shall be Nalco 2567 or OUC approved equal. The Customer shall submit in writing the proposed alternate chemical to OUC chilled water services.
 - b. Add cleaning chemical treatment manufacturer's recommended dosages of chemicals based on the building system volume.
 - c. Circulate cleaning chemical for 48 hours.
 - d. The building chilled water system shall then be drained from the lowest point in the system with make-up water fed to the system on a continuous basis. During the draining process, the building chilled water circulating pumps shall be in continuous operation to prevent settling of debris loosened by the pre-cleaning detergent.
 - e. Circulation and draining shall continue until the total alkalinity, conductivity, clarity, and pH of the water in the building chilled water system is equal to the makeup water used for filling.
 - f. The Customer is cautioned to ensure temperature and pressure in the system during flushing does not cause rupture disc or relief valves, etc., to open as a result of increased temperature in the chilled water system, as a result of the recirculation process.
 - g. Clean and inspect all strainers. Replace damaged strainers.

7. **Certification:** After the system is cleaned and flushed, the Customer shall submit **Chilled Water System Cleanliness and Treatment Certification Documentation** to OUC for review and acceptance. This documentation shall be prepared by a qualified chemical cleaning/treatment contractor.

The Customer shall provide documentation of the Cleanliness and Treatment consisting of the following:

- Name of chemical cleaning contractor
- Estimated system volume
- Location of sample points.
- Chemicals used.
- Date/Time chemical cleaning is initiated and completed.
- pH, total alkalinity, and conductivity of makeup water.
- pH, total alkalinity, conductivity, Fe concentration (less than 1 ppm), and clarity of chilled water system after flushing.

The Customer's Contractor Superintendent shall sign the Certification. OUC shall maintain the right to independently verify the condition of the chilled water within the Premises. OUC will submit sample results of the OUC chilled water system upon request.

8. If carbon steel/black iron piping is not ready for operation within 24 hours of the initiation of OUC chilled water service, the Customer shall either treat the affected portions of the system with 25-100 ppm Nalco 2513 (NO SUBSTITUTES) corrosion inhibitor or completely drain the affected portions of the system. Service to portions of the system that have been cleaned and flushed and are ready to be placed into operation can be initiated if the out of service piping is isolated with all isolation valves locked in the closed position and all other requirements for the initiation of chilled water service are met.
9. Should the Customer desire to place the building chilled water system's main supply and return headers into operation in **phases**, the Customer shall provide means to isolate the operational phases from the phases under construction. **Cross contamination of dirty water and cleaning chemicals shall not be permitted.** The Customer is responsible for cleaning each phase in accordance with the requirements herein including separate certification documents for each phase.
- a. If branch piping for future individual fan coil units and/or air handlers are not to be placed into service immediately, the Customer shall lock closed the isolation valves. The Customer shall contact OUC chilled water services to coordinate placing the individual units into service. If the affected piping is not corrosion resistant, it shall be drained or treated with corrosion inhibitor.

- b. The Customer shall conduct a thorough flush of the branch piping with clean potable water. **DO NOT FLUSH NEW PIPING VIA THE CHILLED WATER SYSTEM.** If SUBMETERS are to be installed, a spool piece in place of the meter shall be installed during the flushing process. The Customer shall flush until the exiting water is clear. The new piping shall be treated with Nalco 2513 corrosion inhibitor or drained if it is to be left idle for greater than 24 hours.

- c. For installations without heat exchangers, OUC will allow filling of new piping via the OUC Chilled Water System only for small sections of branch piping that have been properly flushed with clean domestic water. It is assumed the building chilled water system supply and return headers are already in service and the sections of piping have been left idle until the required tenant configuration has been determined. **The Customer shall contact OUC chilled water services prior to filling the new piping via the building chilled water system.** Any in service piping that has been dead headed shall be momentarily flushed via the building chilled water system to remove accumulated sediment and debris.

CONNECTION DETAIL AT FAN COIL UNIT

Figure 1

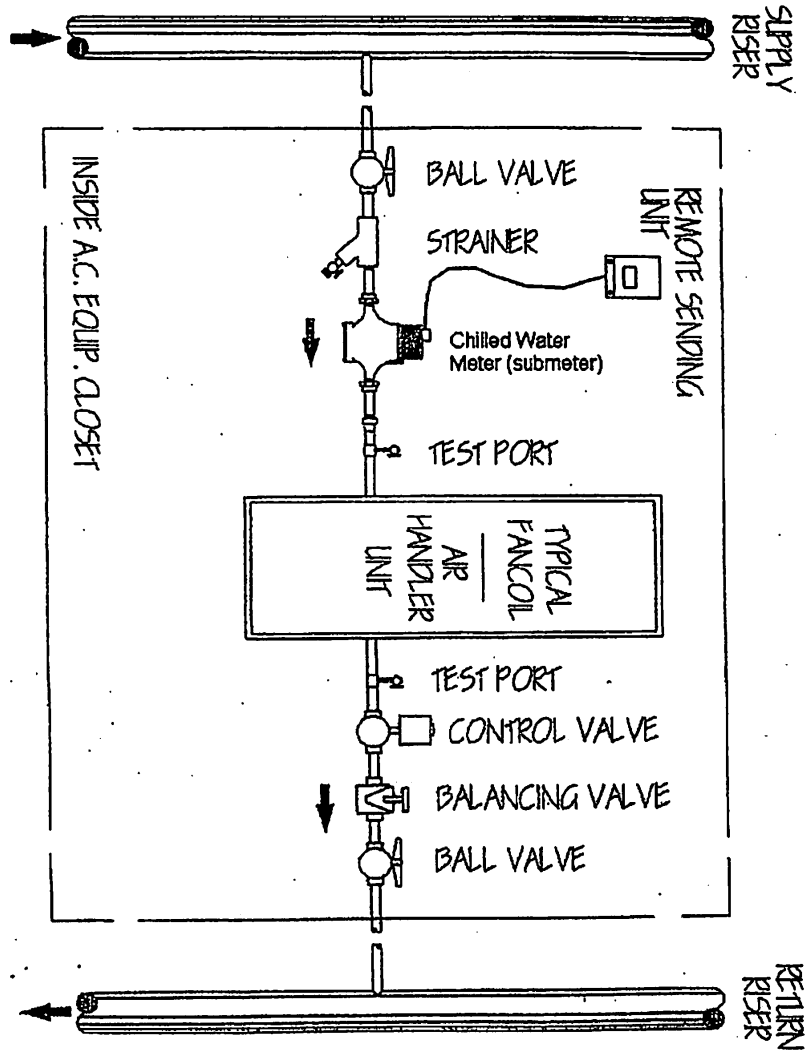
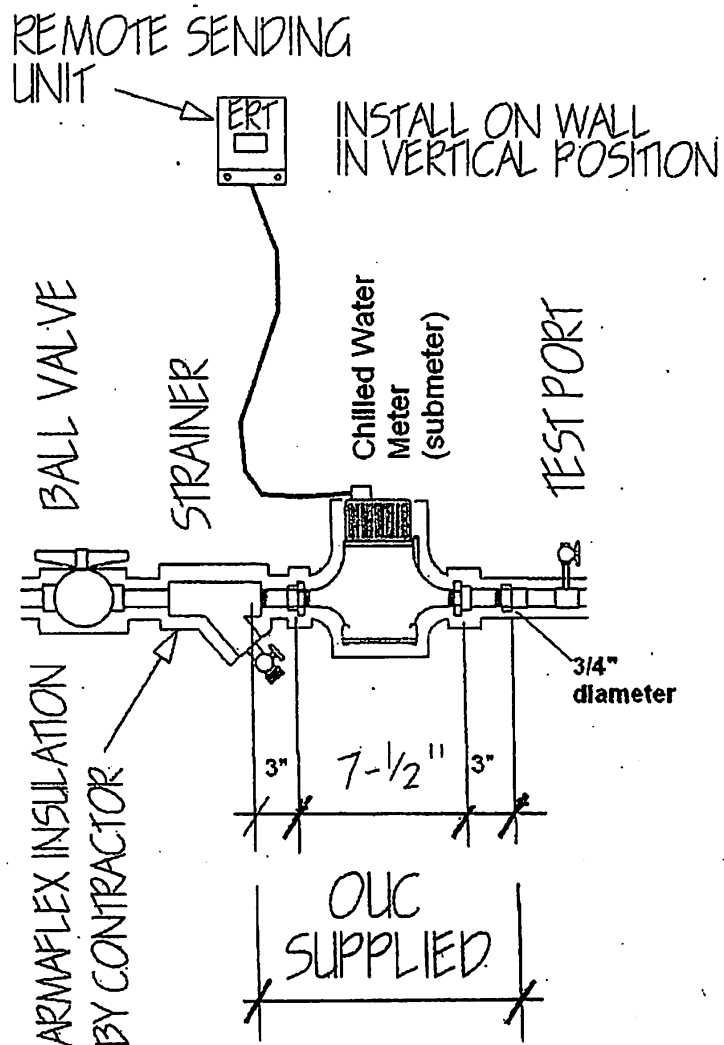


Figure 1 Typical Fan-Coil Unit Installation

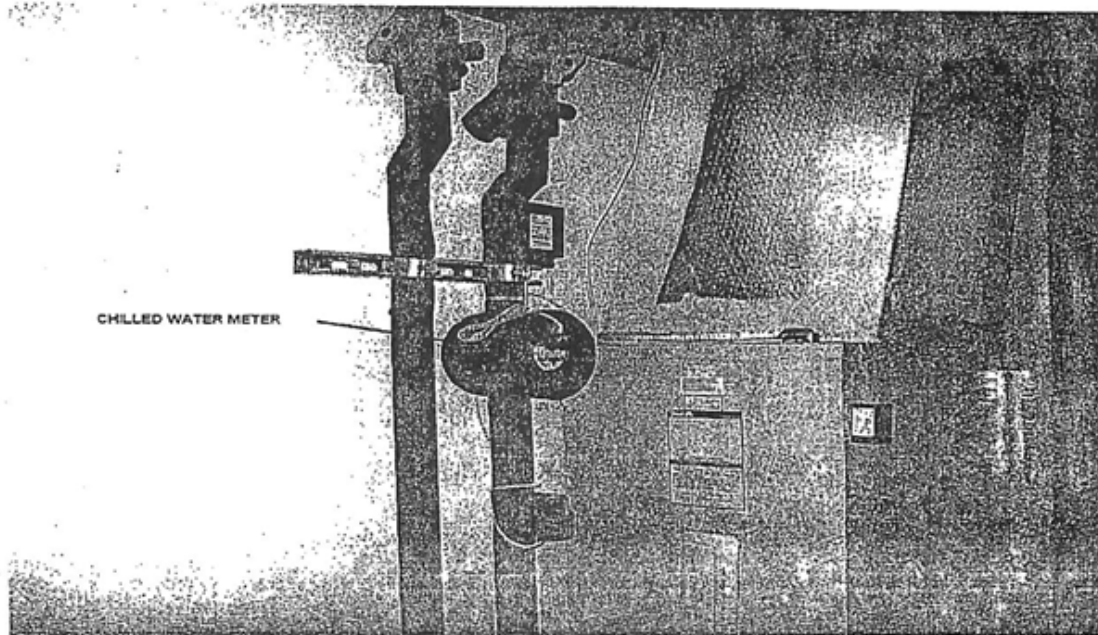


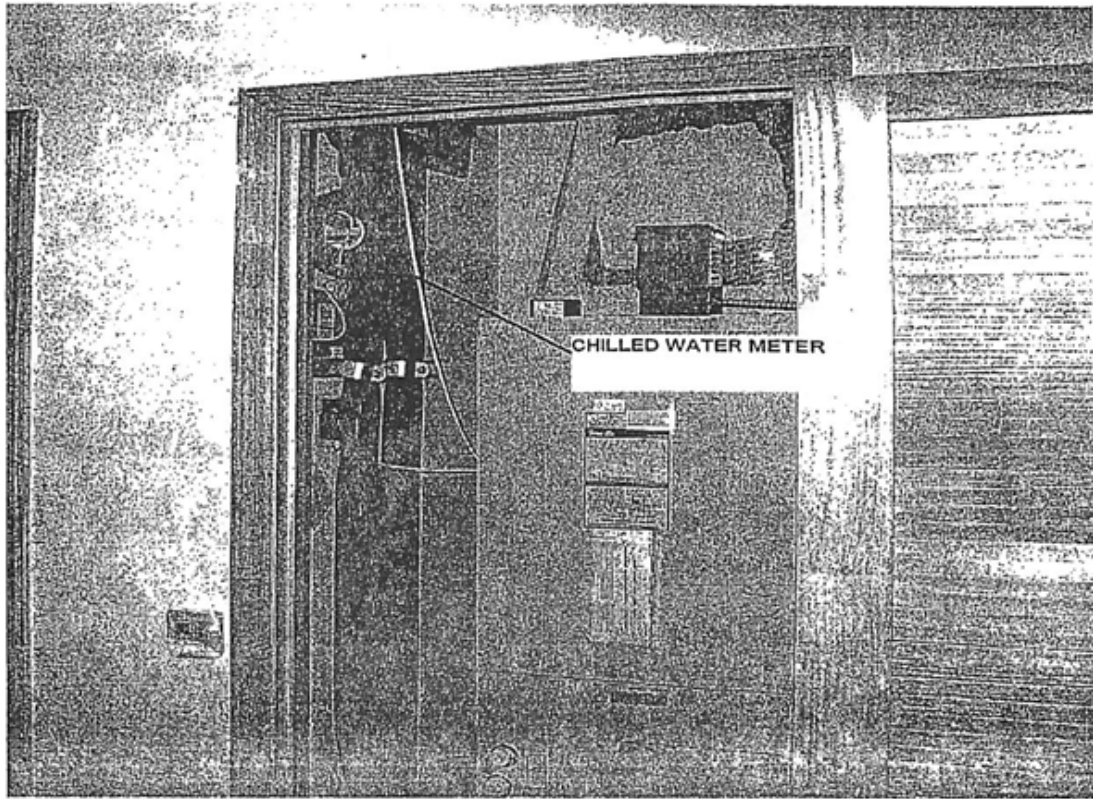
METER DETAILS

Figure 2

Figure 2 SUBMETER installation Details (5/8" Meter Shown)

SUBMETER Installation Examples





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EXHIBIT "K"

CHILLED WATER DISTRIBUTION SYSTEM AND FIBER OPTIC NETWORK

General Chilled Water Distribution System Description: The Company shall construct a chilled water distribution system from the Central Energy Plant to five (5) feet outside the Customer Improvement. The initial chilled water distribution system will be installed along Road Q servicing the Burnham Institute and the University of Central Florida Medical Campus. The distribution system consists of a chilled water supply pipe and a chilled water return pipe in parallel. Further pipeline extensions, connections and modifications will be added to serve new customers as required.

General Fiber Optic Network Description: A fiber optic network shall be installed along the center line elevation of chilled water distribution system except where necessary to bring conduit into a pull box location. The fiber optic network shall be used for communication and operation of the chilled water system.

AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into as of the 5th day of December, 2007, by and between **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company ("Lake Nona"), **LAKE NONA BOGGY CREEK, LLC**, a Florida limited liability company ("LNBC") and **BURNHAM INSTITUTE FOR MEDICAL RESEARCH**, a 501(c)(3) California nonprofit public benefit corporation ("Burnham").

WITNESSETH:

WHEREAS, Lake Nona, Burnham and Orlando Utilities Commission, a Florida statutory commission ("OUC"), entered into that certain Chilled Water Service Agreement, dated of even date herewith, for the purpose of OUC providing chilled water to Burnham ("CWS Agreement"); and

WHEREAS, Burnham and LNBC, an affiliate of Lake Nona, entered into that certain Development Obligation Agreement dated March 6, 2007 (the "DOA"), pursuant to which LNBC is constructing certain improvements on Burnham's property; and

WHEREAS, Lake Nona, LNBC and Burnham desire to set forth the parties' understanding with regard to certain terms of the CWS Agreement in accordance with the terms and provisions set forth herein;

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00), the mutual covenants and conditions set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, Lake Nona and Burnham agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Construction Obligations.** During the Term of the DOA and subject to Burnham's obligations thereunder, LNBC agrees to perform or cause to be performed Burnham's obligations under Articles 2.D, 2.E, 2.G, 2.I, 2.J, 2.K, 8.B.3 and 8.J.5 of the CWS Agreement. Burnham shall cooperate and provide timely and reasonable assistance to LNBC with respect to the foregoing obligations.
3. **Liquidated Damages.** If (i) LNBC defaults under Paragraph 2 of this Agreement, (ii) such default is the direct cause of Burnham failing to accept Service, and (iii) Burnham therefore owes liquidated damages to OUC pursuant to Section G.2 of Article 14 of the CWS Agreement, then LNBC shall be responsible for such payment. Notwithstanding the foregoing, LNBC shall have the right to contest and defend against OUC's claim for liquidated damages. If LNBC determines that any of its subcontractors, vendors or materialmen are responsible for all or any portion of any liquidated damages amounts, LNBC shall have the right to offset such amounts against amounts owed to such parties or assess such parties for such amounts.

4. **Termination of Agreement.**

- a) Pursuant to Article 14.B of the CWS Agreement, Lake Nona has the right to terminate the CWS Agreement upon the occurrence of certain Events of Default, and further, has the right to buy out the Company System in accordance with Article 15 of the CWS Agreement. Lake Nona agrees that prior to exercising its right to terminate the CWS Agreement, Lake Nona shall submit five (5) business days' prior written notice to Burnham of its intent to do so, which written notice shall also state whether Lake Nona has the then-current intent to buy the Company System in accordance with Article 15 of the CWS Agreement (the "Termination Notice"). Burnham's approval of a termination by Lake Nona shall not be required if (i) Lake Nona, or its successor or assign, buys the Company System and assumes OUC's obligations under the CWS Agreement, (ii) Lake Nona arranges for a third-party to operate and maintain the Company System pursuant to the terms of the CWS Agreement, subject to Burnham's consent, which shall not be unreasonably withheld, or (iii) Lake Nona secures alternate chilled water service to Burnham on similar financial terms to the CWS Agreement, subject to Burnham's consent, which shall not be unreasonably withheld.
- b) If: (i) the Termination Notice states that Lake Nona does not intend to buy the Company System; or (ii) if the Termination Notice stated that Lake Nona intended to buy the Company System but Lake Nona elects not to buy the Company System and Lake Nona does not provide alternate service under 4(a)(ii) or (iii) above, then Lake Nona shall provide Burnham with a new Termination Notice and, in either case, Burnham shall have thirty (30) days from the receipt of Lake Nona's written notice in which to approve or disapprove of Lake Nona's election to terminate in writing. Should Burnham provide written approval of Lake Nona's termination of the CWS Agreement, or should Burnham fail to respond to Lake Nona's written notice within such thirty (30) days, Lake Nona may proceed with terminating the CWS Agreement. Should Burnham disapprove Lake Nona's request, Lake Nona's right to terminate the CWS Agreement shall be abated (and in the case of (ii) above, Lake Nona shall withdraw any termination notice given to OUC) until: (x) Burnham secures alternative chilled water service; provided, however, that Burnham shall not be obligated to do so; or (y) Lake Nona provides alternative service to Burnham under 4(a)(ii) or (iii) above.
- c) Pursuant to Article 14.B of the CWS Agreement, Burnham has the right to terminate the CWS Agreement upon the occurrence of certain Events of Default. Burnham hereby agrees that (i) during the Term of the DOA, Burnham shall not exercise its right to terminate the CWS Agreement; and (ii) if, at any time, Lake Nona delivers a Termination Notice indicating that Lake Nona intends to buy the Company System, Burnham shall not exercise its rights to terminate the DOA during Lake Nona's acquisition of the Company System and (iii) upon Lake Nona's acquisition of the Company System, Burnham shall automatically waive any and all defaults of OUC under the CWS Agreement (but not any rights to

Capacity Charge adjustments) arising prior to the date of such acquisition by Lake Nona.

5. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Florida.

6. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and it supercedes all prior understandings or agreements between the parties.

7. **Capitalized Terms.** Any and all capitalized terms used but not otherwise defined in this Agreement shall have the meanings ascribed to them in the CWS Agreement.

8. **Construction of Agreement.** The parties hereby acknowledge that both parties hereto participated equally in the drafting of this Agreement and that, accordingly, no court construing this Agreement shall construe it more stringently against one party than the other.

9. **Section Headings.** The section headings as used herein are for convenience of reference only and shall not be deemed to vary the contents of this Agreement or the covenants, agreements, representations and warranties herein set forth, or limit the provisions or scope of any section herein.

10. **Attorneys' Fees.** In the event it becomes necessary for either party to bring suit to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover all costs, including reasonable attorneys' fees and paralegals' fees against the non-prevailing party, including costs and attorneys' fees for any appeal.

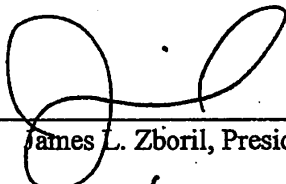
11. **Execution and Counterparts.** To facilitate execution of this Agreement, the parties hereto agree that this Agreement may be executed and telecopied to the other party and that the executed telecopy shall be binding and enforceable as an original. This Agreement may be executed in any number of counterparts as may be required and it shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart. It shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

***** Signatures on following pages *****

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

"LNBC"

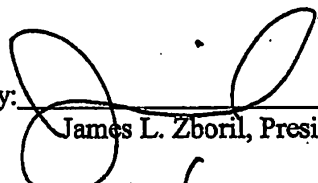
LAKE NONA BOGGY CREEK, LLC, a
Florida limited liability company

By: 
James L. Zboril, President

Date: December 6, 2007

"LAKE NONA"

LAKE NONA LAND COMPANY, LLC,
a Florida limited liability company

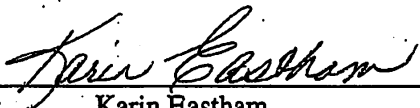
By: 
James L. Zboril, President

Date: December 6, 2007

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"BURNHAM"

Burnham Institute for Medical Research,
a 501(c)(3) California nonprofit public
benefit corporation

By: 
Name: Karin Eastham
Title: Executive VP and COO

Date: December 5, 2007

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WZ

ITEM: FFC-3

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: Temporary License and Construction Agreement for Rosen Campus

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Recommend approval of the Temporary License and Construction Agreement for a portion of land located at 9907 Universal Boulevard, Orlando in Orange County, Florida, which is also the location of the Rosen College of Hospitality Management, necessary to facilitate expansion of the college.

BACKGROUND INFORMATION

The University of Central Florida Real Estate Foundation (UCFREF) is the owner of the underlying land that is located at 9907 Universal Boulevard, Orlando in Orange County, Florida. UCFREF is a limited liability company of which the University of Central Florida Foundation the sole member.

UCFREF purchased the property on May 21, 2001, with philanthropic dollars and subsequently entered into a ground lease with the university as of October 15, 2002. Construction of the existing college was funded solely through philanthropy and subsequently donated to the university.

Due to enrollment growth within the college, the existing building is insufficient to fill the college's need for space. Thus, a capital improvement project has been proposed to expand the existing structure by up to 50,000 square feet. The construction costs for the project is intended to be funded solely through philanthropy. The university has agreed to commit \$2 million dollars toward the furniture, fixtures, and equipment to furnish the building expansion.

Due to significant experience with the construction industry in Central Florida and subsequent ability to control costs, Harris Rosen (or a related entity), who is a significant donor both with respect to the college, the original building, and the proposed expansion, has offered to oversee the construction of the expansion. The attached license sets forth the terms and conditions of the development of the college expansion, including the application of funds for construction invoices and pledge of donor funds. Mr. Rosen is solely responsible for managing the construction and construction budget, including any

budget overages. Mr. Rosen will personally guarantee the project and consider quality and life cycle of materials. Upon completion of the construction, the license will terminate, and the University of Central Florida Board of Trustees will own the expanded building.

Supporting documentation: Attachment A: Temporary License and Construction Agreement
Attachment B: Certification of Funds

Prepared by: Jennifer Cerasa, Associate General Counsel

Submitted by: Misty Shepherd, Interim Vice President for Administration and Finance

Attachment A

TEMPORARY LICENSE AND CONSTRUCTION AGREEMENT

THIS TEMPORARY LICENSE AND CONSTRUCTION AGREEMENT (this "*Agreement*") is made and entered into as of November ____ 2018 (the "Effective Date") by and among the **UNIVERSITY OF CENTRAL FLORIDA REAL ESTATE FOUNDATION, LLC**, a Florida limited liability company ("UCFREF"), the **UNIVERSITY OF CENTRAL FLORIDA FOUNDATION, INC.**, a Florida not-for-profit corporation, ("UCFF"), the **UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES** ("UCF") and **THE HARRIS ROSEN FOUNDATION, INC.** ("Rosen").

Recitals

WHEREAS, UCFREF is the owner of the underlying land that is located at 9907 Universal Boulevard, Orlando in Orange County, Florida, as more particularly described in Exhibit "A" (the "Property"), which is the site of the Rosen College of Hospitality Management ("Rosen College");

WHEREAS, on May 21, 2001, the UCFREF purchased the Property with private philanthropic dollars provided by Rosen; and

WHEREAS, UCFF entered into a ground lease with UCF as of October 15th, 2002 for the lease of the land to UCF;

WHEREAS, Rosen constructed the existing building that is known as the Rosen College for UCF at Rosen's sole cost and expense on the Property; and

WHEREAS, due to the tremendous success of the Rosen College, the existing educational facilities need to be expanded via a new building ("Rosen College Expansion"), to accommodate growing enrollment and faculty;

WHEREAS, Rosen is providing a significant charitable donation towards the Rosen College Expansion and due to its significant development and construction project management experience, Rosen is able to direct the design and construction more cost-effectively than UCF;

WHEREAS, the entire project cost will be funded with charitable donations, which have been pledged in written gift agreements to UCFF, which is a Florida corporation and the sole manager of UCFREF;

NOW THEREFORE, in consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Building Expansion.** Rosen shall manage and direct the design and construction of a new facility as an expansion to the existing Rosen College of Hospitality Management that will not exceed 50,000 square feet (the "Building Expansion"), and at current budgeting be closer to 40,000 square feet.

1.1. Plan Approval. Design and construction plans must be mutually approved by UCF and Rosen. UCF shall provide approval within ten (10) calendar days of receipt of any proposed design or construction plans. Notwithstanding the foregoing, Rosen shall serve as the lead for all planning, design and construction of the Building Expansion. Vendors, consultants, and contractors are selected at Rosen's discretion and Rosen shall serve as the contracting party for all related construction and development agreements.

1.2. State Requirements. The parties recognize that UCF, as the future owner and manager of the Building Expansion, will be required to show compliance with certain state construction requirements to apply for property operation and maintenance funds from the State of Florida. The parties agree it is in the best interest for the Building Expansion to be eligible to request these funds, and therefore, UCF will submit these mandatory requirements to Rosen for inclusion in the planning, design and construction of the Building Expansion. These mandatory requirements shall be defined as all applicable provisions of UCF's "Design, Construction, and Renovation Standards", version 2018.4, minus any mutually agreed upon exceptions.

1.3. Additional Requests. UCF may submit additional items that will affect operating costs, such as LEED enhancements, but these items will not be mandatory for inclusion in the planning, design and construction. Notwithstanding the foregoing, Rosen agrees that life cycle of materials and future operating costs are important factors in the planning, design and construction of the Building Expansion.

2. Temporary License.

2.1. Temporary License Grant. UCFREF, as the owner of the Property, hereby grants to Rosen, its employees, consultants, contractors, subcontractors, suppliers, et al responsible for the construction of the Building Expansion, a temporary license over, through and within portion of the Property shaded in black on the map attached hereto as Exhibit "B" and incorporated herein by reference (the "Temporary License Area") for the limited purpose of accessing the construction site, for use as a construction staging area, for delivery of construction materials and construction of the Building Expansion ("Temporary License"). The parties acknowledge it may be necessary to relocate or include additional areas for the Temporary License and agree to work together to amend the Temporary License Area as needed.

2.2. Temporary License Term. This Temporary License shall terminate at the earlier of the following events: (i) at such time as the Building Expansion has been completed and accepted by UCF in writing; (ii) three years from the Effective Date. Upon termination, the Building Expansion shall be owned by UCF.

3. UCFF Pledge of Funds.

3.1. Unrestricted Funds. UCFF pledges to utilize FIVE MILLION AND 00/100 DOLLARS (\$5,000,000.00) of unrestricted funds towards the construction of the Building Expansion. The unrestricted funds shall be immediately available for payment of contractor invoices in accordance with the process outlined below.

3.2. Donor Pledges. In addition, UCFF pledges an additional FOUR MILLION AND 00/100 Dollars (\$4,000,000.00) of funds towards the Building Expansion. This amount reflects private funds that are pending, approved or committed via written gift agreements by various donors in support of the Project. However, the parties recognize that a portion of the commitments are in the form of pledges and have not yet been paid to the UCFF or will be paid over a period of years and some donors have placed further restrictions on the use of the funds.

3.3. Additional Donor Pledges. If during the construction of the Building Expansion UCFF secures additional written commitments from private donors that are pledged towards the construction of the Building Expansion, UCFF will commit those funds towards the project.

4. UCF Pledge of Funds. UCF has agreed to commit TWO MILLION DOLLARS 00/100 DOLLARS (\$2,000,000.00) towards the furniture, fixtures and equipment to furnish the Building Expansion.

5. Project Budget. Rosen shall be solely responsible for the creation, monitoring and maintaining of the project budget for the Building Expansion, as well as any cost overruns associated with the project.

6. Payment of UCFF Pledged Funds.

6.1. Payment of Contractor Invoices Directly. Contractor invoices related to the Building Expansion may be submitted to UCFF for payment after written approval by Rosen and UCF Facilities, but UCFF will only be responsible for payment up to the amount of funds which UCFF has received from donors. In the event the account designated for the Building Expansion does not have sufficient funds to pay a contractor invoice, UCFF will notify Rosen and UCF within three (3) business days and Rosen shall submit payment to UCFF for the shortage of funds previously identified in advance of the invoice due date and UCFF will promptly render payment to the contractors.

6.2. Reimbursements to Rosen. Rosen may submit sufficient written proof of paid contractor invoices related to the Building Expansion to UCFF for reimbursement after written approval by UCF Facilities. UCFF will only be responsible for reimbursement up to the amount of funds which UCFF has received from donors for the project. In the event funds become available after receipt of a reimbursement invoice, such reimbursement may be processed immediately.

6.3. Funding Gaps. As outlined herein, the parties recognize there will be funding gaps from the pledge of philanthropic dollars. Rosen shall be responsible for covering all funding gaps in an appropriate manner.

7. Completion of Construction. In the event a certificate of occupancy is not issued within twenty-four (24) months after the commencement of vertical construction, UCF shall have the right, but not the obligation, to complete construction and terminate this Agreement. The right to complete construction is absolute, regardless of any pending litigation.

8. **Risk Mitigation.** Rosen agrees to utilize commercially appropriate risk mitigation measures for the Building Expansion. Risk mitigations measures may include, but are not limited to, delivery of payment and performance bonds, letters of credit, personal guarantee from Harris Rosen or other acceptable security, inspection rights, maintenance of general liability and property insurance in commercially reasonable amounts, guaranteed maximum price, periodic filing of the appropriate financial and operating information for the project, audit rights for UCFF and UCF, together with notice of default delivered directly to UCFF and UCFREF for any project defaults or delays.

9. **Notice.** All official communication and notices required to be made under this Agreement shall be deemed made if sent via U.S. Mail or electronic mail, at the addresses listed below:

The Harris Rosen Foundation, Inc.
9840 International Drive
Orlando, Florida 32819
Attn: Frank Santos

UCF Real Estate Foundation, LLC.
12424 Research Parkway, Suite 250
Orlando, 32826
Attn: Michael J. Morsberger

University of Central Florida
4365 Andromeda Loop North Suite 328
Orlando, Florida 32816
Attn: Misty Shepherd

University of Central Florida
4365 Andromeda Loop North, Suite 360
Orlando, Florida 32816
Attn: Scott Cole Esq.

UCF Rosen College of Hospitality Management
9907 Universal Blvd.
Orlando, 32819
Attn: Dr. Youcheng Wang

10. **Miscellaneous.** This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by all parties. This Agreement runs with the land, and the parties, respectively, bind themselves, their successors in interest, assigns and legal representatives to this Agreement. This agreement may not be assigned or transferred without the prior written consent of all parties. Time is of the essence in this Agreement. If a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts of this Agreement shall remain in full force and effect. If at any time a party fails to enforce a provision of this Agreement, it shall

not constitute a waiver or estoppel of the right to enforce it. This Agreement shall not constitute a joint venture of Rosen and UCF and its related entities.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below.

University of Central Florida Real Estate Foundation, LLC.

Michael J. Morsberger
President

University of Central Florida Foundation, Inc.

Rachel Schaefer
Associate Vice President Strategy

University of Central Florida Board of Trustees

Misty Shepherd
Interim Vice President for Administration and Finance

The Harris Rosen Foundation, Inc.

Frank A. Santos
Registered Agent / VP

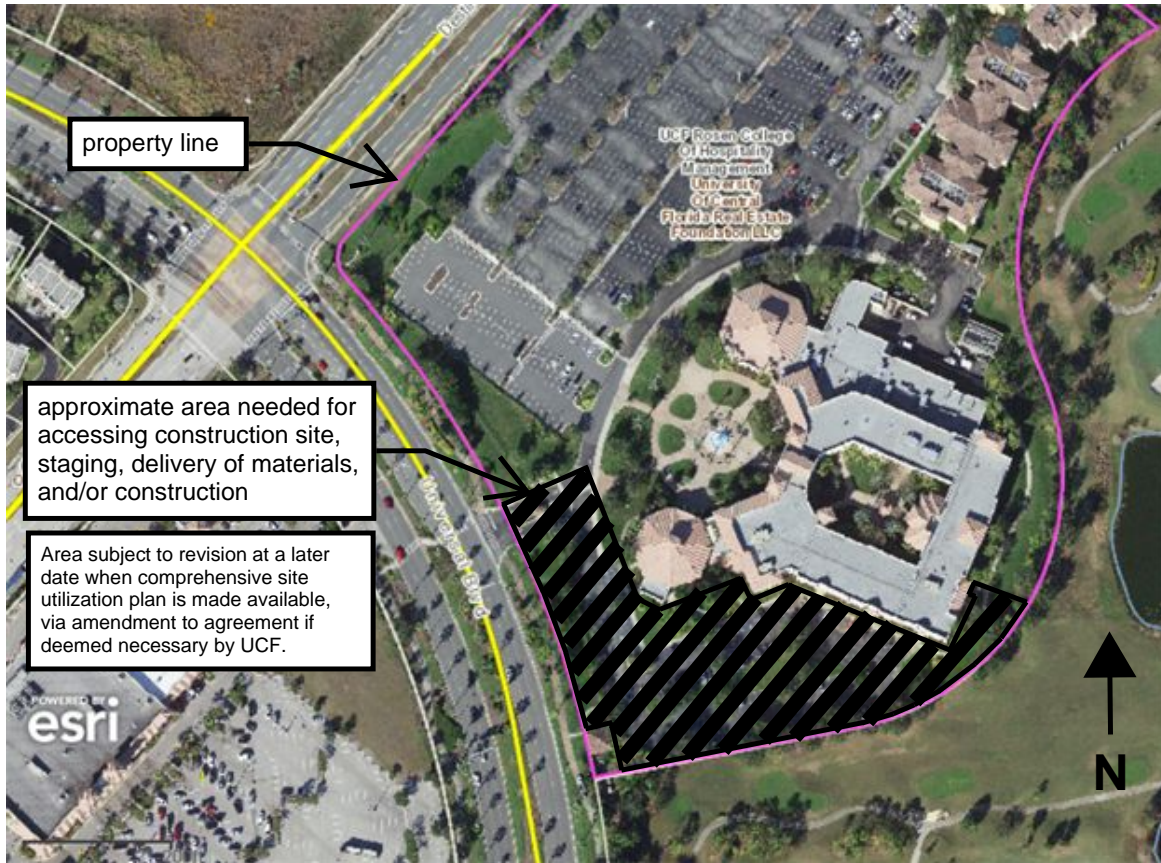
Exhibit "A"**Legal Description of Property**

That part of Sections 5 and 6, Township 24 South, Range 29 East, Orange County, Florida, described as follows:

Commence at the Southwest corner of Section 6, Township 24 South, Range 29 East, and run S 89°30'38" E along the South line of the Southwest 1/4 of said Section 6 for a distance of 1228.59 feet; thence run N 00°31'57" W for a distance of 112.69 feet to the Southeast corner of PLAZA INTERNATIONAL UNIT TWELVE, as recorded in Plat Book 29, Page 13, of the Public Records of Orange County, Florida; thence run the following 8 courses and distances- along the Northerly right-of-way line of State Road No. 528 (Beeline Expressway) and the Southerly line of lands described in Official Records Book 5638, Page 3525, of said Public Records: S 86° 33'09" E, 273.00 feet; N 89°33'21" E, 1884.49 feet; N 88°24'35" E, 100.01 feet to a point on a non-tangent curve concave Northwesterly having a radius of 1819.86 feet, a central angle of 20° 45'00" and a chord bearing of N 79°10'51" E; thence Northeasterly along the arc of said curve for a distance of 659.07 feet to the point of tangency; N 68°48'21" E, 543.85 feet to the point of curvature of a curve concave Northwesterly having a radius of 370.00 feet and a central angle of 69°15'00"; thence run Northeasterly along the arc of said curve for a distance of 447.20 feet to a point of non-tangency; N 03°58'50" E, 137.39 feet; N 89°33'21" E, 225.15 feet to a point on the Easterly right-of-way line of Universal Boulevard, a 200 foot wide dedicated public right-of-way pursuant to the plat of USI-SOUTH CAMPUS UNIT ONE as recorded in Plat Book 46, pages 13 through 16 of said Public Records; thence, departing said Northerly right-of-way line, run the following two courses and distances along the Easterly right-of-way line of said Universal Boulevard: N 00°26'39" W for a distance of 984.15 feet to the point of curvature of a curve concave Westerly having a radius of 1400.00 feet; thence run Northerly along the arc of said curve through a central angle of 10°50'18" for a distance of 264.83 feet to a point of non-tangency and the POINT OF BEGINNING; thence, departing said Easterly right-of-way line, run N 78°43'03" E for a distance of 353.40 feet to the point of curvature of a curve concave Northwesterly having a radius of 340.00 feet; thence run Northeasterly along the arc of said curve through a central angle of 102°58'35" for a distance of 611.07 feet to the point of reverse curvature of a curve concave Southeasterly having a radius of 355.00 feet; thence run Northeasterly along the arc of said curve through a central angle of 85°36'21" for a distance of 530.41 feet to a non-tangent line; thence run N 52°37'54" W for a distance of 616.04 feet; thence run S 41°52'11" W for a distance of 880.62 feet to the point of curvature of a curve concave Easterly having a radius of 40.00 feet; thence run Southerly along the arc of said curve through a central angle of 83°56'47" for a distance of 58.61 feet to a point on the Easterly right-of-way line of said Universal Boulevard and the point of reverse curvature of a curve concave Southwesterly having a radius of 1400.00 feet; thence run Southeasterly along the Easterly right-of-way line of said Universal Boulevard and the arc of said curve and through a central angle of 309°47'40" for a distance of 752.45 feet to the POINT OF BEGINNING.

Containing 20.008 acres more or less and being subject to any rights-of-way, restrictions and easements of record.

Exhibit "B"
Depiction of Temporary License Area



2018 aerial view courtesy of <https://maps.ocpafl.org/webmapjs/>

Attachment B



Capital Projects Funding Certification Form

This form is required as a condition for approval by the Finance and Facilities Committee and the Board of Trustees.

Project name/description: Temporary License and Construction Agreement for Rosen Campus

Funding source(s): \$14 million in charitable contributions pledged to or held by the UCF Foundation

This is to certify that the above capital project which exceeds \$2 million has been reviewed and approved and the type of funding for the project is authorized by state law and Board of Governors Regulations.



President

11/19/18

Date



Vice President

11/20/18

Date



Chief Financial Officer

11/19/18

Date



General Counsel

11/19/18

Date

ITEM: FFC-4

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: L3 Building Lease

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Recommend approval of the lease between the University of Central Florida Foundation and the University of Central Florida Board of Trustees for the space commonly known as the “L3 Building,” located at 12351 Research Parkway, Orlando, Florida 32826.

BACKGROUND INFORMATION

On August 21, 2018, the Board of Trustees approved the Purchase and Sale Agreement to allow the UCF Foundation or a related entity to purchase the property located at 12351 Research Parkway, also known as L3, for \$6 million. Funds for the purchase of the building come from a loan secured by the UCF Foundation. The purchase is to satisfy the growing need of the UCF Division of Digital Learning.

The proposed lease is for the approximately 30,000 square feet of space for a term of 66 months commencing on or around December 3, 2018. The lease may be renewed by mutual agreement for two additional five-year terms. Base rent is set at \$15.84 per square foot for the first 66 months and will be adjusted to fair market rent for any subsequent term. Additional rent is set at \$8.75 per square foot for operating and maintenance costs, for a total per square foot cost of \$24.59. There is no requirement to pre-pay base rent.

Supporting documentation: Attachment A: Digital Learning Lease
Attachment B: Building Photographs

Prepared by: Jennifer Cerasa, Associate General Counsel

Submitted by: Misty Shepherd, Interim Vice President for Administration and Finance

Attachment A

LEASE

Digital Learning Center

November __, 2018

THIS INDENTURE OF LEASE ("Lease"), made and executed as of the ____ day of November, 2018, by and between **UNIVERSITY OF CENTRAL FLORIDA REAL ESTATE FOUNDATION, L.L.C.**, a Florida not for profit corporation ("Landlord"), whose address is 12424 Research Parkway, Suite 140, Orlando, Florida 32826, and the **UNIVERSITY OF CENTRAL FLORIDA BOARD OF TRUSTEES** ("Tenant"), whose address is 4000 Central Florida Blvd, Orlando, Florida 32816.

WITNESSETH:

WHEREAS, Landlord intends to purchase a certain building as described on **Exhibit A** and known as Digital Learning Center 12351 Research Parkway, Orlando, in Orange County, Florida (the "Building");

WHEREAS, Landlord and Tenant, previously entered into multiple leases and other documents related to buildings in the Research Park:

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord certain space in the Building in accordance with the provisions set forth herein;

NOW, THEREFORE, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration, and in consideration of the mutual covenants, agreements and representations of the parties, as herein set forth, Landlord and Tenant agree as follows:

1. **Demise of Premises; Commencement Date.**

a. Landlord hereby leases to Tenant and Tenant leases from Landlord, for the period of time and in consideration of the payment of rental and in consideration of the other terms, conditions, covenants, representations and warranties set forth in this Lease, certain space in the Building consisting of a maximum aggregate area of net rentable space of approximately 46,185 square feet (the "Premises"). The Premises are shown on the attached **Exhibit B**. Tenant shall only pay rent for the space actually occupied up to 46,185 square feet pursuant to the rent roll attached hereto as **Exhibit C**. **Exhibit C** shall be updated and executed by the parties hereto at such time as there is a change to the rent roll. Tenant shall only have the right to lease space within the Building that has not previously been leased by the Landlord to another tenant. Tenant's use of the Premises shall be subject to all zoning ordinances, rules and regulations promulgated by any governmental agencies, boards or subdivisions now or hereafter in effect. To the extent that any additions, alterations, re-measurements, or improvements are made to the Premises, which increase the rentable square footage of the Premises from that set forth above, the maximum aggregate area of net rentable space that may be leased by Tenant shall be consistent with such increase and Landlord shall have a right to increase the Annual Base Rent consistent with the accurate rented square feet measurements.

b. For purposes of this Lease, the "Lease Commencement Date" shall be December 03, 2018.

c. For purposes of this Lease and the calculation of Base Rent, Additional Rent and other charges hereunder, the Landlord believes that the original Premises plus the Tenant's pro rata share of the Building is approximately 40,000 square feet of space. Square footage to be confirmed upon review and approval of final tenant building plans.

d. Landlord may re-measure the Building, including the Premises; however, it is understood

by the parties that there shall be no change in the Rent based upon the results of the measurement until such time that the lease is renewed.

e. Within fifteen (15) days of delivery of the Premises by Landlord to Tenant, the Tenant will deliver a tenant acceptance letter which shall be conclusive evidence that Tenant accepts the Premises "as is," including the zoning of the Building, and that the Premises were in good and satisfactory condition when possession was acquired by Tenant, except as provided in the tenant acceptance letter.

f. Within ten (10) days upon execution of this Lease and at any time requested in writing, Tenant will execute and deliver a Lease Commencement Certificate, as depicted in within **Exhibit D** to Landlord.

2. Tenant Improvements

Intentionally left blank.

3. Term and Extensions to Term.

a. The term of this Lease (the "Term") shall be sixty-seven (67) months, commencing on the Lease Commencement Date. This Lease shall automatically renew for two (2) additional five (5) year terms unless Landlord or Tenant gives written notice of termination within sixty (60) days of the renewal date.

b. Tenant acknowledges that: (i) no representations as to the condition of the Premises have been made by Landlord or Landlord's agents; (ii) no obligation to repair, add to, or improve the Premises has been assumed by Landlord except as this Lease otherwise expressly provides; (iii) no oral arrangements have been entered into in consideration of making this Lease; and (iv) the Lease contains a full statement of the obligations of both parties hereto.

4. Rental, Base Rent, Sales and Use Tax.

a. Rental. Throughout the Term of this Lease, Tenant shall pay to Landlord, at the times and in the manner herein set forth, Base Rent (as adjusted from time to time in accordance with the terms of this Agreement) and Additional Rental (as each of such terms is defined herein), and together with the applicable amount of sales and use taxes payable on any or all of the foregoing amounts in accordance with Section 4(d) hereof, and such amounts may be collectively be referred to herein as "Rent" or "Rental". Whenever used herein, unless the context shall otherwise clearly require, the term "Rent" or "Rental" shall include Base Rent, Additional Rental, and any applicable sales and use taxes payable on any such amounts.

b. Base Rent. Tenant shall pay to Landlord; at the address set forth in this Lease or at such other location as may be designated in writing by Landlord, the base rent ("Base Rent") as set forth in Exhibit C and in this paragraph, plus Additional Rent, increases in Base Rent and other charges, without demand, in accordance with the provisions set forth below.

Total base rent, per the current rent roll, attached hereto as "**Exhibit C**", shall be due and payable as follows:

<u>Base Term</u>	<u>Per Rentable Sq. Ft.*</u>
12/3/2018 - 6/30/2019	15.84
7/1/2019 - 6/30/2020	15.84
7/1/2020 - 6/30/2021	15.84

7/1/2021 - 6/30/2022	15.84
7/1/2022 - 6/30/2023	15.84
7/1/2023 - 6/30/2024	15.84

*Plus Tenant's proportionate share of Additional Rent.

The first sixty-seven months base rental rate shall be \$15.84 per square foot. In month sixty-eight (68), and every sixty (60) months thereafter throughout the term of the Lease (i.e. month 68, 128, 188), Base Rent will be adjusted to fair market rent as reasonably determined by Landlord, based on market conditions being offered to tenants of similar size and creditworthiness for renewal leases in Research Park of comparable type and class. Base Rent shall continue to escalate three percent (3%) per annum after each adjustment period.

Tenant may elect to negotiate and prepay any portion of the base rent up to (60) months. Otherwise, Base Rent shall be due and payable monthly in advance without notice, demand, deduction or set-off of any kind, commencing on the Rent Commencement Date (as herein defined) and continuing on the first (1st) day of each month thereafter. If the Rent Commencement Date occurs on a date other than the first (1st) day of the month or this Lease terminates on a date other than the last day of the month, the monthly Base Rental and other charges herein provided shall be prorated to the day of commencement or termination.

c. Rent Commencement Date. For purposes of this Lease, the "Rent Commencement Date" shall be the earlier of the date at which the Tenant substantially occupies the space, or the date of a certificate of occupancy being issued by the authority having jurisdiction as evidenced by substantial completion of construction, or as otherwise agreed upon in Exhibit "D".

d. Sales and Use Tax. During the Term of this Lease or any renewal thereof, Tenant will pay to Landlord concurrently with the payment of the monthly Rent installment an additional sum equal to the "sales" or "use" tax levied by the State of Florida or any other governmental body by reason of the occupancy of the Premises or due to the payment of Base Rental, Additional Rent or any other sums required to be paid hereunder by Tenant. Tenant's obligation to pay sales or use tax pursuant to this Agreement shall terminate as of the date upon which Tenant furnishes to Landlord a certificate of exemption from the State of Florida Department of Revenue, stating that Tenant is exempt from the obligation to pay such taxes, and the termination of such obligation shall continue for so long as such exemption remains in effect.

5. Additional Rent.

In addition to the Base Rent, Tenant shall pay its pro rata share (as specified in Paragraph 1(c) above of Landlord's additional rent ("Additional Rent"), in accordance with the following terms:

a. "Additional Rent" shall refer to all expenses, costs and disbursements of every kind and nature arising directly from operation and maintenance of the Building, including, but not limited to: those described in Paragraph 20 insurance, including Hazardous Substance insurance (as defined below); applicable real estate taxes and impositions by governmental authorities; wages, salaries, and benefits of those engaged in the operation and maintenance of the Building; all supplies and materials used for operation and/or maintenance of the Building and land upon which the Building is located, including utilities for common areas; cost of building management; janitorial, accounting; garbage and trash removal; maintenance of all Building systems and expenses for common area maintenance which Landlord shall pay or become obligated to pay because of or in connection with the maintenance and/or operation of the

Building and land upon which the Building is located.

b. Landlord shall notify Tenant, by June 1 of each year, of the amount which Landlord estimates (as evidenced by budgets prepared by or on behalf of Landlord) will be Tenant's proportionate share of Additional Rent for the following July 1 to June 30 fiscal year. Tenant shall pay such sum to Landlord in equal monthly installments during the following fiscal year, on or before the first day of each month in said fiscal year. Within forty-five (45) days following the end of each fiscal year, Landlord shall submit to Tenant a statement showing the actual amount which should have been paid by Tenant with respect to Additional Rent for the past fiscal year as evidenced by a year-end audit, the amount actually paid by Tenant during that year, and the amount of the resulting balance due thereon or overpayment thereof, as the case may be. Within thirty (30) days after receipt by Tenant of said statement, Tenant shall have the right to inspect Landlord's books and records, at Landlord's office during normal business hours after prior written notice, showing the Additional Rent for the Building for the calendar year covered by said statement. Any balance shown to be due pursuant to said statement, shall be paid by Tenant to Landlord within said thirty (30) day period. Any overpayment shall be credited against Tenant's obligation to pay Rentals next coming due or in connection with anticipated Additional Rent, or, if by any reason of any termination of the Lease no such future obligation exists, refunded to Tenant.

c. During the first twelve (12) months of the Lease, Tenant's liability for payment of Additional Rent is estimated to be and shall be paid at \$8.75 per rentable square foot. At Tenant's request, Landlord shall supply Tenant with all documentation used by Landlord to estimate Additional Rent.

d. The Tenant's proportionate share of Additional Rent for the purpose of this section shall be calculated by dividing the net rental space leased by the Tenant by the total space in the Building.

e. Landlord hereby agrees that for the purpose of determining Tenant's share of the operating and maintenance due to Landlord under this Lease, said operating and maintenance costs shall not increase by more than five percent (5%) per year during the term of this Lease, or any renewal term, as the case may be, after the base year of calendar year 2018; provided however, the 5% cap shall not include costs for real estate taxes, utilities or insurance related to the Building.

f. Tenant agrees that Landlord has the right to retain fifty percent (50%) of identified energy savings from annual operating expense to offset Landlord's Capital Expenditure for Energy Saving projects until such projects are paid in full.

6. Late Charges

Notwithstanding anything to the contrary contained herein, Tenant, at Landlord's sole option, shall pay a "late charge" of five percent (5%) of the total amount overdue when any installment of Rent or any other amount due for any reason is received at the Landlord's address listed herein more than fifteen (15) days after the due date thereof. This charge is intended to compensate Landlord for the extra expense and hardship suffered or incurred it due to the delinquency of such payments and is not intended to be and shall not be considered to be in the nature of interest or a penalty. If any installment of Rent or any other amount due hereunder is not received by Landlord on or before thirty (30) days after the date due, such sums shall begin accruing interest at the highest rate permitted by law.

7. Use.

a. Tenant shall use and occupy the Premises for any lawful activities permitted under zoning and other laws and restrictions. Tenant shall not permit the Premises or any part thereof to be used for any illegal or improper purpose or for any purpose that will violate any policies of insurance now or hereafter written on or covering the Building or that will increase the rate of premium therefore unless Tenant shall first obtain Landlord's written consent, which consent may be withheld in Landlord's sole discretion. In the event Landlord's insurance premiums are increased due to Tenant's particular use of the Premises or any part thereof, Tenant shall pay the full amount of any increase due to Tenant's particular use. Tenant shall take reasonable measures to prevent, nor shall Tenant allow its employees, agents, licensees, invitees,

guests, or any other person to create, any noise, disturbance, or nuisance whatsoever on or about the Premises that violates any applicable governing ordinance, regulation, rule or law detrimental to or annoying to other tenants in the Building or neighbors.

b. During the Term of the Lease, Tenant shall at all times fully comply, and shall cause the Premises to fully comply, with all federal, state and local laws, rules, regulations and ordinances now or hereafter in force or effect and relating to the Premises or Tenant's use thereof. Without limiting the generality of the foregoing sentence, Tenant shall comply at all times and shall cause the Premises and its use thereof to comply at all times, with any and all applicable health and zoning statutes or ordinances and with the Americans With Disabilities Act (42 U.S.C. Section 12101 et seq) and all regulations promulgated there under.

c. Notwithstanding anything herein to the contrary, to the extent that Tenant utilizes the Premises in any manner, which actions cause the Landlord, the Tenant or the Premises to be out of compliance with the laws of State of Florida or ordinances or codes of the City and/or County including fire safety standards of the State Fire Marshal, upon receipt of written notification from Landlord or from any other governmental office, Tenant shall within thirty (30) days cease such activity or make or cause to be made any and all improvements and/or repairs to bring the Premises and activities therein within compliance with all laws, ordinances and codes. Tenant shall be solely responsible for all costs and expenses associated therewith.

d. During the Term of the Lease, Tenant shall at all times fully comply, and shall cause the Premises to fully comply, with the terms of all recorded covenants encumbering the Premises. Landlord shall deliver to Tenant a copy of covenants and restrictions and amendments thereto relating to the Central Florida Research Park, within which the Premises are located. Tenant acknowledges it is aware that any such covenants are binding upon the Premises.

8. Personal Property Taxes.

Tenant shall pay, or cause to be paid, before delinquency any and all taxes levied or assessed, and which become payable during the Lease Term upon all of Tenant's leasehold improvements, equipment, furniture, fixtures, and any other personal property located in the Premises. In the event any or all of the Tenant's leasehold improvements, equipment, furniture, fixtures and other personal property shall be assessed and taxed with the real property, Tenant shall pay to Landlord its share of such taxes within ten (10) days after delivery to Tenant by Landlord of a statement in writing setting forth the amount of such taxes applicable to Tenant's property.

9. Assignment and Subletting.

a. Unless Landlord shall otherwise consent in writing, which consent shall be in Landlord's sole discretion, Tenant may not assign or sublet the Premises or any portion thereof, nor may any assignee or sub lessee of Tenant further assign or sublease the Premises or any portion thereof. Should Tenant sublease all or a portion of the Premises to a third party with Landlord's approval, Tenant shall require that its tenant carry personal property insurance in the amount of \$1,000,000 and general liability insurance at a minimum coverage of \$1,000,000 combined single limit, in a company satisfactory to Landlord and Tenant and naming Landlord and Tenant each as an additional insured. A partial assignment or subletting shall not release Tenant of its obligation upon the Lease; however, a full assignment of all of Tenant's leasehold interest shall release the Tenant of any obligations and liabilities under the Lease.

b. The parties specifically acknowledge and agree that Tenant may change or modify the department or component unit that occupies the Premises and shall provide Landlord with reasonable advance written notice of any such change. Such actions shall not be deemed a subletting or assignment or

a violation under this Lease.

c. Unless Landlord shall otherwise consent in writing, any sublease shall contain a provision requiring the subtenant to attorn to Landlord in the event of termination of this Lease, so that, in the event of any such termination, Landlord shall have the option (but not the obligation) to deem the sublease a direct lease between Landlord and the subtenant. Any sublease shall also contain an appropriate provision requiring, if Landlord so elects, any sub-subtenant of a subtenant to similarly attorn to Landlord in the event such sublease terminates.

d. If Tenant subleases the Premises for a rental that is greater than the total sum of rent and all other amounts due Landlord and paid by Tenant, at Landlord's option Landlord may either terminate this Lease, or require Tenant to pay Landlord the difference between Tenant's payments and the subtenant's rent. Such payment shall be made monthly, along with Tenant's monthly payment of rent.

e. Landlord may assign this Lease and all of Landlord's rights and obligations hereunder, to a purchaser of the Building, so long as such purchaser assumes and agrees to be bound by all terms and provisions of this Lease.

10. Maintenance Obligations of Landlord.

Landlord shall keep or have kept in good repair and order the structural elements and exterior of the Building, including exterior walls and roof, and the parking area, exterior lighting, walkways and landscaping contiguous to the Premises. The portion of the Building intended to be construed as the exterior shall exclude features specifically required to be maintained by Tenant under the terms hereof. Landlord shall maintain and repair the electrical wiring systems within the Building and within the Premises (other than those installed by Tenant), and the plumbing mains and features (except those within the specific Premises of the tenant. Example would be a commode or additional faucet and plumbing within the Tenant suite that are not for common use within Digital Learning Center. Landlord also shall maintain and repair the air conditioning system and ductwork for the Building. (except those units installed within a tenant space for specific purpose; i.e., server room units). Specific purpose features within a suite (i.e.; insta-hot or water fountain) are not considered standard building features.

11. Additional Obligations of Landlord and Tenant.

a. Condition of Premises and Building. Throughout the Term, Tenant, its employees, and agents shall use reasonable care in the use and occupancy of the Premises and shall refrain from damaging the Premises or the Building and Tenant will not suffer or permit any waste of the Premises. If the acts or operations of Tenant, its employees, or agents cause damage to the Building or Premises that is not routine or incidental damage, or results in obstruction of sanitary sewer lines or breakage of or damage to plate glass windows, Tenant shall immediately notify Landlord. Tenant shall be liable for all costs and expenses of repairing such damage. Landlord shall have the right to repair such damage and Tenant shall reimburse Landlord, on or within twenty (20) days after written demand, for all costs and expenses incurred in connection with the repair of such damage.

b. Services by Landlord. Landlord agrees to use its best efforts to furnish the Premises with the following services, and Tenant agrees to pay for those services as part of Additional Rent, as defined in Paragraph 5:

(i) Electricity, water and sewer at all times and on all days throughout the year.

(ii) Janitorial services, as further described on **Exhibit E**, normal and usual in a suburban first class office building in the Orlando, Florida area, on Monday through Friday except New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas (collectively "Holidays"), and except in any areas (for instance, specified laboratories) where Lessee may from time to time stipulate in writing to the Landlord that cleaning services are not desired nor should be permitted.

- (iii) Common area maintenance, landscaping, recycling collection, trash collection, management fees.

(iv) The Landlord agrees to furnish to Tenant heating and air conditioning equipment and maintain same in satisfactory operating condition at all times for the Leased Premises during the term of the Lease. Heating, ventilating and air conditioning shall be available Monday through Friday from 7:00 a.m. to 7:00 p.m. Saturdays, Sundays and holidays are available upon request.

(v) Landlord shall not be liable for, and Tenant shall not be entitled to, any damages or abatement or reduction of rental by reason of Landlord's failure to furnish any of the foregoing when such failure is caused by strikes, lockouts, or other labor disputes of any character, or by any other cause, beyond the reasonable control of the Landlord. Nor shall any such failure relieve the Tenant from the duty to pay the full amount of rent and other sums of money herein provided to be paid by the Tenant. Notwithstanding the foregoing nothing herein is a waiver or release of Landlord's duty and obligation to maintain the Premises in a habitable condition at all times during the term of the Lease.

c. Parking. Tenant shall have the nonexclusive right to use parking spaces located in the parking lot(s) adjoining the Building. No parking spaces shall be assigned, but Landlord may designate areas for Tenant's parking spaces and such other designated spaces to accommodate visitors.

d. Utilities. Except where individually metered to Tenant, in which case Tenant will timely pay, Landlord will promptly pay all gas, water, power and electric light rates or charges which may become payable during the term of this Lease for the gas, water and electricity used by the Tenant on the premises, and will provide monthly energy use data, as requested by the Tenant.

12. Alterations and Additions by Tenant.

a. Tenant may not make or cause to be made any exterior or interior alteration, improvement or renovation without first obtaining written consent from Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. If alterations, improvements or renovations are made, they shall be kept in a good state of repair by Tenant at its expense.

b. If Tenant makes any alterations, improvements or renovations during the Term, Tenant shall make such changes in accordance with all applicable laws, rules, regulations and ordinances, including but not limited to local building codes and health codes and the Americans With Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

13. Landlord's Right to Construct Additions.

Landlord shall have the right and privilege to make and build additions to the Building, and make such alterations and repairs to said Building as it may deem wise and advisable; provided, however, that same shall not limit any of Tenant's rights hereunder, and further provided, that if such work is to be done, the parties agree to work in good faith to resolve any issues, concerns, disputes or claims that may arise in connection with such work.

14. Condition of Premises at Lease Termination.

Except for additions, alterations, renovations, or improvements specifically allowed to remain in the Premises by Landlord, at the expiration of this Term as set forth in Section 3 hereof, Tenant shall quietly and peaceably deliver the Premises to Landlord in the same repair and condition in which they were received, ordinary wear and tear excepted. Without limiting the generality of the foregoing provision, at the expiration of the Term, Tenant shall remove any and all electrical wiring, conduits, plumbing and other tenant improvements installed by or at the direction of Tenant within the Premises or adjoining space. Tenant may leave in place carpeting, tile and other standard floor, wall and ceiling coverings. All trade

fixtures and equipment of Tenant may be removed at the expiration of the Term (except if Landlord has the right to enforce its Landlord lien rights as set forth in Section 29 herein), and all damage to the Premises or Building caused by such removal shall be repaired, at Tenant's expense.

15. Holding Over.

If Tenant retains possession of the Premises or any part thereof after the termination of the Term, such tenancy shall be a month to month and Tenant shall pay Landlord Rent at the highest rate permitted by law for the time that Tenant remains in possession. Acceptance of Rent by Landlord shall not be a waiver of its right of re-entry or any other right hereunder or at law.

16. Abandonment.

If Tenant abandons the Premises, any personal property left on the Premises shall be deemed to be abandoned, at Landlord's option, and Landlord may enter the Premises and may handle, remove, and store such personal property at the risk, cost and expense of Tenant. Tenant shall pay to Landlord, upon demand, any and all reasonable expenses incurred in such removal or in storage of such property. Landlord may, at its option, without notice, sell said property or any part of it at private sale and without legal process, for such price as Landlord may obtain. Landlord shall first apply the proceeds of the sale to the expenses of removal, storage, handling, and sale of such personal property; shall apply any balance to any amounts due under this Lease from Tenant to Landlord; and shall hold any additional balance, without interest, for Tenant.

17. Right of Peaceable Possession.

Subject to rights given Landlord herein, upon the performance by Tenant of all of its obligations hereunder, Tenant may quietly have, hold, occupy, and use the Premises without interruption or disturbance by Landlord.

18. Subordination and Attainment.

a. Upon request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant will in writing subordinate its rights hereunder to the interest of any ground lessor of the land upon which the Premises are situated and to the lien of any mortgage or other interest of Landlord's lender, now or hereafter in force against the land and Building of which the Premises are a part (including any refinancing or replacements thereof), or upon any building hereafter placed upon the land upon which the Building is located, and to all advances hereafter made upon the security thereof; provided, however, that the ground lessor, or the mortgagee or trustee named in said mortgage or other financing instrument shall agree that Tenant's peaceable possession of the Premises will not be disturbed on account thereof so long as Tenant is not in default under this Lease.

b. In the event any proceedings are brought for foreclosure, or in the event of the exercise of the power of sale under any mortgage or other financing instrument made by Landlord covering the Premises, or in the event of a sale or conveyance of the Building by Landlord, Tenant shall attorn to the purchaser upon any such foreclosure or sale or conveyance and recognize such purchaser as the Landlord under this Lease, and Landlord shall be released from all obligations and liabilities hereunder as of the time of transfer of title to the Building.

19. Estoppel Statement.

From time to time, upon not less than ten (10) days prior request by Landlord, Tenant will deliver to Landlord a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or,

if there have been modifications, that the Lease as modified is in full force and effect and stating the modifications); (b) the dates to which the Rent and other charges have been paid; and (c) to the knowledge of Tenant that Landlord is not in default under any provisions of this Lease, or, if in default, the nature thereof in detail; (d) whether Tenant delivered to Landlord a security deposit, and the amount of any such deposit being held by Landlord.

20. Injury or Damage to Property on Premises: Insurance.

All property of any kind that may be on the Premises during the continuance of this Lease shall be at the sole risk of the Tenant, and except for any negligence of the Landlord, the Landlord shall not be liable to the Tenant or any other person for any injury, loss or damage to property or to any person on the premises. Tenant assumes any and all liability for personal injury and property damage attributable to the negligent acts or omissions of Tenant and its affiliates and the officers, employees, volunteers, and agents thereof while acting within the scope of their employment or agency. Tenant warrants and represents that it is self-funded for liability insurance, both public and property, with said protection being applicable to officers, employees, servants, and agents while acting within the scope of their employment. The parties agree that Tenant shall procure and carry additional public liability insurance to reach a minimum coverage of \$100,000 per person and \$200,000 each occurrence. To the extent permitted by law, Landlord shall be named as an additional insured under such policies and shall be required to receive notice of cancellation or reduction in the policy limits thirty (30) days before such changes are effective. The purpose of such insurance is to protect against any injuries or damages sustained by persons while upon the Premises and for which Landlord or Tenant may be liable. Tenant shall have a certificate of insurance delivered to Landlord prior to the beginning of the Term of this Lease. The insurance carried by Tenant pursuant to this Lease shall contain a clause whereby the insurer waives its right of subrogation against Landlord. The parties agree that nothing contained herein shall be construed or interpreted as a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes. In addition, Tenant will reimburse Landlord for the cost of obtaining insurance acquired by Landlord to cover the risk of Hazardous Substances as defined in Section 31; provided that if such insurance is generic to the property that Tenant's reimbursement is a proportionate cost as part of Additional Rent. In the event the insurance is a particularized to Tenant's actions (including employees, agents, and invitees), such insurance shall have a \$100,000 deductible and Tenant shall reimburse Landlord for the full cost of the insurance. Tenant shall have the right but not the obligation to obtain similar insurance at its expense; provided, such insurance is reasonably acceptable to Landlord and Landlord's approval of same shall not be unreasonably withheld, conditioned or delayed.

21. Assumption of Risk by Tenant.

Tenant assumes all risks of theft as well as any and all damage to Tenant's equipment, furnishings, supplies and other property that may occur by reason of fire, hurricane, or other force majeure event. Tenant shall carry insurance on all equipment, furnishings, supplies of Tenant kept on or about the Premises, and Landlord shall in no event be responsible or liable for damage, theft, or destruction of such equipment, furnishings, or supplies from any cause whatsoever other than negligent actions or omissions of Landlord or its agents.

22. Indemnification and Hold Harmless.

Neither Landlord nor any of its agents, employees, or officers (collectively, "Indemnitee") shall be liable to Tenant, or any of its employees, agents, licensees or invitees, for any injury or damage to any person or property in or about the Premises from any cause other than negligent actions or omissions of Landlord or its officers, employees, volunteers or agents. Tenant assumes any and all risks of personal injury and property damage attributable to the negligent acts or omissions of Tenant and its officers, employees, servants, and agents thereof while acting within the scope of their agency or employment by Tenant. Notwithstanding anything to the contrary that may be contained elsewhere in this Lease, Tenant does not (1) waive any remedy or defense available under the laws of the State of Florida; (2) consent to the State of

Florida or its agents and agencies to be sued; or (3) waive sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

23. Liability of Landlord.

Landlord shall not be liable to Tenant for the theft or loss of any property of Tenant whether on the Premises or any part of the Building or property adjoining the Building. Landlord agrees to make reasonable efforts to protect tenant from interference or disturbance of third persons including other tenants.

24. Casualty.

If the Premises, or any part thereof, shall at any time be destroyed or so damaged by fire, casualty or other elements as to be unfit for occupancy or use by Tenant, then, and in that event, Landlord shall have the option: (1) to terminate this Lease, which termination shall be effective as of the later of the date specified in written notice from Landlord to Tenant or thirty (30) days after receipt of such notice by Tenant, or (2) to repair and rebuild the Premises, abating a fair and just proportion of Rent according to the damage sustained as determined by a third party appraiser until the Premises are restored and made fit for occupancy and use. If Landlord elects to repair and rebuild, the same shall be done and completed within a reasonable time; provided, however if the repairs are not completed within one-hundred eighty (180) days from the date of the occurrence of the damage, Tenant shall have the right to terminate the Lease, which termination shall become effective ten (10) days after Tenant gives Landlord written notice of Tenant's intent to terminate.

25. Eminent Domain.

If the Building or the area where parking for the Premises is located shall be wholly or partially taken by the power of eminent domain, the compensation awarded or agreed to be paid by the condemning authority shall be paid to Landlord, without any right of Tenant to any portion thereof, except for damages and/or relocation expenses as allowed by law that are specifically awarded to Tenant by reason or loss of business. If the taking of the Building is total or if the taking is partial and includes a portion of the Premises that is so great that the remaining Premises will be insufficient for the Tenant to carry on its business, or if a portion of the parking area for the Building is taken that will prevent Tenant from carrying on its business, Tenant shall have the right to terminate the Lease as of the time the court enters an order of taking or as of the time of delivery of a deed of conveyance by Landlord, as the case may be. If there occurs a partial taking of the Premises or parking area or both that does not permit Tenant to terminate this Lease, Tenant shall be entitled to a reduction in Rent based on the amount of the Premises or parking area or both remaining, as the case may be, and other pertinent circumstances bearing upon the equity of the situation. In the event Landlord and Tenant are unable to agree on the amount of reduction of Rent, the issue shall be presented for arbitration before, and pursuant to the rules and regulations of, the American Arbitration Association, and the decision of the arbitrator shall be final and binding on Landlord and Tenant.

26. Signs.

Tenant shall receive Building standard suite and directory signage. Tenant shall not attach, letter or paint any signs or other descriptive or communicative materials to, in or upon the Premises, or place any lettering on the windows, unless such signs, lettering or materials shall be a type, kind, character, text color, and description approved by Landlord in writing, which approval shall not be unreasonably withheld, conditioned or delayed by Landlord. At Landlord's request, Tenant shall remove all of Tenant's signs and lettering at the termination or expiration of this Lease, without expense to Landlord, and without injury or damage to the Premises. If Landlord rejects any proposed sign or other descriptive or communicative materials, Landlord's rejection shall be set forth in writing with the reasons for the Landlord's decision. All signage must comply with requirements imposed pursuant to the recorded covenants and restrictions for Central Florida Research Park.

27. Tenant Work.

Any charges against Tenant by Landlord for services or for work done on the Premises by order or request of Tenant, or otherwise accruing under this Lease, shall be considered Rent and shall be included in any lien for Rent. Any improvements that are the product of Tenant work and that become affixed to the Premises and that Tenant is not required to remove at the expiration of the Term shall become the property of Landlord.

28. Liens.

Tenant shall not permit to be created or allow to remain undischarged any lien, encumbrance or charge arising out of any work or claim of any contractor, mechanic, or laborer, or out of any material supplied or claimed to be supplied by any material man that might be or become a lien or encumbrance or charge upon the Premises or the income there from. Tenant shall notify any contractor making improvements to the Premises in writing that Tenant's interest in the Premises is as lessee only and that Landlord's interest in the Premises shall not be subject to any liens for materials or improvements. If Landlord shall so request, Tenant shall execute a memorandum of this Lease, and Landlord may, at its sole option and expense, record such memorandum among the public records. If any lien or notice of lien on account of an alleged debt of Tenant or any notice that a party has been engaged by Tenant or Tenant's contractor to work in the Premises shall be filed against the Premises, Tenant shall diligently protect its rights as allowed by Chapter 713 of the Florida Statutes including but not limited to causing the lien to be discharged, depositing or bonding in an amount equal to the amount of such claims, or by order of a court of competent jurisdiction. If Tenant fails to cause such lien or notice of lien to be discharged, then Landlord, in addition to any other rights or remedies available to it may at its sole option discharge the same in any manner selected by Landlord, in which event Landlord shall be entitled, if Landlord so elects, to defend any action for foreclosure of such lien or to compel the prosecution of an action to foreclose such lien and may pay the amount of the judgment in favor of the lienor together with interest and costs. Pursuant to Florida Statutes Section 713.10, Landlord shall not be liable for the payment of any lien asserted against the Premises from any obligations of Tenant to material men, laborers, contractors, or any other person furnishing labor, services, or materials to the Premises. Any person undertaking improvements to the Premises on behalf of Tenant shall look solely to Tenant for payment and shall have no claim against Landlord or the Premises for payment of any sums.

29. Landlord's Lien.

To the extent permitted by law, a first lien is expressly reserved by Landlord and granted by the Tenant to Landlord upon Tenant's property consisting of all personal property and equipment located in or upon the demised Premises and all improvements, light fixtures, store fixtures, air conditioning equipment, water fixtures and all other fixtures erected or put in place or that may be erected or put in place upon and within the demised Premises by or through the Tenant or other occupants ("Tenant's Property"), said lien being imposed for the payment of rent and also for the satisfaction of any causes of action which may accrue to the Landlord by the provisions of this Lease or under applicable law. Tenant will keep Tenant's Property in good condition and repair, reasonable wear and tear excepted. Tenant will permit Landlord and its agents to inspect Tenant's Property at any time with reasonable prior notice. Notwithstanding anything herein contained to the contrary, Landlord shall subordinate its lien on such equipment and fixtures to the lien of any financial institution or third-party lender which requests a lien on said equipment and fixtures for purposes of financing said equipment or fixtures, or for operating capital.

30. Environmental Provisions.

a. For purposes of this Paragraph, the following capitalized terms shall have meanings as follows:

(i) "Hazardous Substances" shall mean any hazardous or toxic substances, materials, wastes, pollutants or contaminants as defined, listed or regulated, now or in the future, by any federal, state or local law, rule, regulation or order or by common law decision, including, without limitation trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; petroleum products or by-products, asbestos and polychlorinated biphenyls.

(ii) "Applicable Laws" shall include, but shall not be limited to, Comprehensive Environmental Response Compensation and Liability Act; the Resource Conservation and Recovery Act; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 ~ ~.; and the Clean Air Act, 42 U.S.C. § 7401 ~ .; all as may be amended from time to time, together with the rules and regulations promulgated there under, and together with any other federal, state or local laws, rules or regulations, whether currently in existence or hereafter enacted or promulgated, that govern or relate to: (i) the protection of the environment from spilled, deposited or otherwise emplaced contamination or the existence, cleanup or remedy of such contamination; (ii) Hazardous Substances or the storage, use, generation, discharge, treatment, removal, recovery, transportation or disposal of Hazardous Substances.

b. Tenant shall not cause or permit the presence, use, generation, release, discharge, storage, transportation or disposal of any Hazardous Substances on, under, in, about, to or from the Premises except as necessary to carry on Tenant's use as herein permitted, provided said activities have been approved in advance in writing by Landlord and are conducted in accordance with all Applicable Laws and provided further that Tenant has fully disclosed to Landlord in writing the existence, extent and nature of any such Hazardous Materials which Tenant is legally authorized and empowered to maintain on, in or under the Premises or to use in connection therewith, and provided further that Tenant has obtained and will maintain all licenses, permits and approvals required with respect thereto and is in full compliance with all the terms, conditions and requirements of such licenses, permits and approvals, and provide further that if used, such Hazardous Materials must be disposed of strictly in accordance with Applicable Laws, guidelines issued by any national or regional board of insurance underwriters, and prudent standards of practice.

c. Tenant shall promptly respond to and clean up any release or threatened release of any Hazardous Substance into the drainage systems, soil, surface water, groundwater, or air, safely and in strict accordance with Applicable Laws, and as authorized or required by federal, state, or local agencies having authority to regulate Hazardous Substances.

d. For any month during which any Hazardous Substances have been used, generated, treated, stored, transported on, in or about the Premises, Tenant shall provide Landlord with the following written information on or within ten (10) days after the end of such month: (i) a list of the Hazardous Substances that were present on the Premises; (ii) Material Data Safety Sheets relating to the Hazardous Substances that were present on the Premises; (iii) a description of all releases of Hazardous Substances that occurred or were discovered on the Premises; (iv) a list of all compliance activities related to such Hazardous Substances, including any contracts with governmental agencies or private parties concerning Hazardous Substances; (v) all manifests, business plans, consent agreements and other documents relating to Hazardous Substances executed or negotiated during the month; and (vi) copies of all documents related to the activities described in this paragraph and written reports of all oral contacts relating thereto.

e. Landlord and its agents and employees may enter upon the Premises, with reasonable prior notice to inspect the Premises and all activities thereon. Such right of entry and inspection shall not constitute managerial or operational control by Landlord over Tenant's activities or operations.

f. Tenant shall promptly and completely assess and clean up any release of Hazardous Substances caused by Tenant, its officers, employees, agents, contractors, invitees or third parties that may occur on the Premises during the Term or during Tenant's occupancy and shall surrender the Premises free of contamination or other damage caused by such occurrences.

g. Tenant shall perform any investigation, monitoring, cleanup, containment, restoration,

removal or other remedial work ("Remedial Work") that is required arising from Tenant's use of the Premises during the Term: (a) under any federal, state or local law or regulation or any judicial or administrative order; (b) pursuant to any agreements assumed or entered into by Tenant; or (c) to maintain the Premises in a condition that prevents the release of Hazardous Substances on the Premises or adjoining properties and presents no unreasonable risk to safety or health or the value of the Premises. All Remedial Work shall be diligently conducted (i) by licensed contractors under the supervision of a consulting environmental engineer, (ii) pursuant to a written plan approved by all public or private agencies or persons with legal or contractual rights to such approval, (iii) with all insurance coverage in place that is then customarily maintained with respect to such activities, and (iv) only following receipt of all required permits, licenses and approvals, all of which elements shall be subject to Landlord's prior written approval. All costs and expenses of such Remedial Work shall be paid by Tenant including, without limitation, the charges of contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the Remedial Work and Landlord's fees and costs incurred in monitoring or reviewing such Remedial Work. If Tenant fails to promptly and completely comply with its obligations with regard to Remedial Work, Landlord may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses incurred in connection therewith shall be reimbursed by Tenant to Landlord within thirty (30) days after demand and shall be deemed a Cost as defined herein.

h. Tenant shall be responsible for the negligent acts or omissions of Tenant and its officers, employees, and agents thereof while acting within the scope of their agency or employment by Tenant that cause (a) the presence, suspected, presence, release or suspected or threatened release of any Hazardous Substance in or into the air, soil, groundwater, surface water or improvements at, on, about, under or within the Premises, or elsewhere in connection with the transportation of Hazardous Substances to or from the Premises, (b) Tenant's failure to perform its covenants in this Paragraph, or (c) the falsity of any representation or warranty made by Tenant in this Paragraph.

31. Events of Default.

The occurrence of anyone or more of the following incidents or events shall constitute an event of default under this Lease, each of which events may be referred to herein as an "Event of Default":

a. If Tenant shall fail to pay any Rent or other sum required to be paid by Tenant hereunder on or before fifteen (15) days after the date due;

b. If Tenant shall fail to fully, promptly and completely observe or perform any provision of this Lease (other than those requiring the payment of Rent or other sum required to be paid by Tenant hereunder) and such failure continues for thirty (30) days after notice to Tenant of such failure. (provided, however, in the event that any such default cannot be cured by the payment of money and cannot with diligence be cured within such 30-day period, if Tenant shall commence promptly to cure the same and prosecute its curative efforts with diligence to completion, the time within which such default may be cured shall be extended for such period as is reasonably necessary to complete the curing thereof with diligence).

c. If any representation or warranty of Tenant set forth in any notice, certificate, demand or request delivered pursuant hereto shall prove to be incorrect in any material and adverse respect as of the time when the same shall have been made and, in each case, the facts shall not be conformed to the representation or warranty within thirty (30) days after notice to Tenant of such inaccuracy;

32. Landlord's Remedies.

If an Event of Default shall occur, Landlord, or Landlord's assignee under financing documents related to the Building, may, at its option and in its sole discretion, and in addition to any other remedy or right given to Landlord from time to time hereunder or by virtue of any law, and without any further demand or notice, proceed according to one or more of the following courses of action:

a. Terminate this Lease, effective as of the date specified in a notice from Landlord, and retake possession of the Premises, in which event Tenant shall immediately surrender the Premises to the Landlord. If Tenant fails to surrender the Premises, Landlord only as permitted by Florida law may, without prejudice to any other remedy Landlord may have for possession or arrearages in Rent, enter upon the Premises and expel or remove Tenant and its effects without being liable for damages therefore and without said entry affecting Landlord's right to collect all sums due or to become due under this Lease. Declare the entire amount of the Rent that would become due and payable during the remainder of the Term to be due and payable immediately, in which event Tenant shall pay the same at once, together with all Rentals and other amounts theretofore due, Landlord may collect the same from Tenant by distress or otherwise. The acceptance of such payment by Landlord shall constitute a waiver of any of Landlord's rights.

b. To the extent permitted under law, do whatever Tenant is obligated to do and has failed to do. Tenant shall reimburse Landlord immediately upon demand for any expense that Landlord may incur in effecting compliance with this Lease on behalf of Tenant.

c. The remedies set forth in subparagraph (a) shall be cumulative. Pursuit by Landlord of any of the foregoing courses of action shall not constitute an election of remedies nor shall it preclude the pursuit of any other courses of action herein provided or any other remedies provided by law or equity. No termination of this Lease by lapse of time or otherwise shall affect Landlord's right to collect Rent for a period prior to the termination thereof. In all events, except as otherwise provided herein, Tenant shall remain liable for the payment of any Rent due under this Lease until paid in full, including without limitation, all Rent, all expenses for physical damage.

d. No agreement to accept a surrender of the Premises shall be valid unless the same shall be in writing and signed by Landlord.

e. Upon termination of this Lease, or re-entry and re-letting of the Premises, Landlord shall have the right to enter the Premises or any part thereof, without further demand or notice, in the name of the Landlord or otherwise, without being liable in any manner whatsoever in trespass, for damages or otherwise. Tenant shall pay promptly, upon demand, all damages, costs, fees, expenses, incurred by Landlord as a result of such termination or re-entry, as well as all costs incurred by Landlord in the nature of repairs required to place the Premises in a rentable condition, and all other costs incurred by the Landlord in order to perform the obligations and covenants of the Tenant hereunder.

f. In all events, except as otherwise provided herein, Tenant shall remain liable for the payment of any Rent due under this Lease until paid in full including all expenses for physical damage, incurred in enforcing any remedy set forth herein or provided by law or otherwise.

33. Rights Reserved by Landlord.

The Landlord reserves the following rights:

a. During the last one hundred twenty (120) days of the Term of this Lease, if during or prior to that time Tenant vacates the Premises, Landlord may decorate, remodel, repair, alter or otherwise prepare the Premises for re-occupancy; provided, that such actions do not interfere or disturb Tenant's possession hereunder.

b. Landlord may have access to the Premises and may enter the Premises at all reasonable hours to inspect or make repairs, alterations, additions or improvements to the Premises, or for any other purpose not inconsistent with the terms and spirit of this Lease; provided that such actions do not interfere or disturb Tenant's possession hereunder.

c. Landlord may show the Premises to prospective tenants, brokers or purchasers during the Term of this Lease at all reasonable times provided prior oral notice is given to Tenant in each such case and Tenant's use and occupancy of the Premises shall not materially be inconvenienced.

34. Waivers.

a. Landlord and Tenant shall and hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage, and any emergency statutory or any other statutory remedy.

b. The failure of Landlord in one or more instances to insist upon strict performance or observation of one or more of the covenants or conditions hereof or to exercise any remedy, right, privilege or option herein conferred upon or reserved to Landlord, shall not operate or be construed as a relinquishment or waiver for the future of such covenants or conditions or of the right to enforce the same or to exercise such privilege, right, option or remedy, but the same shall continue in full force and effect. The receipt by Landlord of all or any portion of Rent or any other payment required to be made by Tenant shall not be a waiver of any other payment then or thereafter due, nor shall such receipt, though with knowledge of the breach of any covenant or condition hereof, operate as or be deemed to be a waiver of such breach. No waiver by Landlord of any of the provisions hereof or any of Landlord's rights, remedies, privileges or options hereunder shall be deemed to have been made unless made by Landlord in writing. Tenant covenants that no surrender or abandonment of the Premises or of the remainder of the Term herein shall be valid unless accepted by Landlord in writing.

35. Radon Gas and Indoor Air Quality Disclosure.

a. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed Federal and State guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

b. Landlord makes no warranties or representations and has no knowledge regarding: (i) air quality within the Premises or Building; or (ii) whether or not the Premises or Building are free from or contaminated or affected by mold, mildew, spores, allergens, irritants, fungus, bacteria, or other organisms or microorganisms, or by conditions relating to excess moisture or humidity. Tenant shall make its own inspections regarding the matters described in this Paragraph.

36. Time of Essence.

Time shall be of the essence as to all periods and times referred to in this Lease and all provisions pertaining hereto. When a date upon which a specified event shall occur or be performed falls upon a weekend or official holiday, the time allowed for the event or performance to *occur* shall be extended to 5:00 p.m. of the next succeeding business day.

37. Not Agent.

Notwithstanding any provisions herein contained, neither party shall be considered the agent of the other party.

38. Lease Interpretation.

In the event it is necessary to interpret the terms of this Lease in a court of law or equity, the laws of the State of Florida, statutory and case law, shall be applied. The headings used throughout this instrument are for convenience only and have no significance in the interpretation of the body of this instrument, and they

shall be disregarded in construing the provisions of this instrument.

39. Use of Singular, Plural and Genders.

The terms "Landlord" and "Tenant" as herein contained shall include the singular and the plural, and the use of one gender shall include both genders whenever the context so requires or admits.

40. Successors and Assigns.

The provisions hereof shall be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the respective parties hereto.

41. Attorneys' Fees.

Intentionally deleted.

42. Broker.

Tenant and Landlord represent and warrant that neither they nor any of their representatives, employees, or agents have dealt with, consulted with, retained or agreed to pay or compensate in any manner any real estate broker in connection with this Lease.

43. Sale or Mortgage by Landlord.

a. Tenant agrees that this Lease shall be inferior and subordinate to any mortgage and security agreement now or hereafter placed on the Building and to all advances already made, or which may be hereafter made, on account of the mortgage and security agreement to the full extent of all debts and charges secured thereby and to any renewals, enlargements or extensions of any part thereof and to any mortgage with the Landlord, any owner of or lessor of the Building may hereafter, at any time, elect to place on the Building. Tenant agrees upon request to execute any documents which the Landlord may deem necessary to accomplish that end.

b. Notwithstanding the foregoing, the Tenant's subordination shall be conditioned on Tenant's receipt of a non-disturbance agreement from the future lender which will state, in part, that, even in the event of foreclosure and taking possession of the Premises and Building by lender, Tenant shall be entitled to remain in the Premises to long as Tenant is performing the terms and conditions of this Lease. The remaining terms of the non-disturbance agreement shall be reasonably satisfactory to the lender, and will not require said lender, as the new landlord, to be responsible for prior acts or omissions of the Landlord.

c. The Tenant, at any time and from time to time at the request of the Landlord or of any mortgagee or purchaser or any prospective mortgagee or purchaser of the Premises or of the Building, will execute, acknowledge and deliver to the Landlord or such mortgagee or prospective mortgagee or purchaser requesting the same a certificate executed by the Tenant certifying that to Tenant's existing knowledge this Lease is in good standing, that it has not been modified, and that there are no defaults hereunder, or, if defaults exist, a description of same and any other information reasonably requested by Landlord.

44. Notices.

a. All notices required or permitted by law or by this Lease to be given to either Landlord or Tenant shall be in writing and may be given by either personal delivery or by registered or certified U.S. mail sent return receipt requested, or by a recognized overnight courier service. Notices shall be sent to the parties at the addresses set forth below or at such other addresses as the parties shall designate to each other from time to time in writing:

AS TO THE TENANT:

University of Central Florida
4000 Central Florida Blvd
Orlando, Florida 32816
Attention: Elizabeth Dooley, Provost

With a copy to:

University of Central Florida
Office of General Counsel
4000 Central Florida Blvd
Orlando, Florida 32816
Attention: W. Scott Cole, General Counsel

AS TO THE LANDLORD:

University of Central Florida Real Estate Foundation, L.L.C
12424 Research Parkway, Suite 140
Orlando, Florida 32826
Attention: Misty Shepherd, Secretary

With a copy to:

University of Central Florida Foundation, Inc,
12424 Research Parkway, Suite 140
Orlando, Florida 32826
Attention: Daniel Gross, Director of Real Estate

Notices sent by facsimile or telecopy shall not be deemed effective. All notices transmitted by registered or certified mail shall be effective as of a date two (2) days after the date of the deposit of same in the U.S. Post Office, properly addressed, with the required postage affixed to the transmittal envelope. Notices sent by overnight courier service shall be deemed effective on the first business day after deposited with such service, with the fee paid in advance. Notices that are personally delivered shall be deemed effective on the date of delivery.

45. Rules

Tenant shall comply with the following rules regarding the use of the Premises and shall require its employees, agents, licensees, invitees and guests to comply with such rules:

- (a) No goods, equipment, inventory, scrap, waste, containers, or other materials may be stored, held, or accumulated outside the Building.
- (b) No person may go upon the roof of the Premises without the written consent of Landlord.
- (c) Tenant shall obtain Landlord's prior consent to any curtain, blind, shade or screen attached to or hung in any window or door that is visible from the exterior of the Building.
- (d) Tenant shall not permit the Premises to be occupied or used in an unlawful manner or a manner reasonably considered offensive or objectionable to Landlord or other occupants of the Building.

(e) Tenant shall not waste electricity, water, or other utilities and shall cooperate with Landlord to assure effective operation of heating and air conditioning units.

(f) Tenant will refer all contractors and installation technicians rendering any service affecting the physical structure of the Premises to Landlord for Landlord's supervision and approval before such persons perform any work in the Premises.

(g) Tenant shall give prompt notice to Landlord of any accident to or defect in plumbing, electrical fixtures, heating apparatus or other systems, or of any damage to the Premises.

(h) No Tenant shall use or keep in its Premises or the Building any kerosene, gasoline or inflammable or combustible fluid or material other than limited quantities necessary for the operation or maintenance of office equipment. In the event flammable or combustible fluids or materials are permitted by Landlord in the Premises, these materials must be maintained and secured so as to comply with all laws, rules and regulations governing such materials, including but not limited to, all fire codes.

(i) No Tenant shall install any radio or television antenna, loudspeaker or any other device on the exterior walls or the roof of the Building without the prior written consent of the Landlord. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building or elsewhere.

(j) Landlord shall have the right to prescribe the weight, size and position of heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as determined by Landlord to be necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe, equipment or property from any cause, and all damage done to the Building by moving or maintaining any such safe, equipment or other property shall be repaired at the expense of Tenant.

(k) Tenant shall not place a load upon any floor of the Premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law.

(l) Without the prior written consent of Landlord, which will not be unreasonably withheld, Tenant shall not use the name of the Building in connection with or in promoting or advertising the business of Tenant except as Tenant's address.

(m) Tenant shall comply with all energy conservation, recycling and waste reduction, safety, fire protection and evacuation procedures and regulations established by any governmental agency.

(n) Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.

(o) Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and for the preservation of good order therein, no amended, revised, new or restated rules or regulations shall be implemented with a retroactive effective date and further, provided, that same shall not materially increase Tenant's obligations hereunder or limit any of Tenant's rights hereunder. Tenant agrees to abide by all such Rules and Regulations hereinabove stated and any additional rules and regulations which are adopted.

(p) Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.

(q) These Rules and Regulations are in addition to and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of the Lease of Premises in the Building.

[Signature Page Follows]

Landlord Execution Page

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

Witnesses (two are required):

Printed name: _____

Printed name: _____

LANDLORD:

UNIVERSITY OF CENTRAL FLORIDA REAL
ESTATE FOUNDATION, L.L.C., a Florida not for profit
corporation

By: _____

Print Name: _____

Its: _____

Date: _____

Tenant Execution Page

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the date first set forth above.

Witnesses (two are required):

Printed name: _____

Printed name: _____

TENANT:

UNIVERSITY OF CENTRAL FLORIDA BOARD OF
TRUSTEES

By: _____

Print Name: _____

Its: _____

Date: _____

Learning Center
Legal Description

EXHIBIT A

Lot 7, Block 2, Central Florida Research Park Section 1, according to the plat thereof on file in the office of the Comptroller in and for Orange County, Florida recorded in Plat Book 12, Pages 123, situate lying and being in Orange County, Florida.

Digital Learning Center
EXHIBIT B

Floor Plan

TO BE ATTACHED

Digital Learning Center
EXHIBIT C

RENT ROLL

TO BE ATTACHED

EXHIBIT "D"

DIGITAL LEARNING CENTER

COMMENCEMENT DATE CERTIFICATE

THIS CERTIFICATE, made this _____ day of _____, 2019, by and between and between University of Central Florida Real Estate Foundation, L.L.C., ("**Landlord**"), and the University of Central Florida, ("**Tenant**").

W I T N E S S E T H:

WHEREAS, Landlord and Tenant have entered into that certain Lease dated November 19, 2018, ("**Lease**") for space known as within the Digital Learning Center, Orlando, Florida; and the University of Central Florida, ("**Tenant**").

WHEREAS, Landlord and Tenant wish to set forth their agreement as to the Lease Commencement Date, and as to the Expiration Date of the Term of the Lease. Suites are those listed on Exhibit "C" attached.

NOW, THEREFORE, in consideration of the premises as described in the Lease and the covenants set forth therein, Landlord and Tenant agree as follows:

1. The Lease Commencement Date is December 03, 2018.
2. The Expiration Date of this Lease shall be June 30, 2024.

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

Signed and acknowledge in presence of:

LANDLORD:

University of Central Florida Foundation Real Estate Foundation, L.L.C.

By: _____

Printed Name: _____

Date: _____

TENANT

University of Central Florida Board of Trustees

By: _____

Print Name: _____

Date: _____

**Digital Learning Center
EXHIBIT E**

Janitorial Specifications

Frequency

Lobby

- 260 spot clean all walls, lights switches, & doors
- 260 dust wipe all decorations & fixtures
- 260 wipe mop all hard surface floors w/treated dust mop
- 260 damp mop all stains & spills
- 260 vacuum walk-off mats
- 260 clean both sides of all glass doors
- 52 machine buff hard surface floor
- 52 dust all high-reach areas
- 12 wash or vacuum all sides of walls
- 12 clean all partitions glass
- 12 clean all ceiling vents
- 1 strip & refinish hard surface floors—VCT

Restrooms To include toilet paper, paper towels, liners and soap

- 260 remove all collected trash to designated area
- 260 clean & sanitize all restroom fixtures, clean mirrors
- 260 wipe all counters, refill dispensers, empty trash & damp mop floors with disinfectant
- 52 wash all restroom partitions & diffusers
- 12 dust & clean all return air vents
- 12 machine scrub floor

Common Areas

- 260 spot clean all walls, light switches, & doors
- 260 using approved spotter, spot clean carpeted areas
- 260 clean both sides of all glass doors
- 260 vacuum all carpets
- 260 clean & polish all drinking fountains
- 52 damp mop entire area using a high-speed machine
- 52 dust all low areas
- 52 dust all high-reach areas
- 52 using a high-speed floor machine, buff all hard surface floors /VCT
- 52 vacuum corners, edges, chairs, & traffic areas
- 12 clean all ceiling vents
- 2 shampoo carpet -
- 1 strip hard surface floors/VCT and re-coat with 3 coats of floor polish

Tenant-Carpeted Areas

- 260 empty all trash receptacles & replace liners
- 260 remove all collected trash to designated area
- 260 dust all horizontal surfaces
- 260 vacuum all carpets
- 260 using approved spotter, spot clean carpeted area
- 52 dust all low areas
- 52 spot clean all partition glass
- 52 dust wipe all phones, including ear & mouth piece
- 12 dust blinds
- 12 dust all high-reach areas
- 6 vacuum all fabric office furniture including chairs

Tenant -- Hard surface

- 260 Empty all trash receptacles & replace liners
- 260 remove all collected trash to designated area
- 260 dust all horizontal surfaces
- 260 spot clean all walls, light switches & doors
- 260 dust mop all hard surface floors w/ treated dust mop
- 260 clean sinks & counters
- 260 spot clean all stains & spills
- 52 dust all low areas
- 52 dust wipe all phones, including ear & mouth piece
- 52 using a high-speed floor machine, spray buff all hard surfaces/VCT
- 24 clean all partition glass
- 12 dust all high-reach areas
- 12 vacuum corners, edges & chairs, & traffic areas
- 4 clean all ceiling vents
- 1 strip hard surface floors & re-coat w/ 3 coats of floor polish/VCT

Tenant – Corridor

- 260 spot clean all walls, light switches, & doors
- 260 using approved spotter, spot clean carpeted areas
- 260 vacuum all carpets
- 52 spot clean all partition glass
- 52 dust all low areas
- 52 vacuum corners, edges, & chairs, then traffic areas
- 4 clean all ceiling vents

Stairs

- 260 Police stairs for litter
- 52 dust mop & clean

Elevators

- 260 completely clean & vacuum carpeted elevators
- 260 vacuum & or wipe walls & ceilings
- 52 clean & polish all metal work

	Frequency code:
260	daily or nightly
104	two times a week
52	one time a week
24	two times a month
12	one time a month
6	once every 2 months
4	once every 3 months
2	once every 6 months
1	once a year

Attachment B

University of Central Florida

October 2018 – L3



University of Central Florida

October 2018 – L3



ITEM: FFC-5

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: Sanford Burnham Prebys Building Name Designation

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

To recommend the Board of Trustees approve the name “UCF Lake Nona Cancer Center” for the former Sanford Burnham Prebys building.

BACKGROUND INFORMATION

The UCF Real Estate Foundation assumed ownership of the former Sanford Burnham Prebys building and premises at Lake Nona on August 27, 2018 and immediately leased the entire building and premises to Sanford Burnham Prebys. The UCF College of Medicine will take full possession on December 1, 2018 and will oversee development of a comprehensive cancer research and treatment center. Board of Trustees approval is requested to brand the building as UCF and name it the UCF Lake Nona Cancer Center.

Supporting documentation: None

Prepared by: Deborah German, Vice President for Health Affairs and Dean of the
UCF College of Medicine

Submitted by: Deborah German, Vice President for Health Affairs and Dean of the
UCF College of Medicine

ITEM: FFC-6

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: John C. Hitt Library Renovation and Expansion

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve the use of \$85.8 million in Capital Improvement Trust Funds (CITF), \$1.6 million in Plant Operations and Maintenance (PO&M) funds, \$0.3 million in Auxiliary funds, and \$0.3 million in Critical Deferred Maintenance funds for expansion and renovation of the John C. Hitt library.

BACKGROUND INFORMATION

Out of an abundance of transparency, the university is requesting individual approval for capital projects exceeding \$2 million that began prior to October 26, 2017. In addition, written certification of the source and appropriateness of funds is being provided for each project.

Prior to October 26, 2017, capital improvement projects were submitted to the Board of Trustees annually through the Five-year Capital Improvement Plan and the Capital Outlay Budget. The then-Vice Provost for Information Technologies & Resources presented a report on the Library expansion to the board at the March 31, 2005, meeting.

According to the Delegation of Authority to the President, which was passed by the board on October 26, 2017, use of university funds for capital improvement projects exceeding two million dollars in construction costs and all changes to such projects that increase project costs by more than 10 percent of the original estimate require specific approval of the board.

Phase I (\$21.7 million), which has been completed, is the expansion toward the Student Union with construction of a three-story automated-retrieval-center (ARC), renovations to restrooms, elevators and fire sprinklers on the top four floors, a redesign of the fifth-floor quiet reading room, and an increase in the number of power outlets for students to recharge phones and computers.

Phase IA (\$21.2 million), currently under construction, will add a connector building between the existing library and ARC. This phase is planned for completion in December 2019. Phase IB (\$7.7 million per floor) will include a comprehensive renovation of one floor per year of the current library. Design will begin in Spring 2019, with construction

starting in 2019-20 as the CITF funds are received.

Supporting documentation: Attachment A: Certification of Funds
Attachment B: Project Photographs

Prepared by: Kathy Mitchell, Interim Chief Financial Officer

Submitted by: Kathy Mitchell, Interim Chief Financial Officer

Attachment B



Capital Projects Funding Certification Form

This form is required as a condition for approval by the Finance and Facilities Committee and the Board of Trustees.

Project name/description: John C. Hitt Library Expansion/*Renovation*

Funding source(s): \$85.8 million in Capital Improvements Trust funds
\$1.6 million in Plant Operations and Maintenance funds
\$0.3 million in Auxiliary funds
\$0.3 million in Critical Deferred Maintenance funds

This is to certify that the above capital project which exceeds \$2 million has been reviewed and approved and the type of funding for the project is authorized by state law and Board of Governors Regulations.

Dale Whitaker

President

10/31/18

Date

Misty Shepherd

Vice President

10/31/18

Date

Kathryn Mitchell

Chief Financial Officer

10/31/18

Date

K. Cole

General Counsel

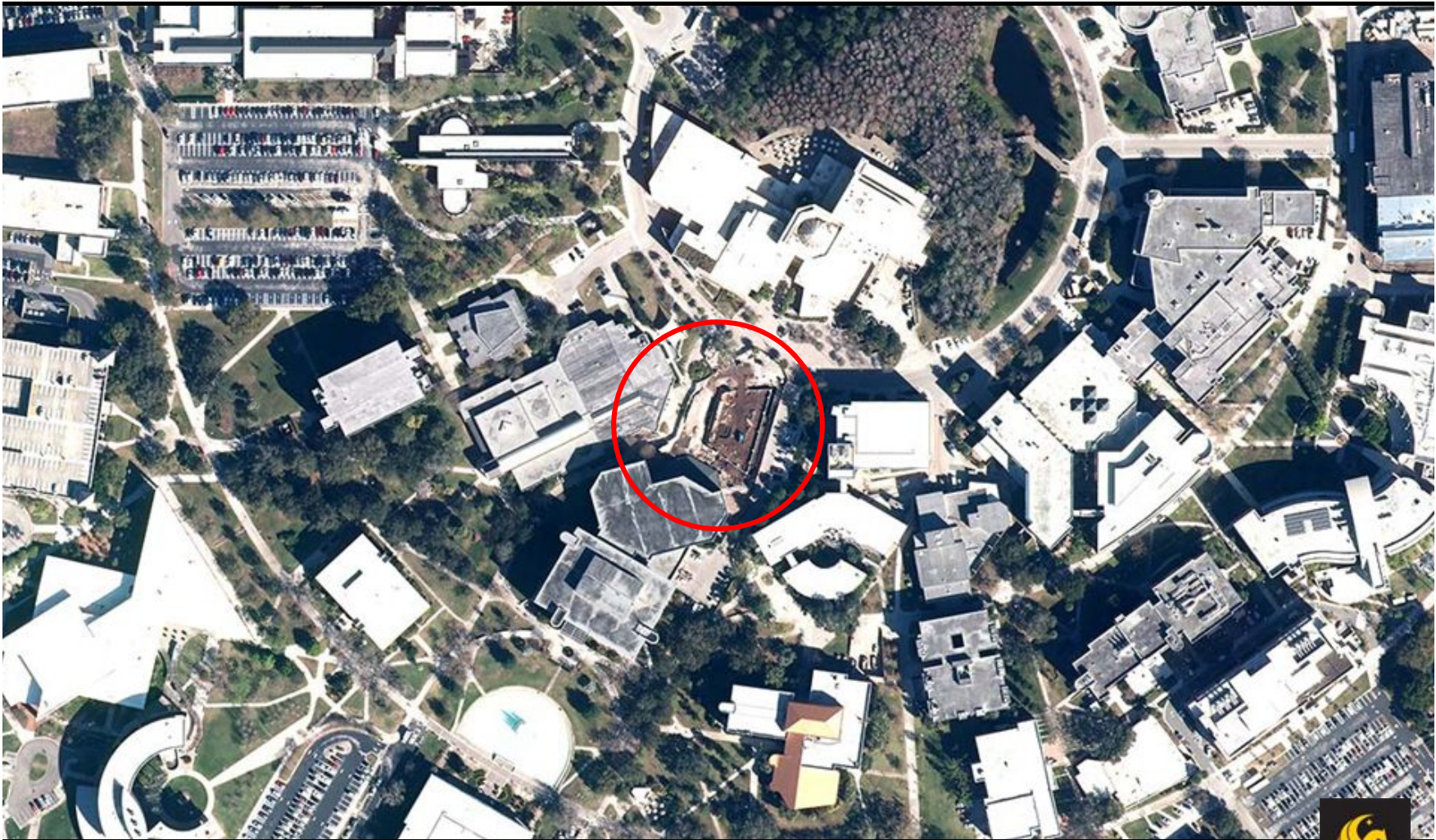
10/31/18

Date

Attachment B

University of Central Florida

October 2018 – John C. Hitt Library Expansion



University of Central Florida

October 2018 – John C. Hitt Library Expansion – Phase 1



Phase 1 – Automatic Retrieval Center

University of Central Florida

October 2018 – John C. Hitt Library Expansion – Phase 1



Phase 1 – Automatic Retrieval Center

University of Central Florida

October 2018 – John C. Hitt Library Expansion – Phase 1A



Phase 1A – Connector



University of Central Florida

October 2018 – John C. Hitt Library Expansion – Phase 1A



Phase 1A – Construction October 2018



ITEM: FEC-7

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: Student Union Renovation and Expansion

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve the funding sources for Phases II, III, and IV of the renovation and expansion of the Student Union at total project cost of \$17.98 million. Funding sources include \$14.35 million from Aramark (less \$3.9 million for equipment Aramark will purchase directly at a lower cost than is available to UCF), \$3 million in Auxiliary funds from Business Services, and \$4.5 million from Student Government Association and Student Development and Enrollment Services.

BACKGROUND INFORMATION

Out of an abundance of transparency, the university is requesting individual approval for capital projects exceeding \$2 million that began prior to October 26, 2017. In addition, written certification of the source and appropriateness of funds is being provided for each project.

Prior to October 26, 2017, capital improvement projects were submitted to the Board of Trustees annually through the Five-year Capital Improvement Plan and the Capital Outlay Budget.

According to the Delegation of Authority to the President, which was passed by the board on October 26, 2017, use of university funds for capital improvement projects exceeding two million dollars in construction costs and all changes to such projects that increase project costs by more than 10 percent of the original estimate require specific approval of the board.

The Board of Trustees approved a 10-year negotiated agreement with Aramark, the university's food service provider, on November 19, 2015. Phase II of the project, the renovation of the existing food court areas, is in progress. Phase III, the expansion of floors 1 and 2 in the food court, will begin in January 2019. Phase IV, the expansion of the third floor for the Student Government Association meeting chambers and suite, will follow the completion of Phase III.

Supporting documentation: Attachment A: Certification of Funds
Attachment B: Project Photographs

Prepared by: Kathy Mitchell, Interim Chief Financial Officer

Submitted by: Kathy Mitchell, Interim Chief Financial Officer

Attachment A



Capital Projects Funding Certification Form

This form is required as a condition for approval by the Finance and Facilities Committee and the Board of Trustees.

Project name/description: Student Union Renovation and Expansion

Funding source(s): \$14.35 million from Aramark

\$4.5 million in Activity and Service Fees from Student Government Association

\$3 million in Auxiliary funds from Business Services

This is to certify that the above capital project which exceeds \$2 million has been reviewed and approved and the type of funding for the project is authorized by state law and Board of Governors Regulations.

Dale Whitaker
President

10/31/18
Date

Misty Shepherd
Vice President

10/31/18
Date

Kathryn Upchell
Chief Financial Officer

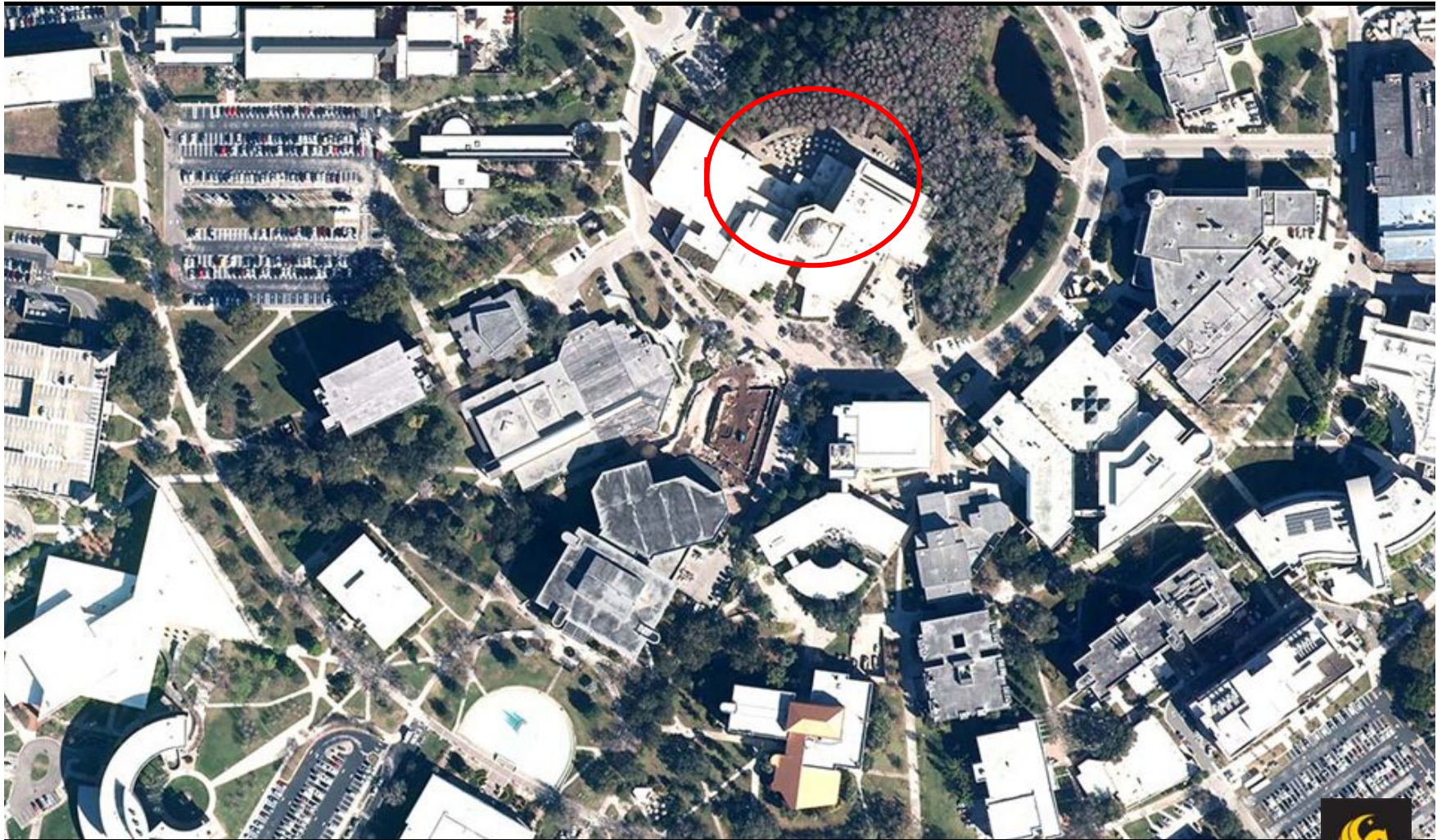
10/31/18
Date

W. Scott Cole
General Counsel

10/31/18
Date

University of Central Florida

October 2018 – Student Union Expansion



University of Central Florida

October 2018 – Student Union Expansion



Phase 1 & 2 – Renovation of Food Court



University of Central Florida

October 2018 – Student Union Expansion



Phase 3 & 4 – Expansion of Food Court Dining and Student Government Floor (rendering)



ITEM: FFC-8

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: CREOL Expansion

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve the funding sources for the renovation and expansion of the Center for Research and Education in Optics and Lasers (CREOL) building. Funding sources include \$5.8 million in auxiliary funds, \$1 million in research overhead funds, \$.2 million in Utilities Infrastructure and Minor Projects (UIMP) funds, and \$17,000 in E&G funds, for a total project cost of \$7 million.

BACKGROUND INFORMATION

Out of an abundance of transparency, the university is requesting individual approval for capital projects exceeding \$2 million that began prior to October 26, 2017. In addition, written certification of the source and appropriateness of funds is being provided for each project.

Prior to October 26, 2017, capital improvement projects were submitted to the Board of Trustees annually through the Five-year Capital Improvement Plan and the Capital Outlay Budget.

According to the Delegation of Authority to the President, which was passed by the board on October 26, 2017, use of university funds for capital improvement projects exceeding two million dollars in construction costs and all changes to such projects that increase project costs by more than 10 percent of the original estimate require specific approval of the board.

CREOL is undergoing a three-story expansion on the east side of the existing building. The expansion involves building a first-floor auditorium and mechanical space; the upper two floors will have laboratories and offices for laser research and education.

Supporting documentation: Attachment A: Certification of Funds
Attachment B: Project Photographs

Prepared by: Kathy Mitchell, Interim Chief Financial Officer

Submitted by: Kathy Mitchell, Interim Chief Financial Officer

Attachment A



Capital Projects Funding Certification Form

This form is required as a condition for approval by the Finance and Facilities Committee and the Board of Trustees.

Project name/description: CREOL Expansion

Funding source(s): \$5.8 million in Auxiliary funds in central reserve
\$1 million in Research Overhead funds
\$0.2 million in Utilities, Infrastructure, and Minor Project Funds
\$17,000 in E&G funds

This is to certify that the above capital project which exceeds \$2 million has been reviewed and approved and the type of funding for the project is authorized by state law and Board of Governors Regulations.

Dale Whitaker
President

10/31/18
Date

Misty Shepherd
Vice President

10/31/18
Date

Kathryn Mitchell
Chief Financial Officer

10/31/18
Date

M. Ann Cole
General Counsel

10/31/18
Date

Attachment B

University of Central Florida

October 2018 – CREOL Building Expansion



University of Central Florida

October 2018 – CREOL Building Expansion



ITEM: FFC-9

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: Roth Athletics Center Shell Building Construction Costs (Phase I)

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Approve construction costs for the Roth Athletics Center shell building (phase I) to exceed the \$2 million minor projects threshold.

BACKGROUND INFORMATION

The Roth Athletics Center is being built in two phases to expedite its completion. Funds were not immediately available for the entire project, so the pre-engineered metal building was designed and purchased using available funds held in the UCF Foundation. During design of the interior build-out, it was determined that several modifications would be necessary to provide the most efficient layout of the two-story building. For example, some of the vertical support columns would need to be relocated to avoid being in the middle of rooms. Also, it was determined the exterior façade should be upgraded. Other changes were made, including the addition of exterior glass, additional required insulation, installation of a roof hatch, and increased foundations and steel to support load requirements of the second-floor.

Initially, the construction value of the shell building was \$1,956,351.46. The change order to modify the building (described above) is \$262,868.00. This brings the total projected construction cost of the building to \$2,219,219.46.

Phase I of this project is underway, and additional change orders are not anticipated.

Supporting documentation: Attachment A: Summary of Change Order #1
Attachment B: Certification of Funds – Roth Athletics
Center (Phase I)

Prepared by: David Hansen, Executive Associate Athletics Director and Chief
Operating Officer

Submitted by: Dr. Daniel J. White, Vice President and Director of Athletics

Attachment A

Roth Athletics Center

Phase I (Shell Building)

Description of Change Order #1:

1. \$156,280 Provide all engineering, materials, equipment, and labor required to modify shell building, windows, foundations, plumbing, roof hatch, fall protection tie-offs, and concrete/masonry
2. \$23,300 Provide fire rated (2hr) glass at eight openings (fire rated windows can be provided at same price)
3. (\$4,650) Credit for overhead door
4. \$5,455 Increased live loads to second floor mechanical and exercise room
5. \$14,795 Add for R-13 (4") white WMP-VRR metal building wall insulation
6. \$1,952 Bond Cost

Contractor's fees related to extension of time of shell construction:

\$22,800	Superintendent
\$16,200	Project Manager
\$9,300	Project Engineer
\$8,758	Contractors Fee
\$3,250	Vehicles
\$2,227	Performance Bond
\$1,451	Contractors General Liability Insurance
\$400	Dumpsters
\$300	Cell Phones
\$300	Fuel, Oil, Grease
\$250	Temp. Toilets
\$200	Builder's Risk Insurance
\$150	Job Office Supplies
\$150	Small Tools

\$262,868	TOTAL amount of change order #1
\$2,219,219	TOTAL construction cost



P.O. Box 471028
Lake Monroe, FL 32747-1028
Phone: (407) 321-8410 Fax: (407) 829-4453

PROPOSED CHANGE ORDER No. 00001

Dated: 10/12/18

To

Carl Kelly, Jr.

UCF

Office of Facilities Planning

P.O. Box 163020

Orlando, FL 32816-3020

Job #:17-169

Project:UCF WayneDenschBldg77Conn-AboveSlab

Title

Building Shell Modifications

Description of Proposal

<u>Item</u>	<u>Description</u>	<u>Amount</u>	<u>Tax Rate</u>	<u>Tax Amount</u>	<u>Net Amount</u>
00001	Furnish and Install all engineering, materials, equipment and labor to modify the shell building, windows, foundations, plumbing, roof hatch, fall protection tie offs and concrete / masonry per revised drawings (4/26/18).	\$156,280.00			\$156,280.00
00002	Furnish and install Fire Rated (2hr) Glass Block at 8 openings per Rev2 5/24/18. (Fire Rated windows can be provided at the same price).	\$23,300.00			\$23,300.00
00003	Credit for Overhead Door removed per the 4/26/18 drawing revisions.	(\$4,650.00)			(\$4,650.00)
00004	Increased live loads to second floor mechanical and cardio rooms in accordance with submittal no. 133419-001R2 response comments dated 9/14/18.	\$5,455.00			\$5,455.00
00005	Add for R-13 (4") White WMP-VRR Metal Building Insulation.	\$14,795.00			\$14,795.00
00006	Shoemaker Bond Cost (1%)	\$1,952.00			\$1,952.00
00007	Request for Project Extension of Time - 184 days	\$53,100.00			\$53,100.00

Total: \$250,232.00

Markup

Markup Amount

Builders Risk Insur. (.08%)

\$200.00

General Liability Insur. (0.58%)

\$1,451.00

P&P Bond Premium (0.89%)

\$2,227.00

Contractors Fee (3.5%)

\$8,758.00

Total Markup: \$12,636.00

Total Cost: \$262,868.00

Accepted by:

Wharton-Smith, Inc.

Signature: _____

Name: _____

Title: _____

Date: _____

Accepted by:

UCF

Signature: _____

Name: _____

Title: _____

Date: _____

Finance and Facilities Committee - New Business

UCF Wayne Densch
PCO Proposal

Wharton-Smith, Inc.
750 Monroe Road
Sanford, FL 32771

COR:	1	Change Order #01				Date:	10/12/18
Owner Reference:							
Billing Line	PCO No.	Responsibility	Description	Quantity	Units	Unit Price	COR Total
Cost Of Work							
		Shoemaker Construction	Phase 2 Impacts on Phase 1	1	LS	197,132.00	197,132.00
		Wharton-Smith	Contractors Fee	1	LS	8,758.00	8,758.00
		Wharton-Smith	Superintendent	1	LS	22,800.00	22,800.00
		Wharton-Smith	Project Manager	1	LS	16,200.00	16,200.00
		Wharton-Smith	Project Engineer	1	LS	9,300.00	9,300.00
		Wharton-Smith	Cell Phones	1	LS	300.00	300.00
		Wharton-Smith	Job Office Supplies	1	LS	150.00	150.00
		Wharton-Smith	Temp. Toilets	1	LS	250.00	250.00
		Wharton-Smith	Small Tools	1	LS	150.00	150.00
		Wharton-Smith	Vehicles	1	LS	3,250.00	3,250.00
		Wharton-Smith	Fuel, Oil, Grease	1	LS	300.00	300.00
		Wharton-Smith	Dumpsters	1	LS	400.00	400.00
		Wharton-Smith	Contractors General Liability Insurance	1	%	1,451.00	1,451.00
		Wharton-Smith	Performance Bond	1	%	2,227.00	2,227.00
		Wharton-Smith	Builder's Risk Insurance	0	%	200.00	200.00
				1	LS	-	-
				1	LS	-	-
Sub Total Cost Of Work:							262,868.00
PCO Grand Total:							262,868.00

**Revised Quote For:**

Wharton-Smith Construction
750 Monroe Road
Sanford, FL 32771

Attention: Vince Babb / Sean Grogan
407-314-9563
vbabb@whartonsmith.com

Project: Wayne Densch WD77 Expansion

September 25, 2018

- Plans by CDE & DJ Design
- Delta 1 Phase 2 Impact on Phase 1
- This quote supersedes "Revised Exterior Elevations Quote dated March 14, 2018 and previous Revised Quote dated June 20, 2018

Our proposed scope of work includes labor and materials (unless otherwise noted) for the following items:

Location	Item Description	Price
Above Slab	Metal Building Revisions and Labor	\$45,490.00
Above Slab	Additional Storefront: Excludes The (8) Fire Rated Windows	41,750.00
Above Slab	Additional Masonry Headers & Tie Beams +6 days	22,830.00
Above Slab	Additional Final Cleaning +2 days	3,700.00
Above Slab	Gutter and Downspouts on Fieldhouse Next Door	1,100.00
Above Slab	Fall Protection Anchors +5 days	14,320.00
Above Slab	Roof Hatch, Curb and Railing	7,120.00
Above Slab	Additional Structural Steel in Addition to PEMB Steel	2,400.00
Above Slab	Credit Overhead Door	-4,650.00
Above Slab	(8) Fire Rated Windows in the South Wall +3 days	23,300.00
Above Slab	Stucco North Side Block Wall +3 days	10,500.00
Above Slab	The 2 nd floor will be designed with the following loading: Dead loads is 80 PSF, Collateral load is 5 PSF, Mezzanine live load is 50 PSF. This is for the shell building.	Included
Above Slab	Additional loads to the mechanical room and cardio room areas affecting the shell building. Mechanical room live load is 125 PSF and cardio room live load is 100 PSF	5,455.00
Above Slab	Standard R-13 (4") White WMP-VRR Plus Metal Building Wall Insulation, North & West Elevations, 2 nd Floor at The Metal Wall Panel Locations. Insulation will be sandwiched between the purlin and the metal panel. +7 days	14,795.00
Below Slab	Additional Plumbing +10 days	9,710.00
Below Slab	Additional Concrete, Slabs, and Rebar +3 days	7,860.00
Below Slab	Additional Termite Warranty (Only Possible If Entire Slab is Poured)	Pending
Below Slab	Foundation Plan Revision Delta 3 dated 9-19-2018	Pending
		\$195,180.00
	Total:	\$205,680.00

Excludes: Bond (1%), Exterior Window Shades/Eyebrows, Termite Warranty and HC Lift

1% Bond = \$1,952

Total Incl. Bond= \$197,132.00



The above prices, scope of work, exclusions and conditions are satisfactory & hereby accepted by both parties:

Please sign and return (1) copy. Keep the other copy for your records.


Alan Dean Shoemaker, President
Shoemaker Construction Company, Inc.

Client's Signature

Date

This proposal may be withdrawn by Shoemaker Construction if not accepted within **30 days** of the date at the top of the paper.

Attachment B



Capital Projects Funding Certification Form

This form is required as a condition for approval by the Finance and Facilities Committee and the Board of Trustees.


Project name/description: Roth Athletics Center Shell Building Construction (Phase I)

Funding source(s): \$2.2M charitable contributions held in the UCF Foundation

This is to certify that the above capital project which exceeds \$2 million has been reviewed and approved and the type of funding for the project is authorized by state law and Board of Governors Regulations.


President


11.7.18
Date


Vice President

11/7/18
Date


Chief Financial Officer

11/7/18
Date


General Counsel

11/7/18
Date

ITEM: FFC-10

**University of Central Florida
Board of Trustees
Finance and Facilities Committee**

SUBJECT: L3 Building Purchase Loan

DATE: November 15, 2018

PROPOSED COMMITTEE ACTION

Recommend adoption of a resolution approving the issuance of fixed rate, tax-exempt debt by the UCF Foundation, Inc. in the amount of \$6 million for the purpose of financing the purchase of a building located at 12351 Research Parkway, Orlando, Florida.

BACKGROUND INFORMATION

At the August 21, 2018, Board of Trustees meeting action was taken to approve the purchase of a building located within the Research Park, commonly referred to as the L3 building. The property consists of approximately five acres and a 46,185 square feet building. The UCF Foundation intends to lease a majority of the building to the university for the purposes of providing space to UCF Division of Digital Learning. As part of the discussion the board was informed that the foundation would be seeking a bank loan to provide financing of the purchase.

At this time in accordance with the Board of Trustees' Delegation of Authority, the foundation is seeking approval to enter into a financing arrangement with Branch Bank and Trust Company. The tax-exempt promissory note will be for a 20-year term and carry a fixed rate of 3.92 percent and be secured solely by a 1st lien position on the property. Annual principal payments will be due each October 1, and semi-annual interest payments will be due each April and October with the source of repayment provided through annual lease revenue. The foundation anticipates closing on the purchase and financing on or around December 3, 2018.

Supporting documentation: Attachment A: Term Sheet

Prepared by: Jennifer Cerasa, Associate General Counsel

Submitted by: Misty Shepherd, Interim Vice President for Administration and Finance

Attachment A



Branch Banking and Trust Company

November 9, 2018

Ms. Misty Shepherd
Chief Financial Officer
University of Central Florida Foundation, Inc.
12424 Research Parkway, Suite 140
Orlando, Florida 32826

Re: Commitment Letter relating to Financing

Dear Ms. Shepherd:

At your request, Branch Banking and Trust Company (the "Bank") is pleased to provide its commitment to University of Central Florida Foundation, Inc. (the "Borrower") for a tax-exempt loan (the "Credit Facility") as more fully described in the Summary of Terms and Conditions attached hereto as Exhibit A (the "Term Sheet").

The commitment of the Bank hereunder is based upon the financial and other information regarding the Borrower previously provided to us. Accordingly, the commitment hereunder is subject to the satisfaction at the closing date of each of the following conditions precedent in a manner acceptable to us in our sole discretion:

- (i) each of the terms and conditions set forth herein and in the Term Sheet;
- (ii) compliance by the Borrower with each of the terms herein and in the Term Sheet;
- (iii) no change, occurrence or development has occurred between the date hereof and the closing date that, in the Bank's reasonable opinion, has or could result in a significant deterioration of the credit quality of the Borrower;
- (iv) between the date hereof and the closing date, the Bank shall not discover any information concerning the Borrower provided to the Bank in making its decision to issue this Commitment Letter to be false or misleading in any material respect or to differ in any material respect from the information and other matters previously disclosed to the Bank; and
- (v) the negotiation, execution and delivery of definitive documentation for the Credit Facility consistent with the Term Sheet and otherwise satisfactory to the Bank.

This Commitment Letter and the Term Sheet do not summarize all of the terms, conditions, covenants, representations, warranties and other provisions which will be contained in the definitive credit documentation for the Credit Facility and the transactions contemplated thereby. The Bank shall have the right to require that such credit documentation include, in addition to the provisions outlined herein and in the Term Sheet, provisions considered appropriate by the Bank for this type of financing transaction.

The commitment of the Bank to provide the Credit Facility shall terminate on November 21, 2018, unless this Commitment Letter is accepted by the Borrower in writing and delivered to the Bank prior to such

University of Central Florida Foundation, Inc.
November 9, 2018
Page 2

time. Following acceptance by you, this Commitment Letter shall expire on December 15, 2018 if the Credit Facility is not closed by such time.

This Commitment Letter may be executed in any number of counterparts, each of which shall be an original, and all of which, when taken together, shall constitute one agreement. Delivery of an executed signature page of this Commitment Letter by facsimile transmission shall be effective as delivery of a manually executed counterpart hereof; provided that such facsimile transmission shall be promptly followed by the original thereof. This Commitment Letter may not be amended or any provision hereof waived or modified except by an instrument in writing signed by the Bank and the Borrower. This Commitment Letter may not be assigned by the Borrower without the prior written consent of the Bank (and any purported assignment without such consent shall be null and void).

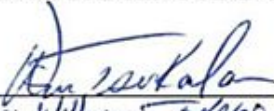
[Signature Page Follows]

University of Central Florida Foundation, Inc.
November 9, 2018
Page 3

Please indicate your acceptance of this Commitment Letter (and the Term Sheet) by signing in the space provided and returning the original copy to us. The Bank is pleased to have the opportunity to assist you in connection with this proposed financing transaction.

Very truly yours,

BRANCH BANKING AND TRUST COMPANY

By: 
Name: William A. Adams
Title: SE Vice President

Accepted and agreed to this _____
day of November, 2018.

UNIVERSITY OF CENTRAL FLORIDA FOUNDATION, INC.

By: _____
Name: _____
Title: _____

EXHIBIT ASUMMARY OF TERMS AND CONDITIONS

November 9, 2018

Branch Banking and Trust Company (the "Bank") is pleased to submit the following summary of terms and conditions for the financing described below to be provided in the form of a tax-exempt loan. This Summary of Terms and Conditions is intended only as an outline of certain material terms of the requested financing and does not purport to summarize all of the conditions, covenants, representations, warranties and other provisions that would be contained in any definitive documentation for the requested financing. Neither BB&T nor any affiliate shall have any obligation to advance funds until final execution of all required credit documents evidencing the proposed transaction.

<u>BORROWER:</u>	University of Central Florida Foundation Inc.
<u>PURCHASER/LENDER:</u>	The Bank or a designated affiliate of the Bank (the "Purchaser").
<u>LOAN AND PURPOSE:</u>	A tax-exempt loan made to Borrower under a Loan Agreement and Tax-Exempt Promissory Note to fund acquisition by Borrower of real property located at 12351 Research Parkway, Orlando, Florida and related improvements (the "Property"). The Property will be leased by the Borrower to the University of Central Florida ("UCF").
<u>AMOUNT:</u>	Up to \$6,000,000.00.
<u>INTEREST RATE:</u>	Fixed rate equivalent of a variable rate priced at 79% of 30 Day LIBOR plus 79% of 95 bps. All in rate as of October 29 would be 3.92%. The interest rate for the tax-exempt loan will be computed on the basis of a 360-day year for the actual number of days elapsed. Additionally, the interest rate will be subject to increase in the event of a Determination of Taxability or adjustment in the event of changes in the maximum federal statutory corporate marginal tax rates.
<u>FUNDING:</u>	The tax-exempt loan will be fully funded at closing.
<u>PAYMENT TERMS:</u>	Interest will be payable semi-annually on each April 1 and October 1 commencing April 1, 2019. Principal will be payable on each October 1 and April commencing October 1, 2019 with a final maturity date of October 1, 2038. The Purchaser shall have the option to require payment in full of the tax-exempt loan upon 120 days prior written notice at any time after the date eleven (11) years from closing (the "Prepayment Election"). At the request of the Borrower made after the Purchaser has given written notice of the Prepayment Election, the Purchaser will provide the Borrower with an indication of an interest rate which the Purchaser will lock for up to 30 days and which the Purchaser would accept to cancel the Prepayment Election. If within the 30 day lock period, the Borrower and the Purchaser amend the tax-

exempt loan to make applicable the indicative rate provided by the Purchaser under documents to be mutually agreed to by the Purchaser and the Borrower and Purchaser receives a bond counsel opinion satisfactory to it, then the Purchaser will cancel the Prepayment Election.

FEES:

Bank Origination Fees: \$0.00

All other expenses associated with the proposed facility are to be paid by the Borrower. These expenses shall include, but are not limited to, the Bank's attorneys' fees to be a not to exceed amount to be determined following and based on discussions to be held between the Purchaser's counsel, bond counsel and Borrower counsel as to the structure of the tax-exempt loan and the responsibilities of the Purchaser's counsel, bond counsel and Borrower's counsel in closing and documenting the proposed facility.

COLLATERAL:

The tax exempt loan will be secured by a 1st lien position on the Property. The tax exempt loan will finance up to 100% of the proposed acquisition cost.

GUARANTORS:

None.

COVENANTS:

Minimum Debt Service Coverage Ratio (DSCR) of > 1.10x. DSCR measured annually and defined as total lease payments plus any interest earned on said lease payments divided by annual debt service.

OTHER ITEMS:

(1) Financial Reporting: To match existing reporting requirements for the Borrower relative to other existing credit exposure to Bank including but not limited to consolidated annual audited financial statements and related officer certifications

(2) Counsel Opinion: The Bank will require receipt of legal opinions from an attorney of the Borrower acceptable to the Bank and its counsel, covering matters customary to a transaction such as this, including an opinion of bond counsel as to the tax-exempt status of interest received on the tax-exempt loan, and in all respects reasonably acceptable to the Bank.

(3) Lender's Counsel to prepare / review documentation.

(4) No Debt Service Reserve requirement: The facility will not have a debt service reserve account.

(5) Continuation of adequate levels of non-credit relationship held at BB&T for the duration of this facility.

(6) The Bank shall have received and approved prior to closing the purchase contract for the Property and the proposed leases of the

Property.

(7) Documentation: The financing documentation shall include a continuing covenants agreement which will contain standard and customary representations, warranties, affirmative covenants, negative covenants and events of default and remedies customary for transactions of this nature.

(8) Other Items: The Purchaser shall have received such other documents, instruments, approvals or opinions as the Purchaser may reasonably request.

**MUNICIPAL ADVISOR
DISCLOSURE:**

The terms of the financing described herein have been prepared by the Bank solely for information purposes. The Bank is not recommending an action or providing any advice to the Borrower and are not acting as a municipal advisor or financial advisor. The Bank is not serving in a fiduciary capacity pursuant to Section 15B of the Securities Exchange Act of 1934 with respect to the information and material contained in this communication. The Bank is acting in its own interest. The Borrower is expected to seek the advice of the IRMA or any other professional advisors which it deems appropriate for the Bond described herein, especially with respect to any legal, regulatory, tax or accounting treatment.

CONFIDENTIALITY:

The terms of this Summary of Terms are confidential and, except for disclosure on a confidential basis to Borrower's financial advisors, accountants, attorneys and other professional advisors retained by Borrower for use in connection with the proposed financing or as may be required by law and subject to such disclosure as may be required by the Borrower under applicable law, may not be disclosed in whole or in part by Borrower or any such financial advisors, accountants, attorneys or other professional advisors to any other person or entity without Bank's prior written consent. If this Term Sheet is being delivered to a financial advisor or person other than the Borrower, by receipt and use by such advisor or other person in connection with the proposed transaction, such advisor or other person agrees to be bound by the confidentiality terms set forth above. The Bank understands the terms of this Summary of Terms may be disclosed to the public in connection with public meetings at which it is discussed and consents to such disclosure.

CLOSING DATE:

The tax-exempt loan must close by December 15, 2018 or the commitment of the Bank shall expire.

In any transaction, the borrower will be required to certify that no part of any real property acquired with the proceeds of or serving as collateral for the credit offered herein has been acquired through the exercise of eminent domain by the governmental authority and will be used by the Borrower for a private purpose.