

DEP CONTRACT NO. SP644  
AMENDMENT NO. 4

THIS CONTRACT as entered into on the 23<sup>rd</sup> day of February, 2005, and amended on the 3<sup>rd</sup> day of March, 2009, the 22<sup>nd</sup> day of February, 2010, and the 3<sup>rd</sup> day of June, 2010, between the FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION (hereinafter referred to as the "Department" or "DEP") and CDM CONSTRUCTORS, INC. (hereinafter referred to as the "Contractor") is hereby amended.

WHEREAS, the Contractor has not completed the work in accordance with the original schedule and the work completion schedule anticipated in Amendment No. 2 to the Contract; and,

WHEREAS, the parties hereto understand and agree that they are currently engaged in the dispute resolution process described in Paragraph 20 of the Contract to address disputes, including but not limited to, those related to the removal of a spray evaporation system and cleaning of the NGS-N lined reservoir, completion of the process water management tasks and the volume of ponded process water subject to liquidated damages, completion of closure construction tasks, the start date for the assessment of closure construction liquidated damages, restoration of certain infrastructure to an operable and maintained condition; and the parties further agree that such disputed matters as identified under Paragraph 20 of the Contract are not affected by this amendment; and,

WHEREAS, the Department in its August 11, 2010, response did not agree with assertions in CDM's July 27, 2010, change order request for additional compensation and an extension of time associated with the NCP Closure work; but for which both parties agree that any related dispute may become subject to the dispute resolution process described in Paragraph 20 of the Contract; and for which the parties further agree that any such disputed matter would not be affected by this amendment; and,

WHEREAS, the parties disagree over the causes of delays in completion of the Contract; and,

WHEREAS, the Department believes that rainfall has been within foreseeable quantities over the course of the Contract and Contractor asserts, inter alia, that excessive rain has delayed its completion of certain tasks; and,

WHEREAS, both parties agree that rainfall is an event beyond the control of the Contractor and agree that the minimum amount of delay Contractor asserts as a result of rainfall delays can be reasonably approximated, solely for the purposes of this Contract Extension, by calculating the number of weekdays prior to August 1, 2010, with greater than 0.5 inches of precipitation as recorded at the work site, which days total 113; and,

WHEREAS, a no-cost contract extension to allow for completion of the work is in the best interest of the State.

NOW, THEREFORE, without prejudice to either party's positions regarding disputes under the Contract which are the subject of dispute resolution under paragraph 20 thereof, or as to claims or defenses asserted or which may be asserted by either party, and not by way of admission by either party regarding the assertions herein, the Contract is hereby amended as follows:

- Paragraph 5 is hereby revised to change the completion date of the Contract from August 22, 2010 to January 28, 2011 (an extension representing 113 weekdays). However, based on the Contractor's updated closure construction schedule, it is understood and agreed that the work outlined in the Contract is to be completed by October 30, 2010. The remainder of the extension period is expected to be used for contract closeout.
- The parties hereto understand and agree that this Contract extension is not intended to and does not affect a release of the Contractor from any applicable liquidated damages arising under paragraph 8 of the Contract or any dispute resolution agreements under paragraph 20 affecting the liquidated damages language, or any rights of the Contractor to assert claims for additional time and compensation independent of this extension, or any defenses of the Department under the Contract to such claims. This amendment notwithstanding, for purposes of the assessment of liquidated damages, the end date of the contract period shall remain the original completion date established in the Contract prior to execution of Amendment No. 2 (to wit: February 22, 2010).

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In all other respects, the Contract of which this is an Amendment, and attachments relative thereto shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed the day and year last written below.

CDM CONSTRUCTORS, INC.

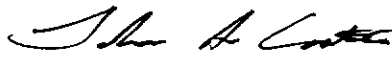
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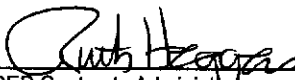
Date: 08/19/2010

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

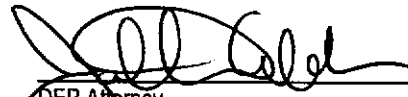
By:  *for TANKY LUCWELLYN*  
Director, Division of Water Resource  
Management or designee

Date: 8/20/10

  
John Coates, DEP Contract Manager

  
DEP Contracts Administrator

Approved as to form and legality:

  
DEP Attorney