



Interoffice Memorandum

AGENDA ITEM

July 24, 2018

TO: Mayor Teresa Jacobs
— AND —
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director
Community, Environmental and Development
Services Department

CONTACT PERSON: David D. Jones, P.E., CEP, Manager
Environmental Protection Department
(407) 836-1405

SUBJECT: August 21, 2018 – Consent Item
Mid-Florida Materials (Landfill) – Amended and Restated
Agreement to Offer Donation of Real Property between Orange
County, Florida and Hubbard Construction Company

The Environmental Protection Division is requesting approval of the Amended and Restated Agreement to offer donation of Real Property between Orange County, Florida and Hubbard Construction Company. This Agreement does not obligate the County to accept the property at the time of the offer.

The property is located on the western side of Golden Gem Road, approximately ½ mile north of Ponkan Road, at 3602 Golden Gem Road, Apopka in unincorporated Orange County. The Parcel ID numbers for the site are 23-20-27-0000-00-035 and 14-20-27-0000-00-019. The subject property is located in District 2.

On October 3, 2017, the Board approved renewal of the solid waste management facility permit (SW-232027-LFCD-85/1212) for Hubbard Construction Company dba Mid-Florida Materials to continue operation of a Class III landfill. Two of the Conditions of Approval were:

28. The permittee will enter into an agreement with the County to donate the southerly 120 acres of the site (the "Park Site") to Orange County after post-closure of the site is completed according to the post-closure plan. The terms of the agreement shall include the following:
 - a. Within an agreed-upon time period after post-closure of the landfill is completed, the permittee shall offer to donate the park site to the County, and the offer shall remain in effect for no fewer than 270 days.
 - b. Upon the County's receipt of the offer to donate, the County staff shall have 180 days to review the status of the park site and submit a report to the Board as to its suitability as park land.

- c. The County shall accept donation of the park site after post-closure and submission of the staff report unless the Board decides at that time not to accept the site.
 - d. The permittee shall indemnify the County, hold the County harmless from all liability arising out of any site conditions which occur or were caused prior to donation to the County and liability arising from any site conditions occurring after donation to the County, the cause of which conditions can be traced to the time the applicant was operating the landfill or to the post-closure time period, except for liability arising out of settling of the land.
 - e. Should the County accept donation of the park site, the County shall use the site for park or recreational purposes only, failing which, the park site shall be reconveyed to the permittee.
63. Within one year of permit issuance, the permittee shall modify the existing Agreement to offer donation of the south 120 acres to the County, to include the entire 220 acre site, under the same terms and conditions.

In summary, the landfill owner is required to amend the previous agreement to include offering the entire property, more precisely 221+ acres. The donation offer would occur after completion of a combined period that includes the filling operational phase plus a post-closure monitoring and maintenance phase. The filling operational phase is currently estimated at approximately 12 years, but varies based on market conditions. The post-closure phase for this type of land fill is typically 30 years. Therefore, the current estimate is that the offer would be made in about 42 years.

The County may choose to accept or reject the property for use as a park or for another recreational purpose as it sees fit. Also, as stipulated in the Agreement, whether the property is accepted or rejected by the County, the permittee would remain responsible for compliance with all permit conditions and federal, state, and local laws related to construction, operation, and closure of the landfill.

This Agreement was reviewed by the County Attorney's Office and approved as to form.

ACTION REQUESTED: Approval and execution of Amended and Restated Agreement to offer donation of Real Property between Orange County, Florida and Hubbard Construction Company. District 2

DJ/JVW: mg

Attachment

**AMENDED AND RESTATED AGREEMENT
TO OFFER DONATION OF REAL PROPERTY
BETWEEN ORANGE COUNTY, FLORIDA
AND HUBBARD CONSTRUCTION COMPANY**

THIS AMENDED AND RESTATED AGREEMENT TO OFFER DONATION OF REAL PROPERTY ("Agreement") is made and entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida ("County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393, and Hubbard Construction Company, a Florida corporation ("Owner"), whose address is 1936 Lee Road, Suite 300, Winter Park, Florida 32789, and amends and restates that certain Agreement to Offer Donation of Real Property Between Orange County, Florida And Hubbard Construction Company, executed on December 18, 2007.

RECITALS

1. Owner is fee simple title holder to certain real property (the "Landfill Property") located in Orange County, Florida, more particularly described in Exhibit "A", attached hereto and incorporated herein; and
2. Owner operates a Class III landfill (the "Landfill") on the 220-acre Landfill Property, subject to the terms of a solid waste management permit, Orange County Permit # SW-232027-LFCD-85/1212, issued by the County ("SWM Permit"); and
3. Owner operates the Landfill referenced in recital #2 above pursuant to Florida Department of Environmental Protection ("FDEP") Permit # SO48-0023167 (collectively the SWM Permit and the FDEP permit are referred to as "the Permits"); and
4. The Landfill accepts yard trash, construction and demolition debris, processed tires, carpet, cardboard, paper, glass, plastic, furniture other than appliances, or other materials approved by FDEP that are not expected to produce leachate that poses a threat to public health or the environment; and
5. On May 9, 2000, the Orange County Board of County Commissioners (the "Board") approved the issuance of SWM Permit # 85-F23-12500 (the "Prior SWM Permit") subject to a condition that the Owner would execute an agreement with the County to offer donation of the southerly 120 acres portion of the Landfill Property to the County after completion of post-closure activities of the Landfill for the use and benefit of the surrounding community contingent upon the County's acceptance of Owner's donation; and
6. On December 18, 2007, Owner and County executed that certain Agreement to Offer Donation of Real Property Between Orange County, Florida And Hubbard Construction Company (the "Prior Agreement"), specifying the terms related to the offer donation of the

southerly 120 acres of the Landfill site, which are more particularly described in Exhibit "B", attached hereto and incorporated herein; and

7. On September 23, 2014, the Board approved the renewal of the SWM Permit subject to a condition that the Owner would amend the Prior Agreement with the County to include the northerly 100-acre portion of the Landfill Property in the offer donation to the County after completion of post-closure activities of the Landfill; and

8. Owner and County desire to amend and restate the Prior Agreement to include entire 220-acre site, or the entire Landfill Property, in the offer donation and agree to be bound by the terms and conditions of this Agreement; and

9. Owner agrees that there is no expectation created by this Agreement or the above-referenced Permits that the County intends to or will accept the offer of donation of the Landfill Property; and

10. The County and Owner have negotiated terms and conditions of a future donation of the Landfill Property, and want to reduce these agreements to writing for the purposes specified herein as the Agreement.

ACCORDINGLY, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto so covenant, stipulate, and agree as follows, to wit:

1. **Recitals.** The recitals hereof are true and correct, and are incorporated herein by reference and made a part of this Agreement. This Agreement amends and restates in its entirety the Prior Agreement.

2. **Owner's Offer to Donate the Landfill Property.** Upon satisfactory closure and long-term care of the Landfill in accordance with the requirements of the Permits, and Article V, Chapter 32, Orange County Code, including, but not limited to the approved closure plan, Owner hereby offers and agrees to donate, transfer, and convey the Landfill Property, more particularly described in Exhibit "A", at no cost to the County, except that the County will be responsible for its cost related to its due diligence and appraisal of the Landfill Property, and in accordance with the terms and subject to the conditions set forth in this Agreement ("Offer to Donate"). In accordance with Owner's closure plan, Owner shall provide the County notice of completion of its closure and long-term care obligations under its closure plan, including certification, signed and sealed by a professional engineer licensed in the State of Florida, verifying that long-term care of the Landfill has been completed in accordance with the County-approved closure plan ("Certificate of Completion"). This Certificate of Completion shall be provided to the County within 30 days of completion of Owner's obligations for long-term care under the permitted closure plan.

3. **Response to Offer to Donate the Landfill Property.** The County shall have 365 days from the date the County receives the Certificate of Completion to provide Owner with a response to Owner's Offer to Donate. Failure to accept the Offer to Donate within the 365-day period shall be deemed a rejection of the offer and shall release Owner of its obligations set out herein, unless the obligations survive termination of this Agreement as provided in this Agreement.

4. **Inspection Period.** The County shall have a period of 365 days from the date the County receives the Certificate of Completion ("Inspection Period") within which to undertake such physical inspections and other investigations, if any, concerning the Landfill Property as may be necessary in order to evaluate the physical characteristics of the Landfill Property, including without limitation Environmental Investigations, as later defined herein. For such purpose, Owner grants to the County and its agents, consultants, contractors, and assigns full right of entry upon the Landfill Property and any part thereof during the Inspection Period for the purpose of undertaking such inspections and investigations. Within ten business days of the date of the Certificate of Completion, Owner shall deliver to the County copies of any and all surveys, examinations, plans, appraisals, permits, licenses, environmental studies or reports, and other studies or investigations regarding the Landfill Property which are in Owner's possession or control.

5. **Acceptance of Offer to Donate and Closing of Transaction.** In the event the County accepts the Offer to Donate, the County shall provide Owner with a certified copy of a resolution of the Board approving the County's acceptance of the Offer to Donate ("Notice of Acceptance") by the Owner no later than 30 days after the date of expiration of the Inspection Period. This transaction shall be closed and the deed and other closing papers delivered on or before 180 days from Owner's receipt of Notice of Acceptance ("Closing of Transaction Date"). Owner shall convey the Landfill Property to the County in fee simple by general warranty deed free and clear of all liens and encumbrances. The Closing of Transaction Date may be extended by written agreement of the Parties.

6. **Owner's Condition of Donation.** Owner shall not attach any conditions to its Offer to Donate. In the event the County accepts the Offer to Donate and subsequent conveyance of the Landfill Property, the County intends to use the site for the benefit of Orange County residents as a park or for another recreational purpose as it sees fit.

7. **Maintenance of Landfill Property.**

- a. In the event the County provides a Notice of Acceptance, maintenance of the Landfill Property (such as, but not limited to, grass mowing, fencing, road repair) will be the responsibility of the County as of the Closing of Transaction Date, unless said maintenance activity is a requirement, term or condition of any local, state or federal permit relating to the Landfill's construction, operation, closure, or post-closure activities, in which case the maintenance responsibility shall remain with Owner,
- b. OWNER SHALL REMAIN RESPONSIBLE FOR COMPLIANCE WITH ANY AND ALL PERMIT CONDITIONS AND APPLICABLE FEDERAL, STATE, AND LOCAL LAWS, ORDINANCES, RULES, REGULATIONS, PERMITS AND APPROVALS RELATED TO THE CONSTRUCTION, OPERATION, CLOSURE, LONG-TERM CARE AND POST-CLOSURE CARE OF THE LANDFILL.
- c. By accepting the Offer to Donate, the County DOES NOT ACCEPT the responsibility nor the obligation to conduct any activities related to the construction, operation, closure, long-term and post-closure care of the

Landfill. However, the County will provide Owner with access to the Landfill Property at reasonable times and in a reasonable manner in order to provide Owner the ability to fulfill its permit conditions relating to the construction, operation, closure, long-term care and post-closure care of the Landfill.

- d. Owner shall remain responsible and liable for any and all Adverse Environmental Conditions, as later defined herein, that may occur on, in, under, over, or from the Landfill Property, whether said Adverse Environmental Condition occurred prior to the Closing of Transaction Date or after the Closing of Transaction Date. This provision (section 7 and all of its subsections) shall survive termination of this Agreement. The County, and any authorized property user, shall cooperate with Owner in the conduct of compliance activities.
- e. The County shall be responsible to repair any damage to Owner's long-term care-related facilities such as the Landfill cap, monitor wells, and gas treatment system caused by the County's use of the Landfill Property. The County's responsibility does not extend to any damage to Owner's long-term care related facilities caused by individuals who are not employees of the County.

8. **Rejection.** In the event the County, in its sole discretion, declines to accept the Offer to Donate, Owner shall retain sole and exclusive ownership of the Landfill Property, and the County shall have no claim thereto. Further, this Agreement shall terminate.

9. **Donated Property.** In the event the County accepts the Offer to Donate, Owner shall assign, transfer, convey and deliver to County on the Closing of Transaction Date, and the County shall accept all the right, title and interest in and to the Landfill Property, subject to all rights, privileges, easements, and licenses, owned and/or used by Owner in connection with Owner's use of the Landfill Property.

- a. Title Evidence. No later than 45 days following County's delivery to Owner of the Notice of Acceptance, Owner shall obtain and deliver, at Owner's sole expense, a current title commitment for title insurance (ATLA Form B Marketability Policy) in favor of the County in the amount of the appraised value of the Landfill Property, as determined by an appraiser hired by the County, from a title insurance company licensed in Florida and reasonably acceptable to the County ("Title Commitment"). Owner shall convey fee simple title, free and clear of all encumbrances except the title exceptions set forth below.
 - i. Ad valorem real estate taxes and assessments for the year within which the Closing of Transaction Date occurs and subsequent years; and
 - ii. Easements within the Landfill Property set out in the recorded deeds; provided however, that none of the restrictions or easements

set out in such deeds shall prevent, hinder or restrict the proposed use of the Landfill Property for any public use; and

- iii. Restrictions of record (except liens, encumbrances, or mortgages) that do not impair, restrict, or inhibit the use or improvement of the Landfill Property as permitted by applicable zoning and land use regulations presently in effect and that are not coupled with a forfeiture or reversionary provision; and
- iv. All local, state, and federal laws, ordinances, and governmental regulations, including but not limited to, all applicable building, zoning, land use and environmental ordinances, regulations, restrictions, prohibitions and other requirements, none of which will prevent or hinder the use of the Landfill Property and easements.

b. **Status of Title.**

- i. The County shall have 14 days from receipt of the Title Commitment within which to examine same. If the County finds title, as shown on the Title Commitment, to be defective (i.e., matters which render title unmarketable in accordance with the title standards adopted by the Florida Bar and are not permitted exceptions), the County shall, within five days thereafter, notify Owner of the defect(s). Owner shall use its best efforts to cause such defects to be cured by the Closing of Transaction Date, which may be extended by mutual agreement of the Parties for a period up to 180 days to cure any such defects.
- ii. In the event that Owner uses its best efforts to cure a defect, but is unable, the County may elect to accept the Landfill Property subject to the defect or reject the Offer to Donate.

- c. **Deletion of Standard Exceptions.** Owner will execute, at or prior to the Closing of Transaction Date, in favor of the title insurance company, the standard form mechanic's lien affidavit and "gap" affidavit to allow the title company to delete all standard exceptions addressed by such affidavits. Prior to the Closing of Transaction Date, the surveys shall be updated as reasonably requested by the title company or the County so that the survey exception may be deleted.

10. **Environmental Matters.**

a. **Definitions.**

- i. **"Adverse Environmental Condition"** means any non-compliance with any Environmental Law.

- ii. ***“Environmental Law”*** means the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. 300f through 300j-26, as such Acts have been or are hereafter amended from time to time; any so called superfund or superlien law; and any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the protection of the environment or human health, welfare, or safety, or to the emission, discharge, seepage, release, or threatened release of Hazardous Materials into the environment including, without limitation, into ambient air, surface water, ground water, or land, or restrictions otherwise relating to the Handling of such Hazardous Materials as now or any time hereafter in effect.
- iii. ***“Governmental Authority”*** means any federal, state, or local government, including, without limitation, the County, or quasi-governmental entity or authority, or any department, commission, board, bureau, agency, court, or instrumentality thereof, in each case having jurisdiction, control, or authority over, or in connection with, permitting, construction, operation, closure, and/or post-closure of any solid waste management facility, or the handling and/or release of Hazardous Materials.
- iv. ***“Handling”*** means use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.
- v. ***“Hazardous Materials”*** means any contaminant, chemical, waste, irritant, petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyls, asbestos, hazardous or toxic substance, material, or waste of any kind, or any other substance regulated by any Environmental Law.
- vi. ***“Release”*** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, unless permitted or authorized by a regulatory agency.
- vii. ***“Spill”*** means any spill, contamination, seepage, discharge, leakage, release, or escape of any Hazardous Materials, whether

sudden or gradual, accidental or anticipated, or of any other nature or manner.

- b. **Environmental Inspections.** During the Inspection Period, the County has the unlimited right, but not obligation or responsibility, to inspect or cause an inspection to be made by qualified professionals on the County's behalf of the Landfill Property, including at the County's option, environmental inspections, sampling, or tests for hydrocarbons or for any toxic or hazardous substances ("Environmental Inspections"). Environmental Inspections include the right to sample and analyze air, sediment, soil, Landfill material, and groundwater. The County, its employees, agents, and contractors may enter upon the Landfill Property for the purpose of making such inspections, sampling, and tests; provided however, that the County shall provide Owner with ten days advance notice of such inspections, sampling, and tests. The County shall provide to Owner complete copies of the results of all such inspections, sampling, and tests. The results of such inspections, sampling, and tests may be disclosed pursuant to the Florida Sunshine Law, unless specifically and expressly exempted from disclosure. Owner, at Owner's expense, shall have the right to collect split samples of all materials tested by the County. Owner and the FDEP shall be notified at least seven days before any inspection, sampling, or test takes place. The County shall have no liability to Owner or any other entity or person for making any report relating to the Environmental Inspections available to any governmental authority. The County shall repair any and all damages to the Landfill Property directly caused by its inspections, sampling, and tests, and shall restore the Landfill Property to substantially the same condition as immediately before the inspections, sampling, or tests. Any activities that may affect the integrity of the closed Landfill cover shall be subject to FDEP approval. The inspections, samplings, and tests shall be conducted in a manner that minimizes inconvenience to Owner's business operations. This paragraph does not prevent the County from conducting inspections of the Landfill at any time to ensure compliance with the County's ordinances and regulations, as well as any permit issued to Owner.
- c. **Notice of Adverse Environmental Conditions.** The County shall notify Owner in writing of any claimed Adverse Environmental Condition not less than ten days prior to the Closing of Transaction Date ("Environmental Defects Notice"). The Environmental Defects Notice shall (a) set forth in reasonable detail the nature of the claimed Adverse Environmental Condition(s), and (b) the County's proposed calculation of the cost to remediate each claimed Adverse Environmental Condition ("Remediation Value").
- d. **Determination of Adverse Environmental Conditions and Remediation Values.** Within five days after Owner's receipt of the Environmental Defects Notice, Owner shall notify the County whether Owner agrees with the County's claimed Adverse Environmental Conditions and/or the

Remediation Value ("Owner's Environmental Response"). If Owner does not agree with any claimed Adverse Environmental Condition and/or the Remediation Value; then the Parties shall enter into good faith negotiations to resolve such matters. In the event that Owner and the County cannot resolve any the disputed Adverse Environmental Conditions, the County may either accept or reject the Offer to Donate subject to the disputed Adverse Environmental Condition.

- e. Remedies for Adverse Environmental Conditions. Owner shall remediate Adverse Environmental Conditions at Owner's sole cost in accordance with applicable Environmental Laws. The County shall be provided notice of all remedial actions.

11. **County's Regulatory Powers.** This Agreement shall not be construed as a waiver or subrogation of the County's regulatory powers.

12. **Access to Records.** Owner will at all times cooperate by providing reasonable access, upon prior notice, to their records and facilities applicable to the Landfill Property and the construction, operation, closure, and post-closure of the Landfill for inspection.

13. **Expenses.** In addition to all costs and expenses related to title, survey and environmental assessment (excluding Environmental Inspections conducted by the County pursuant to subsection 10.b. of this Agreement), Owner shall pay the following:

- a. Owner shall pay for documentary stamp taxes required to be paid with respect to the warranty deed, the cost of recording any corrective title instruments and the premium and related charges for Owner's title insurance policies to be issued pursuant to the Title Commitment, and the cost of recording the warranty deed and other instruments of conveyance.
- b. All other costs of this transaction not expressly allocated to the County herein.

14. **Financial Assurance (Environmental Insurance).** Prior to the Closing of Transaction Date, Owner shall obtain one or more financial assurance instruments in a form (such as letter of credit, performance bond, or insurance) and with terms acceptable to the County and from an entity acceptable to the County in the amount of the sum of the costs of closure, long-term and post-closure care, and remediation of any and all agreed to Adverse Environmental Conditions. The financial assurance shall be updated annually on the anniversary of the date of issuance of the Certificate of Completion and shall remain in force until County and the FDEP notify Owner that the long-term and post-closure care period, or the remediation covered by the financial assurance, has been satisfactorily completed.

15. **Closing of Transaction.** The place of Closing of Transaction shall be in Orange County at the offices of the Orange County Attorney, 201 South Rosalind Avenue, 3rd Floor, Orlando, Florida.

16. **Notice; Proper Form.** Any notices or other communication required or allowed to be delivered hereunder shall be in writing and may either be (1) hand delivered, (2) sent by

recognized overnight courier (such as Federal Express) or (3) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed to a Party at the address set forth opposite the Party's name below, or at such other address as the Party shall have specified by written notice to the other Party delivered in accordance herewith:

OWNER:	Hubbard Construction Company 1936 Lee Road Winter Park, Florida 32789
With a copy to:	Holland & Knight LLP 200 South Orange Avenue, Suite 2600 Orlando, Florida 32801 Attn: Christopher C. Brockman, Esq.
COUNTY:	Manager Environmental Protection Division 3165 McCrory Place, Suite 200 Orlando, Florida 32803
With copies to:	County Administrator P.O. Box 1393 Orlando, Florida 32802-1393 County Attorney P.O. Box 1393 Orlando, Florida 32802-1393

Notices personally delivered by hand or sent overnight courier shall be deemed given on the date of delivery, and notices mailed in accordance with the foregoing shall be deemed given ten days after deposit in the U.S. mail.

17. **Indemnification.** For good and valuable consideration including that recited in this Agreement, the receipt and sufficiency of which is and shall be acknowledged by Owner, Owner agrees and shall agree to thenceforth indemnify, defend (with counsel acceptable to County), and save and hold harmless the County against and from, and to reimburse the County with respect to, any and all claims, judgments, liabilities, damages, loss, obligations, and costs and expenses (including, without limitation, reasonable paralegal and attorneys' fees and court costs, whether in court, out of court, prior to or on appeal, in bankruptcy or administrative proceedings), penalties, or fines, incurred by or asserted against the County by reason or arising out of any Adverse Environmental Condition that exists on or after the Closing of Transaction Date or arising from the Landfill Property or any facilities or operations on the Landfill Property, including without limitation:

- a. Any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, cleanup, containment, removal, storage, or restoration work required

or incurred by the County or any entity or person in a reasonable belief that such work is required by any Environmental Law; and

- b. Any claims of third parties for loss, injury, expense, or damage arising out of the handling of Hazardous Materials on, under, in, above, to or from the Landfill Property.

FURTHER, OWNER HEREBY RELEASES THE COUNTY FROM AND AGAINST ANY AND ALL CLAIMS FOR CONTRIBUTION UNDER CERCLA AND/OR ANY OTHER ENVIRONMENTAL LAW OR ENVIRONMENTAL REGULATION

18. **Taxes.** Ad valorem real and personal property taxes for the year of the Closing of Transaction shall be prorated as of the Closing of Transaction Date.

19. **Assignability.** This Agreement shall not be assignable by any Party without prior written consent of the Parties.

20. **Time of Essence.** It is expressly agreed by the Parties that time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations, and warranties to be performed or satisfied by the Parties hereto.

21. **Survival of Provisions.** The provisions of this Agreement shall not survive the Closing of Transaction hereunder except as provided elsewhere in this Agreement. Paragraphs 6, 7, 10, 11, 12, 13, 14, 16, 17, 20, 22, 24, 25, 26, 29, 30, and 31 herein shall survive the Closing of Transaction hereunder.

22. **Binding Effect.** This Agreement shall be binding upon the Parties, their respective legal representatives, successors-in-interest, transferors, and assigns.

23. **Validity.** The provisions of this Agreement shall not be severable, and in the event one or more provisions is invalid or unenforceable, the entire Agreement shall be deemed terminated.

24. **Governing Law.** This Agreement has been signed, sealed, and delivered in the State of Florida, and shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida. In the event that any section, paragraph, sentence, clause, or provision hereof, shall be held by a court of competent jurisdiction to be invalid, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect. In the event of litigation, the Parties agree that exclusive venue shall lie in the courts in Orange County, Florida.

25. **Additional Documents.** Each Party shall, at the other's request, execute, acknowledge and deliver any instrument or conveyance that may be reasonably necessary or proper to carry out the provisions of this Agreement.

26. **Limitations of Remedies.** The Parties expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for actions arising out of or in connection with this Agreement.

- a. Limitations on the County's remedies. Upon any failure by the Owner to perform its obligations under this Agreement, the County shall be limited strictly to only the following remedies:
 - i. Action for specific performance; and
 - ii. Action for injunction.
- b. Limitations on Owner's remedies. Upon any failure by the County to perform its obligations under this Agreement, Owner shall be limited strictly to only the following remedies:
 - i. Action for specific performance; or
 - ii. Action for injunction; or
 - iii. Action for declaratory judgment regarding the rights and obligations of Owner; or
 - iv. Any combination of the foregoing.
- c. Exception to Limitation of Remedies. The limitations of remedies provided in subparagraphs 26.a. and 26.b. do not extend to any claim or action related to Adverse Environmental Conditions that may presently exist or may exist in the future on the Landfill Property.

27. **Effective Date.** The Agreement shall become effective on the date of later execution by Owner or the County ("Effective Date").

28. **Integrated Agreement, Waiver, and Modification.** This Agreement contains the complete and entire agreement between the Parties hereto with regard to all matters involved in the donation and conveyance of the Landfill Property by Owner to the County and no portion hereof may be modified, altered, amended, or waived unless same shall be in writing, approved expressly by the County, and signed by the Parties.

29. **Recordation.** This Agreement shall be recorded in the public records of Orange County, Florida at the sole cost of Owner.

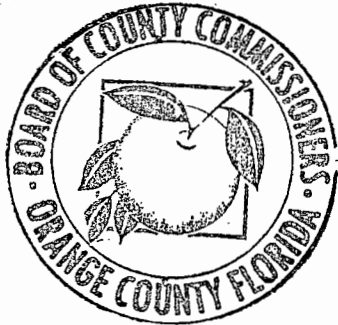
30. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties herein, and no right of cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

31. **Attorneys Fees.** Each of the Parties shall be responsible for its own attorney's fees incurred to effectuate this Agreement.

Waiver of Jury Trial. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, CROSS-CLAIMS, COUNTER-CLAIMS, OR THIRD PARTY CLAIMS) ARISING

OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR BETWEEN THE PARTIES TO THIS AGREEMENT, THEIR AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS, THE PARTIES HERETO EXPRESSLY CONSENT TO A NON-JURY TRIAL IN THE EVENT OF ANY OF THE FOREGOING

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the dates below written.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs
for Orange County Mayor

Date: 8.21.18

ATTEST: Phil Diamond, CPA, Orange County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Printed Name: Katie Smith

HUBBARD CONSTRUCTION COMPANY,
a Florida corporation

By: P. Frederick O'Dea, Jr.
P. Frederick O'Dea, Jr.

Its: Vice President/Secretary

Date: 7/12/18

ATTEST:

By: Tracy Hewett
TRACY HEWETT

Its: Assistant Secretary

STATE OF FLORIDA

COUNTY OF Orange

The foregoing instrument was acknowledged before me this 12th day of July, 2018, by P. Frederick O'Dea, Jr. the Vice President and Secretary (insert title) and Tracy Hewett the Assistant Secretary (insert title) of Hubbard Construction Company, a Florida corporation on behalf of the Corporation. He is personally known to me ☒ or has produced as identification [].

[Signature]
Notary Public – State of Florida

Print Name: JAMES E. LEBLANC
My Commission Expires: November 3, 2020
Bonded Thru Troy Fain Insurance 800-385-7019

EXHIBIT "A"

LEGAL DESCRIPTION

THE SOUTHWEST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$, AND THE EAST $\frac{1}{2}$ OF THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 20 SOUTH, RANGE 27, EAST, ORANGE COUNTY, FLORIDA

AND

THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 14, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY FLORIDA

AND

THE SOUTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$, LESS ROAD ON EAST, OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, AND THAT ADJOINING PROPERTY DESCRIBED AS THE NORTHEAST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ALL IN ORANGE COUNTY, FLORIDA

AND

THE NORTHWEST $\frac{1}{4}$ OF THE NORTHEAST $\frac{1}{4}$ OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA

SUBJECT TO EASEMENT OVER THE NORTH 30 FEET THEREOF FOR INGRESS AND EGRESS FOR THE OWNERS OF THE EAST HALF OF THE NORTHEAST $\frac{1}{4}$ OF THE NORTHWEST $\frac{1}{4}$ OF SAID SECTION 23. (+/- 220 acres)

NOTE:

1. THIS IS NOT A SURVEY.
2. LEGALS PER ORANGE COUNTY OFFICIAL RECORDS BOOK 5146 PAGE 657, BOOK 5145 PAGE 1958, BOOK 2797 PAGE 1030 AND BOOK 2841, PAGE 694.

DEC 04 2007 JWC/LA

**AGREEMENT
TO OFFER DONATION OF REAL PROPERTY
BETWEEN ORANGE COUNTY, FLORIDA
AND HUBBARD CONSTRUCTION COMPANY**

THIS AGREEMENT TO OFFER DONATION OF REAL PROPERTY ("Agreement") is made and entered into by and between Orange County, Florida, a charter county and political subdivision of the State of Florida ("County"), whose address is P.O. Box 1393, Orlando, Florida 32802-1393, and Hubbard Construction Company, a Florida corporation ("Owner"), whose address is 1936 Lee Road, Winter Park, Florida 32789.

RECITALS

1. Owner is fee simple title holder to certain real property (the "Property") located in Orange County, Florida, more particularly described on Exhibit "A," attached hereto and incorporated herein; and
2. Owner operates a Construction and Demolition Debris (C&D) landfill (the "Landfill") on the 220-acre Property, subject to the terms of a solid waste management permit, permit number 85-F23-12500, issued by the County ("SWM Permit");
3. Owner operates the Landfill referenced in recital #2 above pursuant to Florida Department of Environmental Protection (FDEP) Permit No. S048-0023167-003 (collectively the SWM Permit and the FDEP permit are referred to as "the Permits"); and
4. The Landfill accepts construction and demolition debris. The term "construction and demolition debris" means materials generally considered to be not water-soluble and non-hazardous in nature including, but not limited to, steel, glass, brick, concrete, asphalt roofing material, pipe, gypsum wallboard, and lumber, from the construction or destruction of a structure as part of a construction or demolition project or from the renovation of a structure. If the demolition project is from a structure where hazardous materials or hazardous waste are or were managed, the debris will be considered hazardous waste and will not be considered construction and demolition debris, as defined in this article, unless tested and the results show otherwise. The term construction and demolition debris includes rocks, soils, tree remains, trees, and other vegetative matter that normally results from land clearing or land development operations for a construction project. This term construction and demolition debris also includes:
 - (1) Clean cardboard, paper, plastic, wood, and metal scraps from a construction project;
 - (2) Except as provided in section 403.707(12)(j), Florida Statutes (2006), unpainted, non-treated wood scraps from facilities manufacturing materials used for construction of structures or their components and

unpainted, non-treated wood pallets provided the wood scraps and pallets are separated from other solid waste where generated and the generator of such wood scraps or pallets implements reasonable practices of the generating industry to minimize the commingling of wood scraps or pallets with other solid wastes; and

- (3) De minimus amounts of other nonhazardous wastes that are generated at construction or destruction projects, provided such amounts are consistent with best management practices of the industry.

Regulated asbestos--containing materials, as defined in 40 CFR 61.141, are excluded from the term construction and demolition debris. Mixing of construction and demolition debris with other types of solid waste, including material that is not from the actual construction or destruction of a structure, will cause the waste to be classified as other than construction and demolition debris.

5. As a result of neighborhood meetings associated with the SWM Permit application, Owner voluntarily agreed to donate the southerly 120 acres of the site after completion of post-closure activities of the Landfill for the use and benefit of the surrounding community contingent upon the County's acceptance of Owner's donation of the southerly 120 acres of the site; and

6. Owner voluntarily agreed to donate to the County the southerly 120 acres of the landfill site, as more particularly described on Exhibit "B," as a condition of approval of the SWM Permit; and

7. On May 9, 2000, the Orange County Board of County Commissioners (the "Board") approved the issuance of the SWM Permit, subject to conditions, one of which provided that the Owner would execute an agreement with the County to offer donation of the southerly 120 acres portion of the Property to the County after completion of post-closure activities of the Landfill; and

8. Owner agrees to be bound by the terms and conditions of this Agreement; and

9. Owner agrees that there is no expectation created by this Agreement or the above-referenced permit that the County intends to or will accept the offer of donation of the Property; and

10. The County and Owner have negotiated terms and conditions of a future donation of the Property, and want to reduce these agreements to writing for the purposes specified herein as the Agreement.

ACCORDINGLY, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto so covenant, stipulate, and agree as follows, to wit:

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

2. **Owner's Offer to Donate the Property.** Owner hereby offers and agrees to donate, transfer, and convey the Property, at no cost to the County except that the County will be responsible for its cost related to its due diligence and appraisal of the Property, and in accordance with the terms and subject to the conditions set forth in this Agreement.

3. **County's Time to Respond to Offer to Donate the Property.** The County shall issue a Certificate of Completion of Post-closure in accordance with Orange County Code section 332-216(b)(14). The County shall have 270 days from the date of issuance of the Certificate of Completion of Post-closure to provide Owner with a response to Owner's Offer to Donate the Property. The County shall not place conditions on its acceptance of the Offer to Donate except as set forth herein or agreed to in writing by both parties after the date of execution hereof. Failure to accept within the 270-day period shall be deemed a rejection of the offer to donate and shall release the Owner of any obligation set out herein.

4. **Inspection Period.** The County shall have a period of 180 days from issuance of the Certificate of Completion of Post-closure (the "Inspection Period") within which to undertake such physical inspections and other investigations, if any, concerning the Property as may be necessary in order to evaluate the physical characteristics of the Property, including without limitation Environmental Investigations. For such purpose, the Owner grants to the County and its agents, consultants, contractors, and assigns full right of entry upon the Property and any part thereof during the Inspection Period for the purpose of undertaking such inspections and investigations. Within ten business days of the date of the Certificate of Completion of Post-closure, Owner shall deliver to the County copies of any and all surveys, examinations, plans, appraisals, permits, licenses, environmental studies or reports, and other studies or investigations regarding the Property which are in Owner's possession or control including all documents described above which are in the possession or control of Owner's consultants, contractors, agents, representatives, and/or attorneys.

5. **Acceptance of Offer.** In the event the Board accepts the offer of donation, the County shall provide Owner with a certified copy of a resolution of the Board of County Commissioners approving the County's acceptance of the offer to donate the Property no later than the expiration of the Inspection Period. Within 180 days of receipt of an acceptance of the Offer to Donate from the Board, Owner shall convey the Property to the County in fee simple by warranty deed, in a form reasonably acceptable to the County's Real Estate Management Division and Orange County Attorney's Office, free and clear of all liens and encumbrances, but subject to matters of record. The Closing Date shall be set by mutual agreement of Owner and County.

6. **Owner's Condition of Donation.** In the event the County accepts conveyance of the Property, the County intends to allow use of the Property by an organization or organizations such as the North Orange County Improvement Association, whose purpose is to provide

recreational opportunities for the citizens of Orange County, at a fee determined by the Board and pursuant to terms and conditions established by the Board.

7. Maintenance of Property.

- a. In the event the County accepts conveyance of the Property, maintenance of the Property (such as, but not limited to, grass mowing, fencing, road or shape repair) will be the responsibility of the County, unless said maintenance activity is a requirement, term or condition of any local, state or federal permit relating to the Landfill's construction, operation, closure, or post-closure activities, in which case the maintenance responsibility shall remain with the Owner.
- b. OWNER SHALL REMAIN RESPONSIBLE FOR COMPLIANCE WITH ANY AND ALL PERMIT CONDITIONS RELATED TO THE CONSTRUCTION, OPERATION, CLOSURE, AND POST-CLOSURE CARE OF THE LANDFILL.
- c. By accepting the donation of the Property, the County DOES NOT ACCEPT the responsibility nor the obligation to conduct any activities related to the construction, operation, closure, and post-closure care of the Landfill. However, the County will provide Owner with access to the Property at reasonable times and in a reasonable manner in order to provide Owner the ability to fulfill its permit conditions relating to the construction, operation, closure, and post-closure of the Landfill.
- d. Owner shall remain responsible and liable for any and all Adverse Environmental Conditions that may occur on, in, under, over, or from the Property, whether said Adverse Environmental Condition occurred prior to closing or after closing, provided same does not result from any third party activities occurring subsequent to the conveyance of the Property to the County. This provision (section 7 and all of its subsections) shall survive termination of this Agreement. The County, and any authorized property user, shall cooperate fully with the Owner in the conduct of compliance activities.
- e. County shall be responsible to repair any damage to the Owner's post-closure care related facilities such as the landfill cap, monitor wells, and gas treatment system caused by its use of the Property. The County's responsibility does not extend to any damage to the Owner's post-closure care related facilities caused by individuals who are not employees of the County.

8. **Rejection.** In the event the Board, in its sole discretion, declines to accept the offer to donate the Property, the Owner shall retain sole and exclusive ownership of the Property, and the County shall have no claim thereto, all obligations of this Agreement shall become null and of no force or effect, and this Agreement shall terminate.

9. **Donated Property.** In the event the Board accepts the offer of donation, on the Closing Date, Owner shall assign, transfer, convey and deliver to County, and the County shall accept all the right, title and interest in and to the Property, subject to all rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads owned and/or used by the Owner in connection with the Owner's use of the Property.

a. **Title Evidence.** Owner shall cause to be issued, at Owner's sole expense, a title commitment for an owner's ATLA Form B Marketability Policy in favor of the County in amount of the appraised value of the Property, as determined by an appraiser hired by the County with the concurrence of Owner, from a title insurance company licensed in Florida and reasonably acceptable to the County. Owner shall convey fee simple title, free and clear of all encumbrances except the title exceptions set forth below.

- i. Ad valorem real estate taxes and assessments for the year within which the Closing Date occurs and subsequent years; and
- ii. Easements within the Property set out in the recorded deed; provided however, that none of the restrictions or easements set out in such deed shall prevent, hinder or restrict the proposed use of the Property for public park and recreational uses; and
- iii. Restrictions of record (except liens, encumbrances, or mortgages) that do not impair, restrict, or inhibit the use or improvement of the Property as permitted by applicable zoning and land use regulations presently in effect and that are not coupled with a forfeiture or reversionary provision; and
- iv. All local, state, and federal laws, ordinances, and governmental regulations, including but not limited to, all applicable building, zoning, land use and environmental ordinances, regulations, restrictions, prohibitions and other requirements, none of which will prevent or hinder the use of the Property and Easements.

b. **Status of Title.**

- i. The County shall have fourteen days from receipt of the Title Commitment within which to examine same. If the County finds title, as shown on the Title Commitment, to be defective (i.e., matters which render title unmarketable in accordance with the title standards adopted by the Florida Bar and are not Permitted Exceptions), the County shall, within five days thereafter, notify Owner of the defect(s). The Owner shall use its best efforts to cause such defects to be cured by the Closing Date, which may be extended by mutual

agreement of the parties for a period up to one hundred eighty days to cure any such defects.

- ii. In the event that the Owner uses its best efforts to cure a defect, but is unable, the County may elect to accept the Property subject to the defect or reject the donation.
- c. Deletion of Standard Exceptions. Owner will execute, at or prior to Closing, in favor of the title insurance company, the standard form mechanic's lien affidavit and "gap" affidavit to allow the title company to delete all standard exceptions addressed by such affidavits. Prior to Closing, the surveys shall be updated as reasonably requested by the Title Company or County so that the survey exception may be deleted.

10. **Environmental Matters.**

a. Definitions.

- i. **"Adverse Environmental Condition"** means any material non-compliance with any applicable Environmental Law.
- ii. **"Environmental Law"** means any and all federal, state, and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements, or other governmental restrictions relating to the protection of the environment or human health, welfare, or safety, or to the emission, discharge, seepage, release, or threatened release of Hazardous Materials into the environment including, without limitation, into ambient air, surface water, ground water, or land, or restrictions otherwise relating to the Handling of such Hazardous Materials applicable to the Property.
- iii. **"Governmental Authority"** means any federal, state, or local government, including, without limitation, the County, or quasi-governmental entity or authority, or any department, commission, board, bureau, agency, court, or instrumentality thereof, in each case having jurisdiction, control, or authority over, or in connection with, permitting, construction, operation, closure, and/or post-closure of any solid waste management facility, or the handling and/or release of Hazardous Materials.
- iv. **"Handling"** means use, treatment, storage, manufacture, processing, distribution, transport, placement, handling, discharge, generation, production, or disposal.

- v. **"Hazardous Materials"** means any contaminant, chemical, waste, irritant, petroleum product, waste product, radioactive material, flammable or corrosive substance, explosive, polychlorinated biphenyls, asbestos, hazardous or toxic substance, material, or waste of any kind, or any other substance regulated by any Environmental Law.
 - vi. **"Release"** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, unless permitted or authorized by a regulatory agency.
 - vii. **"Spill"** means any spill, contamination, seepage, discharge, leakage, release, or escape of any Hazardous Materials, whether sudden or gradual, accidental or anticipated, or of any other nature or manner.
- b. Environmental Inspections. Upon issuance of the Certificate of Completion of Post-Closure, the County has the unlimited right, but not obligation or responsibility, to inspect or cause an inspection to be made by qualified professionals on the County's behalf of the Property, including at County's option, environmental inspections, sampling, or tests for hydrocarbons or for any toxic or hazardous substances. Environmental inspections include the right to sample and analyze air, sediment, soil, landfill material, and groundwater. County, its employees, agents, and contractors may enter upon the Property for the purpose of making such inspections, sampling, and tests; provided however, that County shall schedule such inspections, sampling, and tests with Owner; that County shall provide to Owner complete copies of the results of all such inspections, sampling, and tests; that the results of such inspections, sampling, and tests may be disclosed pursuant to the Florida Sunshine Law, unless specifically and expressly exempted from disclosure. Owner shall have the right to collect split samples of all materials tested by the County. The Owner, and the Florida Department of Environmental Protection (FDEP) shall be notified at least seven (7) days before said inspection, sampling and tests take place. The County shall have no liability to Owner or any other entity or person for making any report relating to the Environmental Inspections available to any governmental authority. The County shall repair any and all damages to the Property directly caused by said inspections, sampling, and tests, and shall restore the Property to the same condition as immediately before the inspections, sampling, or tests. Any activities that may affect the integrity of the closed landfill cover shall be subject to FDEP approval. Said inspections, samplings, and tests shall be conducted in a manner that minimizes inconvenience to the Owner's business operations. This right to inspect pursuant to this Agreement commences upon the County's issuance of Certificate of Completion of Post-Closure and terminates upon notice by the County that it will or will not accept the offer of donation of the Property. This paragraph does not prevent the County from

conducting inspections of the Landfill at any time to ensure compliance with the County's ordinances and regulations, as well as any permit issued to Owner.

- c. **Notice of Adverse Environmental Conditions.** County shall notify Owner in writing of any claimed Adverse Environmental Condition not less than ten business days prior to the Closing Date ("Environmental Defects Notice"). The Environmental Defects Notice shall (a) set forth in reasonable detail the nature of the claimed Adverse Environmental Condition(s), and (b) County's proposed calculation of the cost to remediate each claimed Adverse Environmental Condition ("Remediation Value").
- d. **Determination of Adverse Environmental Conditions and Remediation Values.** Within five business days after Owner's receipt of the Environmental Defects Notice, Owner shall notify County whether Owner agrees with County's claimed Adverse Environmental Conditions and/or the Remediation Value (Owner's Environmental Response). If Owner does not agree with any claimed Adverse Environmental Condition and/or the Remediation Value; then the parties shall enter into good faith negotiations to resolve such matters within sixty days thereafter. In the event that Owner and the County cannot resolve any the disputed Adverse Environmental Conditions within said sixty-day period, the County may either accept or reject the donation subject to the disputed Adverse Environmental Condition.
- e. **Remedies for Adverse Environmental Conditions.** Owner shall remediate Adverse Environmental Conditions at Owner's sole cost in accordance with applicable Environmental Laws.

11. **County's Regulatory Powers.** This Agreement shall not be construed as a waiver or subrogation of the County's regulatory powers.

12. **Access to Records.** Owner will at all times cooperate by providing reasonable access, upon prior notice, to their records and facilities applicable to the Property and the construction, operation, closure, and post-closure of the Landfill for inspection.

13. **Financial Assurance (Environmental Insurance).** Prior to the Closing Date, Owner shall obtain financial assurance in a form (such as letter of credit, performance bond, or insurance) and with terms reasonably acceptable to the County and from an entity acceptable to the County in the amount of the sum of all costs of closure, post-closure care, and remediation of any and all Adverse Environmental Conditions. Said financial assurance shall be updated annually on the anniversary of the date of issuance of the Certificate of Completion of Post-closure and shall remain in force until County and the Department of Environmental Protection notify Owner that the post closure care period has been satisfactorily completed.

14. **Closing.** The place of closing shall be in Orange County at the offices of the

Orange County Attorney, 201 South Rosalind Avenue, 3rd Floor, Orlando, Florida.

15. **Notice; Proper Form.** Any notices or other communication required or allowed to be delivered hereunder shall be in writing and may either be (1) hand delivered, or (2) sent by recognized overnight courier (such as Federal Express, and addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

OWNER: Hubbard Construction Company
1936 Lee Road
Winter Park, Florida 32789

With a copy to: Holland & Knight LLP
200 South Orange Avenue, Suite 2600
Orlando, Florida 32801
Attn: Christopher C. Brockman, Esq.

COUNTY: Manager
Environmental Protection Division
800 Mercy Drive
Orlando, Florida 32808
Attn: Lori Cunniff

With copies to: County Administrator
P.O. Box 1393
Orlando, Florida 32802-1393
Attn: Ajit Lalchandani

County Attorney
P.O. Box 1393
Orlando, Florida 32802-1393
Attn: Thomas B. Drage, Jr.

Notices personally delivered by hand or sent overnight courier shall be deemed given on the date of delivery or refusal.

16. **Indemnification.** For one hundred dollars payable by County at time of closing on the Property and other good and valuable consideration including that recited in this Agreement, the receipt and sufficiency of which shall be acknowledged by Owner, Owner shall agree to thenceforth indemnify, defend (with counsel acceptable to County), and save and hold harmless the County against and from, and to reimburse the County with respect to, any and all claims, judgments, liabilities, damages, loss, obligations, and costs and expenses (including, without limitation, reasonable paralegal and attorneys' fees and court costs, whether in court, out of court, prior to or on appeal, in bankruptcy or administrative proceedings), penalties, or fines, incurred by or asserted against the County by reason or arising out of any Adverse

Environmental Condition that exists on or after the date of the Closing arising from the Property or any facilities or operations on the Property prior to Closing, including without limitation:

- a. Any loss, cost, expense, claim, or liability arising out of any investigation, monitoring, cleanup, containment, removal, storage, or restoration work on the Property required or incurred by County relating to Owner's use of the Property in a reasonable belief that such work is required by any Environmental Law; and
- b. Any claims of third parties for loss, injury, expense, or damage arising out of the Handling of Hazardous Materials on, under, in, above, to or from the Property.

FURTHER, OWNER HEREBY RELEASES COUNTY FROM AND AGAINST ANY AND ALL CLAIMS FOR CONTRIBUTION UNDER CERCLA AND/OR ANY OTHER ENVIRONMENTAL LAW OR REGULATION.

17. **Taxes.** Ad valorem real and personal property taxes for the year of Closing shall be prorated as of the Closing.

18. **Assignability.** This Agreement shall not be assignable by either party without prior written consent on the part of the other party.

19. **Time of Essence.** It is expressly agreed by both parties that time is of the essence of this Agreement and in the performance of all conditions, covenants, requirements, obligations, and warranties to be performed or satisfied by the parties hereto.

20. **Survival of Provisions.** The provisions of this Agreement shall not survive the closing hereunder except as provided elsewhere in this Agreement. Paragraphs 5, 7, 16, 23, 25, and 30 herein shall survive the Closing.

21. **Binding Effect.** This Agreement shall be binding upon the parties, their respective legal representatives, successors-in-interest, transferors, and assigns.

22. **Validity.** The provisions of this Agreement shall not be severable, and in the event one or more provisions is invalid or unenforceable, the entire Agreement shall be deemed terminated.

23. **Governing Law.** This Agreement has been signed, sealed, and delivered in the State of Florida, and shall be construed, interpreted, and enforced in accordance with the laws of the State of Florida. In the event of litigation, both parties agree that exclusive venue shall lie in the courts in Orange County, Florida.

24. **Additional Documents.** Each party shall, at the other's request, execute, acknowledge and deliver any instrument or conveyance that may be reasonably necessary or

proper to carry out the provisions of this agreement.

25. **Limitations of Remedies.** The County and Owner expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for actions arising out of or in connection with this Agreement.

a. **Limitations on the County's remedies.** Upon any failure by the Owner to perform its obligations under this Agreement, the County shall be limited strictly to only the following remedies:

- i. Action for specific performance; and
- ii. Action for injunction.

b. **Limitations on Owner's remedies.** Upon any failure by the County to perform its obligations under this Agreement, the Owner shall be limited strictly to only the following remedies:

- i. Action for specific performance; or
- ii. Action for injunction; or
- iii. Action for declaratory judgment regarding the rights and obligations of the Owner; or
- iv. Any combination of the foregoing.

c. **Exception to Limitation of Remedies.** The limitations of remedies provided in subparagraphs 25.a. and 25.b. do not extend to any claim or action related to Adverse Environmental Conditions that may presently exist or may exist in the future due to Owner's use of the Property.

26. **Effective Date.** The Effective Date of this Agreement shall be the date by which both the Owner and the County have executed this Agreement, and the Agreement is approved by the Orange County Board of County Commissioners.

27. **Integrated Agreement, Waiver, and Modification.** This Agreement contains the complete and entire agreement between the parties hereto with regard to all matters involved in the donation and conveyance of the Property by Owner to County and no portion hereof may be modified, altered, amended, or waived unless same shall be in writing, approved expressly by the Board of County Commissioners, and signed by the parties.

28. **Recordation.** This Agreement, or a notice or memorandum thereof shall be recorded in the public records of Orange County, Florida at the sole cost of Owner.

29. **Disclaimer of Third Party Beneficiaries.** This Agreement is solely for the benefit of the formal parties herein, and no right of cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

30. **Attorneys' Fees.** Each of the parties shall be responsible for its own attorney's fees incurred to effectuate this Agreement.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the dates below written.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Richard T. Crotty*
Richard T. Crotty
Orange County Mayor

Date: 12-18-07

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

By: *[Signature]*
Deputy Clerk

HUBBARD CONSTRUCTION COMPANY

By: *P. Frederick O'Dea, Jr.*
P. Frederick O'Dea, Jr.
(Type Name)

Its: V.P./Secretary (Insert Title)

Date: October 15, 2007

ATTEST:

By: *Kelly S. Amick*
Kelly S. Amick
(Type Name)

Its: Asst. Secretary (Insert Title)

STATE OF FLORIDA
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 15th day of October, 2007,
by P. Frederick O'Dea Jr. the V.P./Secretary (insert title) and
Kelly S. Amick the Asst. Secretary (insert title) of Hubbard Construction Company,
on behalf of the Corporation. He/she is personally known to me [] or has produced
as identification.

Carol Broomfield
Notary Public - State of Florida

Carol Broomfield
Print Name of Notary Public
My Commission Expires: .

(SEAL)  Carol Broomfield
Commission # DD517942
Expires February 14, 2010
Bonded/Troy Fair - Insurance, Inc. 800-385-7019

S:\ACotter\AGRCNT\Mid-FL Materials Agreement to Donate OCAO Clean 10-15-07.doc# 3835254_v2

EXHIBIT A

LEGAL DESCRIPTION

THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4, AND THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWNSHIP 20 SOUTH, RANGE 27, ORANGE COUNTY, FLORIDA

AND

THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 14, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA

AND

THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, LESS ROAD ON EAST, OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, AND THAT ADJOINING PROPERTY DESCRIBED AS THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ALL IN ORANGE COUNTY, FLORIDA

AND

THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA

SUBJECT TO EASEMENT OVER THE NORTH 30 FEET THEREOF FOR INGRESS AND EGRESS FOR THE OWNERS OF THE EAST HALF OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 23. (+-220 acres)

NOTE:

1. THIS IS NOT A SURVEY
2. LEGALS PER ORANGE COUNTY OR BOOK 5146-PAGE 657, BOOK 5145-PAGE 1958, BOOK 2797-PAGE 1030 AND WARRANTY DEED DATED DECEMBER 7, 1977.

EXHIBIT B

LEGAL DESCRIPTION

THE SOUTHEAST 1/4 OF THE NORTHEAST 1/4, LESS ROAD ON EAST, OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, AND THAT ADJOINING PROPERTY DESCRIBED AS THE NORTHEAST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ALL IN ORANGE COUNTY, FLORIDA

AND

THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 23, TOWNSHIP 20 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA

SUBJECT TO EASEMENT OVER THE NORTH 30 FEET THEREOF FOR INGRESS AND EGRESS FOR THE OWNERS OF THE EAST HALF OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 23.(+-120 acres)

NOTE:

1. THIS IS NOT A SURVEY
2. LEGALS PER ORANGE COUNTY OR BOOK 2797-PAGE 1030 AND WARRANTY DEED DATED DECEMBER 7, 1977.