



March 1, 2024

Mr. John Elder, Project Manager  
TLC Diversified  
2719 17<sup>th</sup> Street East  
Palmetto, FL 34221

Subject: Indian River County Contract No. 2021026  
Notice of Intent to Assess Liquidated Damages

Dear Mr. Elder:

TLC Diversified is the General Contractor for the Oslo Water Treatment Plant Improvements Project for Indian River County Department of Utility Services (IRCDUS). The project had a Notice to Proceed on August 4, 2021, with a final completion date of November 2, 2023. TLC formally requested and was granted a 197-day extension to the contract that provided a substantial completion date of March 15, 2024, and final completion date of May 17, 2024. Since this time extension request was granted, the work at the project site has not progressed to a point where the schedule is anticipated to be met. The following major components are required for substantial completion and have not yet been completed to date:

1. Replacement of NF Trains 1, 3 and 4;
2. Feed pump rehabilitation work;
3. Process piping improvements including feed water, permeate and concentrate; and,
4. Membrane clean-in-place system.

As of February 29, 2024, there is currently less than one month of time prior to a substantial completion date – this date that requires the Owner, Indian River County, have beneficial use of the project. Given the amount of work that needs to be completed prior to the substantial completion date, the contract timeline is not anticipated to be met. The Owner and the Owner's engineering consultant have made multiple requests for the schedule to be updated and submitted, but none have been provided since the time extension work change directive was issued.

Section 00530, Article 3 subsection-3.3 of the agreement between TLC and IRC dated July 6, 2021, is as follows:

*3.3 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the work is not completed within the times specified in Paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and*

*difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER seven-hundred and fifty dollars (\$750.00) for each day that expires after the time specified in Paragraph 3.1 for Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER seven-hundred and fifty dollars (\$750.00) for each day that expires after the time specified in Paragraphs 3.1 and 3.2 for completion and readiness for final payment.*

*3.3.1 The CONTRACTOR and OWNER agree that OWNER is authorized to deduct all or any portion of the above-stated liquidated damages due to the Owner from payments due to the Contractor; or, in the alternative, all or any portion of the above-stated liquidated damages may be collected from the Contractor or its Surety or Sureties. These provisions for liquidated damages shall not prevent the OWNER, in case of the CONTRACTOR's default, from terminating the Contractor's right to proceed as provided in this AGREEMENT.*

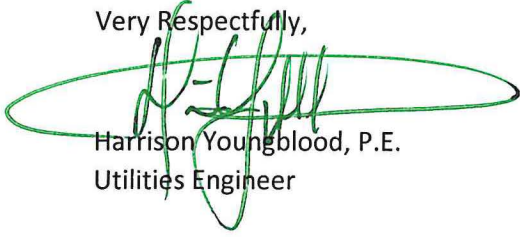
*3.3.2 In addition to the above-stated liquidated damages, the CONTRACTOR shall be responsible for reimbursing OWNER all expenses related to third party consultants in administering the Project beyond the Final Completion date specified in this Agreement, or beyond an approved extension of time granted to CONTRACTOR, whichever date is later.*

The lack of progress made on this project is concerning to IRCDUS. This is a very important project for IRCDUS, in which significant resources have been dedicated to this project. Many concessions have been made by IRCDUS for the benefit of TLC as it relates to the terms and conditions of this contract without penalty. Given the lack of progress, and the non-responsiveness with regards to timeliness, IRCDUS acknowledges the liquidated damages section of the agreement between TLC and IRC to be a remedy and resource at its disposal to reinforce timely completion of this work. As such, this letter is intended to serve as IRC's Notice of Intent to assess liquidated damages in accordance with the contractual terms if the agreed upon dates are not met.

Notwithstanding the foregoing, IRCDUS' expectation is that TLC submit an updated schedule within five (5) days of receiving this letter. The new schedule shall be provided in Gantt chart form with milestones, and shall be updated on a weekly basis going forward. If the schedule is reasonable and acceptable, IRCDUS will formally accept the changes by amendment. However, in the event the newly submitted timelines/milestones are not met, TLC shall, within one (1) business day, provide a written explanation as to the reason for the missed date and a plan of how the schedule will be recovered without any further time extension. It is expected that TLC will devote the resources needed to complete this project and adhere to the provided schedule with no further extensions.

Be advised, IRCDUS reserves the right to assess Liquidated Damages and will do so if no new agreement is acceptable or if the agreed upon schedule is not met. It is our hope that TLC will dedicate the necessary manpower and resources to complete this project within reasonable timeframe.

Very Respectfully,



Harrison Youngblood, P.E.  
Utilities Engineer

cc: Sean C. Lieske, Director of Utility Services  
Howard Richards, PE, Manager – Capital Projects  
Richard Meckes, Operations Manager  
Nick Black, PE, Kimley-Horn and Associates