

LEASE AGREEMENT

This Lease Agreement ("Lease") is made and entered into this ____ day of _____ 2023, by and between **SOLID WASTE DISPOSAL DISTRICT** ("SWDD"), a dependent special district of **INDIAN RIVER COUNTY**, a Political Subdivision of the State of Florida organized and existing under the Laws of the State of Florida ("County"), whose address is 1801 27th Street, Vero Beach, FL 32960, and **HALLEY ENGINEERING CONTRACTORS, INC.**, a Florida corporation, located at 13901 NW 118 Avenue, Medley, Florida 33178 ("Halley").

RECITALS

WHEREAS, SWDD owns a parcel of real property located in Vero Beach, Florida and,

WHEREAS, Halley is currently engaged in the construction of Florida Department of Transportation (FDOT) Oslo Widening and I-95 Interchange project (together "Project"); and,

WHEREAS, Halley has requested to lease 2 acres of SWDD property ("Premises") as a staging area for materials and equipment to support its construction of the Project. The property subject to the lease is depicted on the aerial photograph attached to this lease and incorporated herein; and,

WHEREAS, SWDD desires to lease the Premises to Halley in accordance with the terms of this Lease; and,

NOW THEREFORE, in consideration of the promises and covenants contained herein, the County and Department do mutually covenant and agree as follows:

1. Incorporation of Recitals

The foregoing recitals are true and correct and are incorporated into this Lease as if fully set forth herein.

2. Term

The Term of this Lease is for a period commencing the day and year first above written, and shall continue until September 30, 2027 ("Term") or until completion of the Project, whichever occurs

first. The parties agree that the duties, rights and responsibilities of each party is deemed to have been in effect from the beginning of the Term.

3. Extension of Term

The Term of this Lease may be extended upon mutual written agreement by the parties.

4. Bond

- a. Halley must furnish a performance bond (the "Bond") in a form acceptable to the SWDD in a sum of not less than \$100,000 to guarantee its performance of its duties under this Lease, including without limitation those responsibilities as outlined in Paragraph 10. The Bond must be provided to SWDD within ten (10) days of executing this Lease. Should the Bond not be received by the SWDD within the time allotted by this Agreement, this Lease shall automatically terminate, and Halley shall vacate the Premises immediately.
- b. The SWDD shall have the right to deduct the sums, expenses, liquidated damages, compensation or late fees payable or due under this Lease from the Bond. If the Bond cannot cover the losses incurred by SWDD, SWDD may make further claim against Halley.
- c. If the Term of this Lease, including any extensions, expires and the responsibilities as outlined in Paragraph 10 have been completed to the satisfaction of the SWDD, SWDD shall return to Halley the Bond in full. If the responsibilities as outlined in Paragraph 10 have not completed to the satisfaction of the SWDD prior to the expiration of the Lease, the Bond shall not be returned to Halley.

5. Termination

Notwithstanding anything herein, the SWDD shall have the right to terminate this Lease with or without cause, and thereby end any and all obligations created by this agreement upon thirty (30) days written notification of termination to Halley.

6. Intended Use of the Premises

Halley shall use the Premises solely for the purpose of staging of materials and equipment to support the Project. The parties acknowledge and agree the Premises are currently unimproved and the SWDD makes no guarantee or warranty as to condition of the property as to the proposed

or intended use. Halley shall not use the Premises for any other purpose without the prior written approval of the SWDD. Halley shall not use any other portion of the SWDD Property without the prior written approval of the SWDD. Halley shall clear, level, and stabilize the Lease area at their own cost. The existing culvert running parallel to Oslo Road needs to be evaluated by a civil/structural engineer at Halley's expense to establish a baseline condition. Upon completion of this lease Agreement, Halley would re-evaluate the existing culvert condition to determine if any structural degradation has occurred. If determined that damage has occurred, then replacement of culvert shall be at Halley's expense. Replacement means that it must meet or exceed current culvert capacity and current building codes. This is inclusive of all labor, equipment, materials, permits and engineering as required.

7. Declared Emergency

In the event of a declared emergency, County/SWDD shall give Halley as much advanced notice as is practicable to exercise its right to use the leased premises. The County/SWDD would have priority to use the site as a Disaster Debris Management Site and Halley's access to the Premises may be restricted during this period. During County's/SWDD's use of the leased premises, Halley's duty to pay rent shall be abated on a prorated basis.

8. Rent

Halley agrees to pay to the SWDD rent in the amount of \$600.00 per month for the Term of the Lease plus all applicable sales, use and like taxes, for the use of the Premises as set forth in this Lease. Each monthly payment is due in full on or before the fifteenth (15th) day of the month. If full payment is not received by the SWDD on or before the fifteenth (15th) day of each month, and SWDD has not agreed in writing to accept partial and/or late payment, a late fee equal to five (5) percent of the rent amount shall be due for each day the rent is late. Payments shall be made payable to "SWDD" and shall be delivered to Indian River County Landfill, 1325 74th Ave SW, Vero Beach, FL 32960.

9. Holding Over.

If Halley does not vacate the Premises upon the expiration or termination of this Lease without first obtaining the written consent of SWDD to remain in the Premises, such holding over shall constitute, and be construed as, at SWDD's option, a month-to-month tenancy or a tenancy at

sufferance at a rental rate up to double the monthly rent amount stated herein, and all other terms and provisions of this Lease shall apply during such holdover period. During such holdover period, Halley agrees to vacate and deliver the Premises to SWDD within thirty (30) days of Halley's receipt of written notice from SWDD to vacate. Halley agrees to pay the amount payable during the holdover period to SWDD on demand. No holding over by Halley without the consent of SWDD will operate to extend the Term.

10. Permitting, Maintenance, Clearing and Restoration of Premises

Halley shall have the following responsibilities with regard to permitting, maintenance, clearing and restoration of the Premises:

- a. Obtain all necessary permits and licenses as required by the SWDD, including but not limited to, a Florida Department of Environmental Protection National Pollutant Discharge Elimination System (NPDES) permit.
- b. Installation of any improvements necessary for its use of the Premises, including but not limited to an access road, subject to the prior approval of the SWDD Managing Director or his designee.
- c. Clearly mark the perimeter of the 2-acre area to ensure access doesn't occur outside the area. Maintain the Premises in a neat, safe and orderly manner.
- d. Refrain from storing petroleum products, and prohibit the removal, burial, or swapping of onsite soils.
- e. Protect surrounding canal and drainage ditch system with appropriate silt fencing and/or turbidity barrier as necessary for erosion control to the satisfaction and approval of the SWDD, which shall not be unreasonably withheld. Such protection is to be installed around the Premises within ten (10) days of receipt of approval.
- f. Take all measures necessary to prevent the spill of any toxic or hazardous materials on the Premises and shall immediately notify the SWDD of any possible spill or contamination. Any such spill or contamination to any area on or around the Premises, including without limitation the soil, surrounding canal, and drainage ditch system, shall be the responsibility of Halley to remedy and clean-up.

- g. Prior the expiration of the Term, including all renewals, remove all materials, equipment, junk, trash and debris from the Premises. No materials, including without limitation construction or demolition materials, will remain on site at the end of the Project.
- h. Following clean up, return the Premises to pre-existing or better condition.

11. Assignment Leasing and Successors in Interest

Halley shall not lease the Premises in whole or any part, nor assign this Lease to any other persons or entity during the term of this Lease.

12. Independent Contractor

Under the terms of this Lease, Halley is and shall be at all times an independent contractor and operator responsible to all parties for all of its acts or omissions. It is further agreed that in its use and enjoyment of the premises herein, including the facilities thereon, Halley shall indemnify, save, and hold harmless the SWDD from and against any and all claims, actions, damages, liability, and expenses in connection with the loss of life, personal injury, or damage to property occurring in or about, or arising out of, the demised premises, or occasioned wholly or in part by any act or omission of Halley, its agents or representatives.

13. Indemnification

In consideration of the benefits received pursuant to this Lease, Halley does hereby agree and covenants to defend fully, protect, indemnify and hold harmless County and SWDD and their respective officers, directors, agents, and employees ("Indemnified Parties") from and against each and every claim, demand or cause of action and any and all liability, cost, expense, including but not limited to reasonable attorneys' fees, costs and expenses incurred in defense of the Indemnified Parties, even if incident to appellate, post judgment or bankruptcy proceedings, damages or loss in connection therewith, which may be made or asserted by the Indemnified Parties, their invitees or any third parties on account of personal injury, death, damage or property damage caused by, arising out of or in any way incidental to or in connection with Halley's use of the property. At the election of the Indemnified Parties, Halley shall contest and defend the Indemnified Parties against any such claims of liability against the Indemnified Parties. The Indemnified Parties shall in any event, have the right, through counsel of its choice, to control the

defense or response to any such claim to the extent it could affect the Indemnified Parties financially. Only those matters which are determined by a final, nonappealable judgment to be the result of the negligence of the Indemnified Parties or the negligence of a third party who is not an agent, employee, invitee, or subcontractor of Halley shall be excluded from Halley's duty to indemnify the Indemnified Parties, but only to the extent of negligence of the Indemnified Parties or such third party. For purposes of this indemnification, "claims" shall mean and include all obligations, actual and consequential damages and costs reasonably incurred in the defense of any claim against the Indemnified Parties, including, but not limited to attorneys' and expert witness fees, costs of investigation and proof of facts, court costs, other litigation expenses, and travel and living expenses. The Indemnified Parties shall have the right to defend any such claim against it in such manner as the Indemnified Parties deems appropriate or described in its sole discretion.

14. Liability for Damage or Injury

The County nor SWDD shall not be liable for any damage or injury which may be sustained by any party or persons on the Premises other than the damage or injury caused solely by the negligence of the County or SWDD.

15. Notice

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given by either (i) personal service; (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing the date and time of delivery; or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by written notice to the other party:

If to SWDD:

County Administrator
1801 27th Street
Vero Beach, FL 32960

With a Copy to:

County Attorney
1801 27th Street
Vero Beach, FL 32960

If to Halley:

Halley Engineering Contractors, Inc
13901 NW 118th Ave
Miami, FL 33178
Attn: Daniel Halley, P.E., President

16. Insurance

Halley shall maintain the following insurance during the term of this Agreement:

1. Workmen's Compensation and Employer's Liability Insurance-Worker's Compensation Insurance shall provide for the limits required by Chapter 440, Florida Statutes (2021), and as may be amended from time to time. Halley's liability shall be for a limit of no less than five hundred thousand and 0/100 (\$500,000.00) dollars. If Halley, its partners, or officers request a waiver of exemption under Section 440.04, Florida Statutes (2021), and as may be amended from time to time, Halley agrees to provide full disclosure of this waiver to the County and SWDD and the County and SWDD shall have the right to reject Halley's waiver of exemption.
2. General Liability Insurance — Halley shall provide Commercial General Liability Insurance written on an occurrence basis, including product liability/completed operations, contractual liability, fire legal liability for a limit of at least one million dollars and 0/100 (\$1,000,000.00) dollars, combined single limit for bodily injury, illness and property damage. Halley shall also provide Coverage B (Personal Injury), written at a sub-limit of at least one hundred thousand and 0/100 (\$100,000.00) dollars and Coverage C (Medical Payments) of at least five thousand and 0/100 (\$5,000.00) dollars per person and twenty-five thousand and 0/100 (\$25,000.00) dollars per occurrence. The policy shall also provide the County and SWDD will be given a thirty (30) day written notice of cancellation or non-renewal and include the County and SWDD as additional named insureds.
3. Business Automobile Liability — Halley shall maintain and, prior to commencement of this contract, provide the SWDD with evidence of business automobile liability insurance to include: 1) coverage for any automobile for limits of not less than \$1,000,000 combined single limit (bodily injury & property damage) per accident and 2) Personal Injury Protection (Florida no-fault) with full statutory limits. The policy shall also provide the County and SWDD will be given a thirty (30) day written notice of cancellation or non-renewal and include the County and SWDD as additional named insureds.
4. Halley shall furnish Certificates of Insurance to the County and SWDD prior to the commencement of operations, which Certificates shall clearly indicate that Halley has obtained insurance in the type, amount and classifications as required for strict compliance

of the insurance provisions of this section. The County and SWDD reserve the right to reasonably amend the insurance requirements by the issuance of notice in writing to Halley.

17. Damage or Destruction to Premises.

Except as otherwise provided in this Lease, if the Premises or any part thereof (including any premises improvements), shall be damaged or destroyed, Halley shall, to the extent of the insurance deductible and insurance proceeds available, promptly repair or replace the same, and any insurance proceeds received with respect to such damage or destruction shall be applied to payment of the expenses of such repair or replacement, and any excess insurance proceeds shall belong to Halley. It shall be Halley's responsibility to repair or reconstruct the premises as appropriate. Halley shall be responsible for the payment of any deductible required under its insurance coverage. Any other terms or provisions of this agreement pertaining to repair, alteration, construction or reconstruction by Halley shall be binding upon the User in repairing or reconstructing the premises.

18. Waiver

Waiver of a breach of any provision in this Lease shall not be deemed a waiver of any other breach of the same or different provisions.

19. Rules and Regulations

Halley will observe, obey and comply with all rules and regulations adopted by the County and SWDD and all laws, ordinances and/or rules and regulations of other governmental units and agencies having lawful jurisdiction, which may be applicable to Halley's operations under this Lease.

20. Interpretation; Venue

This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior verbal or written agreements between the parties with respect thereto. This Agreement may only be amended by written document, properly authorized, executed and delivered by both parties hereto. This Agreement shall be governed by and construed under the laws of the State of Florida without regard to the principles of conflicts of laws of said state. In

the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit for Indian River County, Florida, for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

21. Mediation

Prior to initiating any litigation concerning this Lease, the parties agree to submit the disputed issue(s) to a mediator for non-binding mediation. The parties shall agree on a mediator chosen from a list of certified mediators available from the Clerk of Court for Indian River County. The parties shall share the fee of the mediator equally. To the extent allowed by law, the mediation process shall be confidential and the results of the mediation or any testimony or argument introduced at the mediation shall not be admissible as evidence in any subsequent proceeding concerning the disputed issue(s).

22. Public Records

Halley shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Halley in conjunction with this Lease. Specifically, Halley shall:

- a. Keep and maintain public records required by the County and SWDD to perform the service.
- b. Upon request from the County or SWDD's custodian of public records, provide the County or SWDD 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 Section 119 Florida Statutes or as otherwise provided by law.
- c. 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 Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the County or SWDD.
- d. Upon completion of the Agreement, transfer, at no cost, to the County or SWDD all public records in possession of the Contractor or keep and maintain public records required by the County and SWDD to perform the service. If the Contractor transfers all public records to

the County and SWDD upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public record disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All record stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology system of the County.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers the day and year first above written.

Attest:
Ryan L. Butler, Clerk of Court and
Comptroller

**Solid Waste Disposal District
Indian River County, Florida**

By:

By:

Deputy Clerk

Joseph H. Earman, Chairman

Date Approved by SWDD: _____

Approved By:

**Approved as to Form and Legal
Sufficiency By:**

John A. Titkanich, Jr., County Administrator

William K. DeBaal, County Attorney

Halley Engineering Contractors, Inc.

By:

Print Name: _____

Print Title: _____

Witness:

Witness:

By:

By:

Print Name: _____

Print Name: _____

Lease Property Aerial Photograph

