

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	CENTRAL DISTRICT
)	
v.)	OGC FILE NO. 23-0378
)	
MARION COUNTY BOARD OF COUNTY)	
COMMISSIONERS)	
_____)	

Settlement Agreement

This Settlement Agreement (Agreement) is entered into between the State of Florida Department of Environmental Protection (Department) and Marion County Board of County Commissioners (Respondent) to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida’s air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes (F.S.), and the rules promulgated and authorized in Title 62, Florida Administrative Code (F.A.C.). The Department has jurisdiction over the matters addressed in this Agreement.
2. Respondent is a person within the meaning of Section 403.031(5), F.S.
3. Respondent is the owner and is responsible for the operation of the Marion County Utilities Department Silver Springs Shores Emerald, a 2.0 million gallons per day (MGD) annual average daily flow (AADF) permitted capacity extended aeration domestic wastewater treatment plant (Facility). The wastewater treatment plant consists of influent screening, grit removal, flow equalization, oxidation ditches, secondary clarification, filtration, liquid chlorination, and dewatering and aerobic digestion of biosolids. R-001 is a 130-acre sprayfield, R-002 consist of four rapid infiltration basins, and R-003 is slow-rate public access system consisting of three golf courses and landscape irrigation. The Facility is operated under Wastewater Permit No. FLA296651 (Permit), which was issued on February 7, 2019, and will

expire on February 24, 2024. The Facility is located at 450 Emerald Road, Ocala, in Marion County, Florida, latitude 29° 05' 39" N, longitude 82° 00' 50" W, Parcel: 37508-000-00 (Property). Respondent owns the Property on which the Facility is located.

4. The Department finds that the following violation(s) occurred:

a) A Compliance Evaluation Inspection was conducted on September 7, 2022. A review of the effluent quality records from the Discharge Monitoring Reports indicates chronic effluent limit violations for Total Nitrogen in violation of 403.067(7) F.S. (AO-15-0238)

Date	Parameter	Monitoring Location	Result	Permit Limit
12/2022	Total Nitrogen Annual Avg	EFA-1	3.4 mg/L	3.0 mg/L
11/2022	Total Nitrogen Annual Avg	EFA-1	3.3 mg/L	3.0 mg/L
10/2022	Total Nitrogen Annual Avg	EFA-1	3.4 mg/L	3.0 mg/L
09/2022	Total Nitrogen Annual Avg	EFA-1	3.5 mg/L	3.0 mg/L
08/2022	Total Nitrogen Annual Avg	EFA-1	3.6 mg/L	3.0 mg/L
07/2022	Total Nitrogen Annual Avg	EFA-1	3.7 mg/L	3.0 mg/L
06/2022	Total Nitrogen Annual Avg	EFA-1	3.6 mg/L	3.0 mg/L
05/2022	Total Nitrogen Annual Avg	EFA-1	3.3 mg/L	3.0 mg/L
04/2022	Total Nitrogen Annual Avg	EFA-1	3.1 mg/L	3.0 mg/L
02/2022	Total Nitrogen Annual Avg	EFA-1	3.2 mg/L	3.0 mg/L
01/2022	Total Nitrogen Annual Avg	EFA-1	3.4 mg/L	3.0mg/L
12/2021	Total Nitrogen Annual Avg	EFA-1	3.3 mg/L	3.0 mg/L
11/2021	Total Nitrogen Annual Avg	EFA-1	3.3 mg/L	3.0 mg/L

10/2021	Total Nitrogen Annual Avg	EFA-1	3.3 mg/L	3.0 mg/L
09/2021	Total Nitrogen Annual Avg	EFA-1	3.4 mg/L	3.0 mg/L
08/2021	Total Nitrogen Annual Avg	EFA-1	3.5 mg/L	3.0 mg/L

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

Agreed:

5. Respondent shall comply with the following corrective actions within the stated time periods:

6. Respondent shall comply with the interim limit (“Interim Limit”), the discharge monitoring, and reporting requirements in the table below for discharges to the Rapid Infiltration Basin system (R-002) at the Facility. All of the other parameter limits in the Permit remain the same and Respondent shall comply with all of the other conditions of the Permit. The Interim Limit shall become effective upon the first day of the month following the effective date of this Settlement Agreement. **The Interim Limit shall remain in effect until October 31, 2024.**

Parameter	Units	Max/Min	Reclaimed Water Limitations		Monitoring Requirements			Notes
			Limit	Statistical Basis	Frequency of Monitoring	Sample Type	Monitoring Site Number	
Nitrogen, Total (interim)	mg/L	Max Max	5.0 Report	Annual Average Monthly Average	Weekly	8-hr FPC	EFA-1	

7. **Within 30 days** of the effective date of this Agreement, Respondent shall submit to the Department an evaluation conducted by a professional engineer registered in the state

of Florida, of the Facility, including the effluent disposal system and associated collection system, to discover the cause or causes of the violations identified in paragraphs 4 above.

8. **Within 60 days** of the due date for submission of the evaluation in paragraph 7, Respondent shall submit to the Department Facility process modifications, prepared and submitted under seal by a professional engineer registered in the state of Florida, to remedy the cause or causes of the violations identified in paragraphs 4 above and ensure the Facility and effluent disposal system will function in full and consistent compliance with all applicable rules.

9. **Within 90 days** of the due date for submission of the process modification(s) in paragraph 7, Respondent shall submit a complete application for a Department wastewater permit to construct the modifications submitted pursuant to paragraph 7, if such a permit is required. In the event the Department requires additional information to process the permit application Respondent shall provide a written response containing the information requested by the Department within 90 days of the date of the request.

10. **Within 365 days** after issuance of the wastewater permit referenced in paragraph 9 above, or if no permit is required, within **160 days** of the approval of the process modification(s) in paragraph 7, Respondent shall complete construction of the modification(s) submitted pursuant to paragraph 7.

11. **Within 30 days** after completion of the modification, Respondent shall submit to the Department a Certification of Completion, prepared and sealed by a professional engineer registered in the State of Florida, stating that modifications to the Facility have been modified in accordance with the provisions of the Permit or, if no Permit is required the process modification(s) submitted pursuant to paragraph 7.

12. **Every quarter** after the effective date of this Agreement and continuing until all corrective actions have been completed, Respondent shall submit to the Department a written report containing information about the status and progress of projects being completed under this Agreement, information about compliance or noncompliance with the applicable requirements of this Agreement, including construction requirements and effluent limitations,

and any reasons for noncompliance. These reports shall also include a projection of the work Respondent will perform pursuant to this Agreement during the 12-month period which will follow the report. Respondent shall submit the reports to the Department within 30 days of the end of each quarter.

13. Respondent's completion of all corrective actions required by paragraphs 5,6,7,8,9,10,11 and 12 within the respective deadlines specified thereunder shall constitute full compliance with 403.037(7)(a) F.S, and Rule 62-600, F.A.C.

14. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraph(s) 5 through paragraph 12 of this Agreement. Additionally, Respondent shall pay the Department stipulated penalties for any discharges of wastewater from the WWTF and/or collection/transmission system. Respondent shall pay penalties as follows:

<u>Amount p/day p/discharge</u>	<u>Discharge Volume</u>
\$1000.00	up to 5,000 gallons
\$2,000.00	5,001 to 10,000 gallons
\$5,000.00	10,001 to 25,000 gallons
\$10,000	25,001 to 100,000 gallons
\$15,000	in excess of 100,000 gallons

The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment, and shall do so as further described in paragraph 15, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Agreement.

15. Respondent shall make all payments required by this Agreement by cashier's check, money order or on-line payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Agreement and the notation "Water Quality Assurance Trust Fund."

Online payments by e-check can be made by going to the DEP Business Portal at:

<http://www.fldepportal.com/go/pay/>. It will take a number of days after this Agreement is final, effective and filed with the Clerk of the Department before ability to make online payment is available.

16. Except as otherwise provided, all submittals and payments required by this Agreement shall be sent to Compliance Assurance Program, Department of Environmental Protection, Central District, 3319 Maguire Blvd., Orlando, FL 32803.

17. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Agreement and the rules and statutes administered by the Department.

18. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Agreement have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Agreement with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Agreement.

19. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Agreement, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon

becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

20. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Agreement, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Agreement. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Agreement.

21. This Agreement is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Agreement is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Agreement does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

22. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Agreement.

23. Respondent is fully aware that a violation of the terms of this Agreement may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

24. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, F.S., on the terms of this Agreement. Respondent also acknowledges and waives its right to appeal the terms of this Agreement pursuant to section 120.68, F.S.

25. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Agreement will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

26. The terms and conditions set forth in this Agreement may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Agreement constitutes a violation of section 403.161(1)(b), F.S.

27. This Settlement Agreement is a final order of the Department pursuant to section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Settlement Agreement will not be effective until further order of the Department.

28. Persons who are not parties to this Settlement Agreement, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and 120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Settlement Agreement means that the Department's final action may be different from the position it has taken in the Settlement Agreement.

The petition for administrative hearing must contain all of the following information:

- a) The name and address of each agency affected and each agency's file or identification number, if known;

- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Central District, 3319 Maguire Blvd., Orlando, FL 32803. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Settlement Agreement may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

29. Rules referenced in this Agreement are available at <http://www.dep.state.fl.us/legal/Rules/rulelist.htm>

FOR THE RESPONDENT:

Marion County Board of County Commissioners
Craig Curry, Chair

Date

DONE AND AGREED this _____ day of _____, 2023, in
_____, county, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Aaron Watkins
District Director
Central District

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

Clerk

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35