

# **EXHIBIT A**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

Robert Cothran, as the representative of a class of similarly situated persons, and on behalf of the Electric Supply Employee Stock Ownership Plan,

Plaintiff,

Case No. 8:23-cv-00518-CEH-CPT

v.

George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin,

Defendants.

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement, dated February 16, 2024 (the “Settlement Agreement”), is made and entered into by and among: (i) Plaintiff Robert Cothran (on behalf of himself and each Settlement Class Member), by and through his counsel of record in the litigation; and (ii) George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin, by and through their counsel of record in the litigation.<sup>1</sup> The Settlement Agreement is intended to fully, finally, and forever resolve, discharge, and settle the Released Claims, subject to the approval of the Court and the terms and conditions set forth in this Settlement Agreement.

**ARTICLE I**

**DEFINITIONS**

1.1 “Action” means the civil action captioned Robert Cothran, as the representative of a class of similarly situated persons, and on behalf of the Electric Supply Employee Stock Ownership Plan v. George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin, Case No. 8:2023-cv-00518, pending in the United States District Court for the Middle District of Florida.

1.2 “Administrative Expenses” means all expenses incurred in the administration of this Settlement Agreement, including but not limited to (a) all fees, expenses, and costs associated with the identification of Settlement Class Members, the collection of data for the Plan of Allocation described in Article V, as well as the production and dissemination of the Notice to Settlement Class Members, including costs of the Plan’s recordkeeper; (b) tax

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<sup>1</sup> Except as otherwise specified, all capitalized terms shall have the meanings set forth in Article I of this Settlement Agreement.

expenses related to the Settlement Agreement and its implementation (including taxes and tax expenses described in Section 4.6); (c) all expenses incurred by the Settlement Administrator in administering and effectuating this settlement, including all costs associated with the calculations and distributions of funds pursuant to the Plan of Allocation; (d) all fees and expenses associated with the Settlement Website and telephone support line described in Article III; (e) all fees charged by the Settlement Administrator; and (f) all fees and expenses charged by the Independent Fiduciary and Escrow Agent. All Administrative Expenses approved by the Court and all tax-related Administrative Expenses pursuant to Section 4.6, if any, shall be paid from the Gross Settlement Amount.

1.3 “Alternate Payee” means a person, other than a Settlement Class Member or Beneficiary, who according to the Plan’s records was entitled to a benefit under the Plan as a result of a QDRO, where the QDRO relates to a Settlement Class Member’s balance during the Class Period.

1.4 “Attorneys’ Fees and Costs” means the amount awarded by the Court as compensation for the services provided by Class Counsel and the reasonable costs and expenses incurred by Class Counsel in connection with the Action, including the investigation leading to it, which shall be recovered from the Gross Settlement Amount and shall not exceed one-third of the Gross Settlement Amount.

1.5 “Beneficiary” means a person who according to the Plan’s records was entitled to receive a benefit under the Plan that was derivative of the interest of a deceased Settlement Class Member, other than an Alternate Payee.

1.6 “CAFA Notice” means the notice(s) required to be provided pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715 (“CAFA”).

1.7 “Claims” means any and all manner of claims, counterclaims, cross claims, third-party claims, actions, causes of actions, potential actions, suits, arbitrations, controversies, costs, damages, losses, obligations, liabilities, judgments, and demands whatsoever, known or unknown, asserted or unasserted, suspected or unsuspected, accrued or unaccrued, whether class, individual, or otherwise, arising under the laws, regulations, or common law of the United States of America, any state or political subdivision thereof, or any foreign country or jurisdiction, in law, in contract, or in equity, and regardless of legal theory.

1.8 “Class Counsel” means Engstrom Lee LLC, Morgan & Morgan, P.A., and Wenzel Fenton Cabassa, P.A.

1.9 “Class Period” means January 1, 2016 through April 14, 2021, inclusive.

1.10 “Complaints” means the original Complaint filed in this Action at ECF No. 1 on March 8, 2023 and the Amended Complaint filed at ECF No. 23 on May 4, 2023.

1.11 “Court” means the United States District Court for the Middle District of Florida.

1.12 “Defendants” means George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin.

1.13 “Defendants’ Counsel” means Groom Law Group, Chartered and Gordon Rees Scully Mansukhani, LLP.

1.14

1.15 “Entitlement Amount” means that portion of the Net Settlement Amount payable to an individual Settlement Class Member, as determined according to the procedures described in Article V herein.

1.16 “ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

1.17 “Escrow Account” means an account at an established financial institution that is established for the deposit of the Gross Settlement Amount and amounts relating to it, such as income earned on the investment of the Gross Settlement Amount.

1.18 “Escrow Agent” means The Huntington National Bank, an independent contractor to be retained by Class Counsel and the Settlement Administrator, which will serve as escrow agent for any portion of the Gross Settlement Amount deposited in or accruing in the Escrow Account pursuant to this Settlement.

1.19 “Fairness Hearing” means the hearing to be held before the Court pursuant to Federal Rule of Civil Procedure 23(e) to determine whether the Settlement Agreement should receive final approval by the Court.

1.20 “Final Approval” means the entry of the Final Approval Order.

1.21 “Final Approval Order” means the order and final judgment of the Court approving the Settlement, in substantially the form submitted in connection with Plaintiff’s Motion for Final Approval of the Settlement.

1.22 “General Release Compensation” means the sum of five thousand U.S. dollars from the “Gross Settlement Amount” described in Section 1.23 herein, which Defendants have agreed to pay Named Plaintiff in exchange for a full general release of claims not covered in this Action and agreement not to disparage Defendants.

1.23 “Gross Settlement Amount” means the sum of one million, one hundred thousand U.S. dollars (USD \$1,100,000.00), contributed to the Qualified Settlement Fund as described in Article IV herein. The Gross Settlement Amount shall be the full and sole monetary payment to the Named Plaintiff, Settlement Class Members, and Class Counsel made by or on behalf of Defendants in connection with this Settlement Agreement.

1.24 “Independent Fiduciary” means the person or entity selected by Defendants to serve as an independent fiduciary with respect to the Settlement Agreement for the purpose of rendering the determination described in Section 2.2 herein.

1.25 “Named Plaintiff” means Robert Cothran.

1.26 “Net Settlement Amount” means the Gross Settlement Amount, plus any interest or income earned on the Qualified Settlement Fund, minus: (a) all Attorneys’ Fees and Costs approved by the Court; (b) the General Release Compensation approved by the Court; (c) all Administrative Expenses and additional payments approved by the Court and tax-related Administrative Expenses; and (d) any contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties and approved by the Court that is set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, and (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period.

1.27 “Notice” means the form of Court-approved notice of this Settlement Agreement that is disseminated to Settlement Class Members. The Settling Parties shall propose that the Court approve the form of notice attached as Exhibit 1 hereto.

1.28 “Non-Rollover-Electing Settlement Class Member” means a Settlement Class Member who has not timely submitted a completed, satisfactory Rollover Form by the Rollover Form Deadline, or whose Rollover Form is rejected by the Settlement Administrator.

1.29 “Plan” means the Electric Supply Employee Stock Ownership Plan.

1.30 “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount as described in Article V herein.

1.31 “Preliminary Approval Order” means the order of the Court preliminarily approving the Settlement Agreement, in substantially the form submitted in connection with Named Plaintiff’s motion for entry of Preliminary Approval Order.

1.32 “PTE 2003-39” means U.S. Department of Labor Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75,632 (Dec. 31, 2003), as amended.

1.33 “QDRO” or “Qualified Domestic Relations Order” means a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a Settlement Class Member and which previously has been determined qualified pursuant to the Plan’s procedures.

1.34 “Qualified Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent as described in Article IV herein.

1.35 “Released Claims” means any and all Claims, actions, suits, controversies, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether legal or equitable, contractual, statutory, or common law, accrued or unaccrued, asserted or unasserted, or known or Unknown Claims, against any of the Released Parties with respect to the Plan arising on or before the date of preliminary approval of the Settlement:

(a) that were asserted in the Action against Defendants or could have been asserted in the Action or any other court, forum, or proceeding against Defendants based on or arising from any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences asserted in the Action, whether or not pleaded in the Complaints, including all Claims related to the investment of the Plan's assets or the valuation of the assets of the Plan;

(b) that would be barred, including by res judicata or other legal or equitable doctrine, based on the Court's entry of the Final Approval Order;

(c) that arise from the direction to calculate, the calculation of, and/or the method or manner of the allocation of the Net Settlement Fund pursuant to the Plan of Allocation; or

(d) that arise from the approval by the Independent Fiduciary of the Settlement Agreement.

Notwithstanding anything herein, the following shall not be included in the definition of Released Claims: (i) Claims to enforce the Settlement Agreement, and (ii) Claims for individual vested benefits brought pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) that are otherwise due under the terms of the Plan.

1.36 "Released Parties" means (a) each Defendant; (b) Electric Supply of Tampa LLC, formerly known as Electric Supply of Tampa Inc., and its past, present, and future direct and indirect parent companies, subsidiaries, affiliates, divisions, joint ventures, committees, predecessors, successors, successors-in-interest, insurers, reinsurers, and assigns, and any individual, partnership, corporation, or any other form of entity or organization that controls, is controlled by, or is under common control with any of the foregoing; (c) any fiduciary of the Plan or service provider to the Plan (other than the Independent Fiduciary), and, (d) with respect to (a) through (c) above, all of their affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, insurers, reinsurers, assigns, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), administrators, shareholders, officers, directors, partners, agents, managers, members, employees, representatives, attorneys, administrators, heirs, executors, and all persons acting under, by, through, or in concert with any of them.

1.37 "Rollover-Electing Settlement Class Member" means a Settlement Class Member who has timely submitted a completed, satisfactory Rollover Form by the Rollover Form Deadline set by the Court and whose Rollover Form is accepted by the Settlement Administrator.

1.38 The "Rollover Form Deadline" shall be 14 calendar days prior to the Fairness Hearing, unless otherwise specified by the Court.

1.39 "Rollover Form" means the form described generally in Section 5.2(a)(i) herein, substantially in the form attached as Exhibit 2 hereto.

1.40 “Settlement” means the settlement of the Action contemplated by this Settlement Agreement.

1.41 “Settlement Administrator” means Analytics Consulting LLC, an independent contractor to be retained by Class Counsel and approved by the Court.

1.42 “Settlement Agreement” means this agreement and its exhibits.

1.43 “Settlement Allocation Score” has the meaning ascribed to it in Section 5.1(a) herein.

1.44 “Settlement Class” means the following class: all participants of the ESOP who had an account balance greater than zero at any time between January 1, 2016 and April 14, 2021, excluding Defendants.

1.45 “Settlement Class Member” means a member of the Settlement Class.

1.46 “Settlement Effective Date” means one business day following (a) the date upon which the time expires for filing or noticing any appeal of the Final Approval Order; or (b) if there are any appeals, the date of dismissal or completion of any appeal, in a manner that finally affirms and leaves in place the Final Approval Order without any material modifications, and all proceedings arising out of the appeal(s) (including, but not limited to, the expiration of all deadlines for motions for reconsideration or rehearing or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand).

1.47 “Settlement Period” shall be the period from the Settlement Effective Date and continuing for a period of nine months thereafter.

1.48 “Settlement Website” means the internet website established by the Settlement Administrator as described in Section 3.3 herein.

1.49 “Settling Parties” means Defendants and the Named Plaintiff, on behalf of himself, the Settlement Class, and the Plan, each of whom individually is a “Settling Party.”

1.50 “Unknown Claims” means any and all Released Claims which the Named Plaintiff or the Settlement Class Members do not know or suspect to exist as of the Settlement Effective Date, which if known might have affected their decision(s) with respect to the Settlement.

## ARTICLE II

### SETTLEMENT APPROVAL

2.1 Preliminary approval by Court. On or before February 9, 2024, or such other date as the Court may order, the Named Plaintiff, through Class Counsel, shall apply to the Court for entry of the Preliminary Approval Order, in substantially the form attached hereto as Exhibit 3, which shall include, among other provisions, a request that the Court:

(a) preliminarily approve this Settlement Agreement for purposes of disseminating notice to the Settlement Class;

(b) approve the form and contents of the Notice (including the Rollover Form);

(c) preliminarily bar and enjoin the institution and prosecution of any Released Claims against any Released Parties by Settlement Class Members pending final approval of this Settlement Agreement, even if any Settlement Class Member may thereafter discover facts in addition to or different from those which the Settlement Class Members or Class Counsel now know or believe to be true with respect to the Action and Released Claims;

(d) provide that, pending final determination of whether the Settlement Agreement should be approved, no Settlement Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any Released Claims against Defendants or the Released Parties;

(e) schedule a Fairness Hearing to (1) review comments and/or objections regarding this Settlement Agreement, (2) consider the fairness, reasonableness, and adequacy of this Settlement Agreement, (3) consider whether the Court should issue a Final Approval Order approving this Settlement Agreement, awarding any Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation and dismissing this Action with prejudice, and (4) consider such other matters as the Court may deem appropriate;

(f) provide that any objections to any aspect of the Settlement Agreement shall be heard, and any papers and documents submitted in support of said objections shall be considered, by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the objection and any supporting papers or documents must be sent to Class Counsel and Defendants' counsel at least 21 calendar days prior to the Fairness Hearing (or by such other deadline as determined by the Court). Any person wishing to speak at the Fairness Hearing shall serve a notice of intent to appear on Class Counsel and Defendants' Counsel at least 21 calendar days prior to the Fairness Hearing (or by such other deadline as determined by the Court); and

(g) provide that any Settling Party may file a response to an objection by a Settlement Class Member before the Fairness Hearing.

2.2 Review by Independent Fiduciary. Defendants shall, in their sole discretion, select and retain the Independent Fiduciary, on behalf of the Plan, to determine whether to approve and authorize the settlement of the Released Claims on behalf of the Plan.

(a) The Independent Fiduciary shall comply with all relevant requirements set forth in PTE 2003-39.

(b) The Independent Fiduciary shall notify Defendants of its determination in writing (with copies to Class Counsel and Defendants' Counsel) and in accordance with PTE 2003-39, which notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.



(c) The Settling Parties shall comply with reasonable requests for information made by the Independent Fiduciary for purposes of evaluating the Settlement Agreement.

(d) All fees and expenses associated with the Independent Fiduciary's retention, services, and determination shall be considered Administrative Expenses.

2.3 Final Approval by Court. No later than fourteen (14) calendar days before the Fairness Hearing, or by such other deadline as specified by the Court, Class Counsel shall submit a motion to the Court requesting Final Approval of the Settlement Agreement and entry of the Final Approval Order, which shall include, among other provisions, a request that the Court:

(a) dismiss with prejudice all of the Released Claims in the Action, whether asserted by the Named Plaintiff on his own behalf, on behalf of the Settlement Class, or derivatively on behalf of the Plan, without costs to any of the Settling Parties, except as contemplated by this Settlement Agreement;

(b) decree that neither the Final Approval Order nor this Settlement Agreement constitutes an admission by any Defendant or Released Party of any liability or wrongdoing;

(c) bar and enjoin the Named Plaintiff and all Settlement Class Members from asserting any Released Claims against any of the Released Parties;

(d) determine that this Settlement Agreement is entered into in good faith and represents a fair, reasonable, and adequate settlement that is in the best interests of the Settlement Class Members;

(e) determine that all applicable CAFA requirements have been satisfied; and

(f) preserve the Court's continuing and exclusive jurisdiction over the Settling Parties and all Settlement Class Members to administer, construe, and enforce this Settlement Agreement in accordance with its terms for the mutual benefit of the Settling Parties, but without affecting the finality of the Final Approval Order.

### **ARTICLE III**

#### **SETTLEMENT ADMINISTRATION**

3.1 CAFA Notice. No later than ten (10) calendar days after the Named Plaintiff's filing of this Settlement Agreement and motion for entry of the Preliminary Approval Order with the Court, the Settlement Administrator shall provide appropriate notice of this Settlement Agreement to the Attorney General of the United States and to the Attorneys General of all states in which Settlement Class Members reside, as specified in 28 U.S.C. § 1715(b). The costs of such notice shall be considered an Administrative Expense. Upon completing such

notice, the Settlement Administrator shall provide written notice to Class Counsel and the Defendants' Counsel.

3.2 Notice to Class Members.

(a) Defendants shall, upon timely request of the Settlement Administrator and at least 14 calendar days before the deadline for issuance of the Notice, produce to the Settlement Administrator the names and last known addresses for all Settlement Class Members for the purpose of disseminating the Notice to Settlement Class Members as provided in Section 3.2(b) below. Defendants shall provide any other readily accessible information that is reasonably and timely requested by the Settlement Administrator for purposes of issuance of the Notice.

(i) The Settlement Administrator shall use the information and data provided by Defendants solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

(ii) In the event the Settlement Administrator wishes to consult with Class Counsel to address any issue that arises in connection with the administration of the settlement, the Settlement Administrator may share with Class Counsel the information necessary to evaluate the issue. However, such information shall be kept in strict confidence by Class Counsel and shall not be used for any other purpose.

(b) No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall send the Notice by first-class mail, postage prepaid, or by such other means as the Court may order, to the Settlement Class Members.

(c) The Notice shall be in the form approved by the Court, which shall be in substantially the form attached as Exhibit 1 hereto.

(d) The Notice shall include a copy of the Rollover Form attached as Exhibit 2 hereto.

(e) A Notice shall be sent to the last known address of each Settlement Class Member, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known address.

(f) The Settlement Administrator shall use commercially reasonable efforts to locate any Settlement Class Member whose Notice is returned and mail such Notice to those Settlement Class Members one additional time.

(g) The Settlement Administrator shall post a copy of the Notice and the Rollover Form on the Settlement Website.

3.3 Settlement Website.

(a) No later than thirty (30) calendar days after the entry of the Preliminary Approval Order, or by such other deadline as specified by the Court, the Settlement Administrator shall establish the Settlement Website. The Settlement Administrator shall maintain the Settlement Website until no later than one year after the Settlement Effective Date or thirty (30) calendar days after the receipt of the notice referenced in Section 5.4, whichever is earlier, at which point the Settlement Administrator shall take down the Settlement Website.

(b) The Settlement Website shall contain a copy of the Notice, Rollover Form, and relevant case documents, including but not limited to a copy of the operative Amended Complaint (ECF No. 23) and all documents filed with the Court in connection with the Settlement. No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing.

(c) The Settlement Website shall also include a toll-free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.

3.4 Distribution of Net Settlement Amount. Within seven (7) calendar days of entry of the Final Approval Order, Defendants shall use reasonable efforts to provide to the Settlement Administrator all readily accessible information timely and reasonably requested by the Settlement Administrator that is necessary to implement the Plan of Allocation. The Settlement Administrator shall distribute the Net Settlement Amount to Settlement Class Members in accordance with the Plan of Allocation as described in Article and within the time set by Section 4.6.

3.5 Maintenance of records. The Settlement Administrator shall maintain reasonably detailed records of its activities carried out under this Settlement Agreement. The Settlement Administrator shall maintain all such records as required by applicable law in accordance with its business practices and provide same to Class Counsel and Defendants' Counsel upon their request. The Settlement Administrator shall provide such information as may reasonably be requested by the Named Plaintiff, Defendants, Class Counsel, or Defendants' Counsel relating to the administration of the Settlement Agreement. The Settlement Administrator shall maintain such records confidentially.

3.6 No liability. Defendants, Defendants' Counsel, and Released Parties shall have no responsibility for, interest in, or liability whatsoever, with respect to:

(a) any act, omission, or determination of the Settlement Administrator or any of its designees or agents;

(b) the determination of the Independent Fiduciary;

(c) the Plan of Allocation or its implementation;

(d) the management, investment, or distribution of the Qualified Settlement Fund;

(e) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns;

(f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or

(g) the determination, administration, calculation, verification, confirmation or payment of any Claims asserted against the Qualified Settlement Fund. Defendants' responsibility with respect to the amounts to be paid pursuant to this Settlement Agreement is limited to their responsibility to cause payments to be made to the Qualified Settlement Fund as set forth in Section 4.2.

## ARTICLE IV

### **ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND**

4.1 Establishment of the Qualified Settlement Fund. No later than ten (10) business days after entry of the Preliminary Approval Order, the Escrow Agent shall establish an escrow account. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified Settlement Fund within the meaning of U.S. Department of Treasury Regulation § 1.468B-1 (26 C.F.R. § 1.468B-1). In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in 26 C.F.R. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

4.2 Funding of the Qualified Settlement Fund. In consideration of all the promises and agreements set forth in the Settlement Agreement, Defendants or their insurer(s) will contribute the Gross Settlement Amount to the Qualified Settlement Fund. Defendants shall, or shall cause their insurer(s) to, contribute the Gross Settlement Amount to the Qualified Settlement Fund in the following manner:

(a) Defendants or their insurer(s) shall issue a check of one half of the Gross Settlement Amount (\$550,000.00) to the Escrow Agent which shall be deposited into the Qualified Settlement Fund no later than twenty-eight (28) calendar days after the later of (i) the date the Preliminary Approval Order is entered, or (ii) the escrow account described in Section 4.1 is established and the Escrow Agent shall have furnished to Defendants' Counsel in writing the escrow account name, IRS W-9 form of the payee (including federal identification number), and all payment information and instructions.

(b) No later than twenty-eight (28) calendar days after entry of the Final Approval Order, Defendants or their insurer(s) will issue a check for the remaining one-half portion of the Gross Settlement Amount (\$550,000.00) to the Escrow Agent which shall be deposited into the Qualified Settlement Fund.

4.3 Notwithstanding anything to the contrary in this Settlement Agreement, in no event shall Defendants or their insurer(s) be required to make payments or incur any expenses in excess of the Gross Settlement Amount. The Gross Settlement Amount shall be the only amount paid by Defendants and/or their insurer(s) under this Settlement Agreement, and Defendants and their insurer(s) shall not be obligated to make any other payments under this Settlement Agreement or in connection with this Settlement.

4.4 Qualified Settlement Fund administrator. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 468B) and the regulations promulgated thereunder, the administrator of the Qualified Settlement Fund shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Gross Settlement Amount (including without limitation applying for a taxpayer identification number for the Qualified Settlement Fund and filing the returns described in 26 C.F.R. § 1.468B-2(k)). Such returns, as well as the election described in Section 4.1, shall be consistent with this Article and, in all events, shall reflect that all taxes (including any estimated taxes, interest, or penalties) on the income earned by the Gross Settlement Amount shall be deducted and paid from the Gross Settlement Amount as described in Section 4.6 herein.

4.5 Investment of the Qualified Settlement Fund. The Escrow Agent shall invest the Qualified Settlement Fund in short-term United States agency or Treasury securities or other instruments backed by the full faith and credit of the United States Government or an agency thereof, or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

4.6 Taxes on the income of the Qualified Settlement Fund. All (1) taxes (including any estimated taxes, interest, or penalties) on any income of the Qualified Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or Defendants' Counsel with respect to any income of the Gross Settlement Amount for any period during which the Gross Settlement Amount does not qualify as a "qualified settlement fund" for federal or state income tax purposes, and (2) all expenses and costs incurred in connection with the taxation of the Qualified Settlement Fund (including, without limitation, expenses of tax attorneys and accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article IV) are Administrative Expenses and shall be timely paid by the Escrow Agent out of the Qualified Settlement Fund. The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defendants' Counsel, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants, Defendants' Counsel, nor Class Counsel are responsible nor shall they have any liability

therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article IV.

4.7 The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Class Counsel and Defendants' Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

4.8 After the Settlement Effective Date, the Gross Settlement Amount will be distributed from the Qualified Settlement Fund as follows: First, within five (5) business days of the Settlement Effective Date, all Administrative Expenses approved by the Court shall be paid. Second, within sixty (60) calendar days of the Settlement Effective Date, (a) all Attorneys' Fees and Costs approved by the Court shall be paid to Class Counsel; (b) the General Release Compensation approved by the Court shall be paid to the Named Plaintiff, and then (c) the Net Settlement Amount will be distributed pursuant to the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund. A contingency reserve not to exceed an amount to be mutually agreed upon by the Settling Parties and approved by the Court may be set aside by the Settlement Administrator for: (1) Administrative Expenses incurred before the Settlement Effective Date but not yet paid, (2) Administrative Expenses estimated to be incurred after the Settlement Effective Date but before the end of the Settlement Period.

4.9 The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. Defendants, Defendants' Counsel, and Class Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

## ARTICLE V

### PLAN OF ALLOCATION

5.1 Calculation of payments to Settlement Class Members. Payments to each Settlement Class Member shall be calculated by the Settlement Administrator as follows:

(a) For each Settlement Class Member, the Settlement Administrator shall determine a Settlement Allocation Score, defined as follows:

Each Settlement Class Member's average Plan balance invested in the Plan's Other Investments Account multiplied by the Settlement Class Member's vested percentage at the time that the Settlement

Class Member’s Plan account was closed.<sup>2</sup> Each Settlement Class Member’s average Plan balance invested in the Plan’s Other Investments Account shall be calculated based on the Settlement Class Member’s Plan balance invested in the Plan’s Other Investments Account at the end of each year, 2016-2020, and at termination of the Plan on April 14, 2021, except that such balance at termination of the Plan (i) shall not include (A) the out of the ordinary S-Corp dividend amount associated with the termination of the Plan or (B) cash from the sale of the Plan employer’s stock and (ii) shall first be multiplied by the ratio of days in 2021 that the Plan was in effect to the total number of days in 2021.

(b) The Settlement Administrator shall determine each Settlement Class Member’s Entitlement Amount by calculating each individual’s *pro rata* share of the Net Settlement Amount, based on their Settlement Allocation Score compared to the sum of all Settlement Class Members’ Settlement Allocation Scores.

(c) The aggregate of all Entitlement Amounts may not exceed the Net Settlement Amount. In the event that the Settlement Administrator determines that aggregate monetary payment pursuant to the Plan of Allocation would exceed the Net Settlement Amount, the Settlement Administrator is authorized to make such *pro rata* changes as are necessary to ensure that the aggregate monetary payment pursuant to the Plan of Allocation does not exceed the Net Settlement Amount.

## 5.2 Payments to Settlement Class Members.

(a) Each Settlement Class Member (or the Beneficiaries or Alternate Payees of Settlement Class Members) will have the opportunity to elect a tax-qualified rollover of their Entitlement Amount to the Electric Supply 401(k) Retirement Savings Plan (if the Settlement Class Member, Beneficiary, or Alternate Payee is a current participant in that plan), an individual retirement account, or another eligible employer plan, which they have identified

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<sup>2</sup> Mathematically stated, the *Settlement Allocation Score* shall be calculated as follows:

(12/31/2016 Other Investments Account Balance + 12/31/2017 Other Investments Account Balance + 12/31/2018 Other Investments Account Balance + 12/31/2019 Other Investments Account Balance + 12/31/2020 Other Investments Account Balance + (4/14/2021 Other Investment Accounts Balance \* (104/365)))

*Divided by*

6

*Multiplied by*

The percent vested that the Class Member was at the time the Class Member’s account was closed (e.g., 1 for 100% vested, 0.5 for 50% vested).



on the Rollover Form, provided that the Settlement Class Member supplies adequate information to the Settlement Administrator to effect the rollover.

(i) Rollover-Electing Settlement Class Members. Upon completing the calculation of each Settlement Class Member's Entitlement Amount and no later than sixty (60) calendar days following the Settlement Effective Date, the Settlement Administrator shall effect a rollover from the Qualified Settlement Fund to the individual retirement account or other eligible employer plan elected by each Rollover-Electing Settlement Class Member in their Rollover Form, if the conditions for such rollover are satisfied and any associated paperwork necessary to transfer such Entitlement Amount by rollover have been provided. If the Settlement Administrator is unable to effectuate the rollover instructions of any Rollover-Electing Settlement Class Member as provided in their Rollover Form, they will be treated as a Non-Rollover-Electing Settlement Class Member.

(ii) Non-Rollover-Electing Settlement Class Members. Upon completing the calculation of each Settlement Class Member's Entitlement Amount and no later than sixty (60) calendar days following the Settlement Effective Date, the Settlement Administrator shall issue a check from the Qualified Settlement Fund to each Non-Rollover-Electing Settlement Class Member, in the amount of each Settlement Class Member's Entitlement Amount (less any withholdings).

5.3 Payments to Beneficiaries and Alternate Payees. The Settlement Administrator shall have sole and final discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article and as ordered by the Court.

5.4 Notice of Completion of Plan of Allocation. Within ten (10) business days of completing all aspects of the Plan of Allocation, the Settlement Administrator shall send to Class Counsel and Defendants' Counsel a summary email containing the following: (a) the number of Settlement Class Members to whom the Settlement Administrator sent the Notice; (b) the date(s) upon which the Settlement Administrator sent the Notice; (c) the number of Settlement Class Members whose Notice was returned as undeliverable; (d) the efforts made by the Settlement Administrator to find the correct address and to deliver the Notice for such Settlement Class Members; (e) the number of Settlement Class Members to whom the Settlement Administrator made a distribution from the Net Settlement Amount, including a breakdown of the number of Settlement Class Members who received a distribution by check and the number of Settlement Class Members who received a distribution by any means other than a check.

5.5 Expiration of Checks and Disbursement of Undistributed Monies from the Qualified Settlement Fund

(a) All checks issued in accordance with the Plan of Allocation shall be mailed to the address of each Settlement Class Member (or their Beneficiary or Alternate Payee) or any updated address obtained by the Settlement Administrator.

(b) All checks issued in accordance with the Plan of Allocation that are not cashed within one hundred twenty (120) calendar days of issuance shall be void and shall



revert to the Qualified Settlement Fund. The voidance of checks shall have no effect on Settlement Class Members' release of Claims, obligations, representations, or warranties as provided herein, which shall remain in full effect.

(c) No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs, taxes, and interest-earned on the Qualified Settlement Fund, shall be paid to the Electric Supply 401(k) Retirement Savings Plan for the purpose of defraying administrative fees and expenses. In no event shall any part of the Settlement Fund be used to reimburse Electric Supply of Tampa LLC or any Defendant or to offset settlement-related costs incurred by any Defendant.

5.6 Responsibility for taxes.

(a) The Settling Parties acknowledge that any payments to Settlement Class Members may be subject to applicable tax laws. Defendants' Counsel, Class Counsel, and the Named Plaintiff will provide no tax advice to the Settlement Class Members and make no representation regarding the tax consequences of any of the settlement payments described in this Settlement Agreement.

(b) Each Settlement Class Member who receives a payment pursuant to the Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state and local taxes resulting from or attributable to the payment received by such person. Each Settlement Class Member shall hold Defendants, Defendants' Counsel, Released Parties, Class Counsel, and the Settlement Administrator harmless from (a) any tax liability, including without limitation penalties and interest, related in any way to payments or credits under the Settlement Agreement, and (b) the costs (including, without limitation, fees, costs and expenses of attorneys, tax advisors, and experts) of any proceedings (including, without limitation, any investigation, response, and/or suit) related to such tax liability.

5.7 Restorative Payments. The Net Settlement Amount to be allocated and distributed to the Settlement Class Members in accordance with the Plan of Allocation shall constitute "restorative payments" within the meaning of Revenue Ruling 2002-45 for all purposes.

## ARTICLE VI

### ATTORNEYS' FEES AND COSTS

6.1 Attorneys' Fees and Costs. No later than thirty (30) calendar days prior to the deadline for objections provided in the Preliminary Approval Order for Settlement Class Members to object to the Settlement Agreement, Class Counsel may file an application with the Court for payment of reasonable Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation (other than those tax-related expenses automatically deducted pursuant to Section 4.6) to be deducted from the Gross Settlement Amount. Defendants agree not to object to Class Counsel's application for Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation provided that it is consistent with the limitations on

Attorneys' Fees specified in Section 1.4 and the Independent Fiduciary has no objection to such Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation. Notwithstanding anything herein, the Court's failure to approve, in whole or in part, any application for Attorneys' Fees and Costs, or Administrative Expenses, sought by Class Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

## ARTICLE VII

### **RELEASES AND COVENANT NOT TO SUE**

7.1 **Releases.** Subject to Article IX below, the obligations incurred pursuant to this Settlement Agreement shall be in full and final disposition and settlement of any and all of the Released Claims.

(a) Upon the Settlement Effective Date, the Named Plaintiff and every Settlement Class Member on behalf of themselves, their heirs, executors, administrators, estates, successors, beneficiaries, agents, attorneys and assigns, and the Plan (subject to Independent Fiduciary approval as described in Section 2.2 herein) shall, with respect to each and every Released Claim, be deemed to fully, finally and forever release, waive, relinquish and forever discharge each and every Released Claim against any and all of the Released Parties, and forever shall be enjoined from prosecuting any and all of the Released Claims, whether or not such Settlement Class Members have submitted an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Settlement Class Members have been approved or allowed.

(b) Nothing herein shall preclude any action to enforce the Settlement Agreement.

7.2 The Named Plaintiff, Class Counsel, the Plan, or the Settlement Class Members may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with Defendants, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Settlement Class Member not to object to the Settlement. Notwithstanding the foregoing, each Settlement Class Member and the Plan shall expressly, upon the Settlement Effective Date, be deemed to have, and by operation of the Final Approval Order, fully, finally, and forever settled, released, relinquished, waived, and forever discharged any and all Released Claims, including Unknown Claims. The Settlement Class Members acknowledge and shall be deemed by operation of the Final Approval Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

7.3 As of the Settlement Effective Date, the Named Plaintiff, the Settlement Class Members, and the Plan (subject to Independent Fiduciary approval as required by Paragraph 3.1), acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but

not limited to a Department of Labor proceeding or an arbitration proceeding), any of the Released Claims.

7.4 Upon the Settlement Effective Date, the Named Plaintiff, the Settlement Class Members, and the Plan shall be conclusively deemed to, and by operation of the Final Approval Order shall, settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of Unknown Claims pertaining specifically to Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Also, the Named Plaintiff and Settlement Class Members with respect to the Released Claims shall, upon the Settlement Effective Date, waive any and all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

7.5 This Settlement Agreement does not in any way bar, limit, waive, or release any right by the Named Plaintiff or any Settlement Class Member to assert and/or recover any moneys resulting from (a) any individual Claim for individual vested benefits brought pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) that are otherwise due under the terms of the Plan or (b) any rights or duties arising out of the Settlement Agreement.

## ARTICLE VIII

### REPRESENTATIONS AND WARRANTIES

8.1 Settling Parties' representations and warranties. The Settling Parties represent and warrant as follows, and each acknowledges that they are relying on these representations and warranties in entering into the Settlement Agreement:

(a) they have carefully read the Settlement Agreement and understand its terms;

(b) they are voluntarily entering into the Settlement Agreement as a result of arm's-length negotiations, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

(c) they have made such investigation of the facts pertaining to the subject matter of the Settlement Agreement as they deem necessary;

(d) they assume the risk of mistake as to facts or law; and

(e) they recognize that additional evidence may come to light, but they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement Agreement.

8.2 Signatories' representations and warranties. The persons executing the Settlement Agreement represent that they have been duly authorized to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement in order to effectuate its terms.

## ARTICLE IX

### TERMINATION

9.1 The Settlement Agreement shall terminate at the election of any of the Settling Parties, and thereby become null and void with no further force or effect, if:

(a) Pursuant to Section 2.2, (1) either the Independent Fiduciary does not approve the release or the Settlement Agreement, or disapproves the release or the Settlement Agreement for any reason whatsoever, or Defendants reasonably conclude that the Independent Fiduciary's approval does not include the determinations required by PTE 2003-39; and (2) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate an approval by the Independent Fiduciary or the Independent Fiduciary's determinations required by PTE 2003-39;

(b) the Court declines to approve the Settlement Agreement or any material part of it;

(c) the Court declines to enter the Preliminary Approval Order or materially modifies the contents of the Preliminary Approval Order submitted by Class Counsel;

(d) the Court declines to enter the Final Approval Order or materially modifies the contents of the Final Approval Order submitted by Class Counsel; or

(e) the Final Approval Order is vacated, reversed, or modified in any material respect on any appeal or other review or in a collateral proceeding occurring prior to the Settlement Effective Date.

Notwithstanding anything herein, no order of the Court, or modification or reversal on appeal of any order of the Court solely concerning Attorneys' Fees and Costs shall constitute grounds for termination of the Settlement Agreement.

9.2 Reversion to prior positions. If the Settlement Agreement is terminated in accordance with this Article, then the Settling Parties and Settlement Class Members will be restored to their respective positions immediately before the execution of the Settlement Agreement, this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, any order entered by the Court pursuant to the terms of this

Settlement Agreement shall be treated as vacated *nunc pro tunc*. All funds deposited in the Qualified Settlement Fund, and any interest earned thereon, shall be returned to Defendants, their agents, or insurer(s) *pro rata* based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void, except as provided for in Section 9.3. The fact of this Settlement Agreement and the terms contained herein shall not be admissible in any proceeding for any purpose, and the Settling Parties expressly and affirmatively reserve all Claims, remedies, defenses, arguments, and motions as to all Claims and requests for relief that might have been or might be later asserted in the Action.

9.3 In the event that the Settlement Agreement is terminated, Administrative Expenses incurred prior to the termination shall be paid first from the interest earned, if any, on the Qualified Settlement Fund. Administrative Expenses in excess of the interest earned on the Qualified Settlement Fund shall be split evenly and paid by Class Counsel, on the one hand, and Defendants and/or their insurer(s), on the other hand.

## ARTICLE X

### **NO ADMISSION OF WRONGDOING**

10.1 The Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to it, is for settlement purposes only and entered into solely for the purpose of avoiding possible future expenses, burdens, or distractions of litigation, and Defendants and the Released Parties deny any and all wrongdoing. Defendants and the Released Parties specifically and expressly deny any and all liability in connection with any Claims which have been made or could have been made, or which are the subject matter of, arise from, or are connected, directly or indirectly, with or related in any way to the Action, including, but not limited to, any violation of any federal or state law (whether statutory or common law), rule, or regulation, and Defendants and the Released Parties deny that any violation of any such law, rule, or regulation has ever occurred.

10.2 The Settlement Agreement, whether or not consummated, and any negotiations, proceedings, or agreements relating to the Settlement Agreement, and any matters arising in connection with settlement negotiations, proceedings, or agreements:

(a) shall not be offered or received, in the Action or any other proceeding, against Defendants or any of the Released Parties as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by Defendants or a Released Party of the truth of any fact alleged by the Named Plaintiff or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation;

(b) shall not be offered or received, in the Action or any other proceeding, against Defendants or any of the Released Parties as evidence of a presumption, concession or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by Defendants or any of the Released Parties;

(c) shall not be offered or received, in the Action or any other proceeding, against Defendants or any of the Released Parties as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, or wrongdoing attributable to them; and

(d) shall not be construed against Defendants or any of the Released Parties as an admission or concession that the consideration to be given hereunder represents the amount which could or would have been recovered after trial of the Action or that the Named Plaintiff or any Settlement Class Member suffered any losses or damages attributable to Defendants or any of the Released Parties.

## ARTICLE XI

### MISCELLANEOUS

11.1 Exhibits included. The exhibits to the Settlement Agreement are integral parts of this Settlement Agreement and are incorporated by reference as if set forth herein.

11.2 Cooperation. Class Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court entry of the Preliminary Approval Order and Final Approval Order.

11.3 Confidentiality. The Settling Parties and their counsel shall keep strictly confidential, and shall not disclose to any third party, the terms and conditions of this Settlement Agreement until such time as Plaintiff files his motion for preliminary approval of the Settlement.

11.4 Non-disparagement. The Settling Parties, their counsel, and their agents shall refrain from making derogatory or disparaging public comments or remarks regarding the Action or the Settlement, the Named Plaintiff, the Settlement Class Members, Defendants, and/or the Released Parties in connection with the Action or the Settlement.

11.5 Entire agreement. This Settlement Agreement and all of the exhibits appended hereto constitute the entire agreement of the Settling Parties with respect to the subject matter of the Action and supersede any prior agreement, whether written or oral, as to that subject matter. No representations or inducements have been made by any Settling Party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized in such documents.

11.6 Waiver. The waiver by any Settling Party of a breach of the Settlement Agreement by any other Settling Party shall not be deemed a waiver of any other breach of the Settlement Agreement.

11.7 Construction of agreement. This Settlement Agreement shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that the Settlement Agreement, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that the Settlement Agreement is the result of arm's-length

negotiations between the Settling Parties, and all Settling Parties have contributed substantially and materially to its preparation.

11.8 Headings. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

11.9 Governing law. The Settlement Agreement and all documents necessary to effectuate it shall be governed by the laws of Florida without regard to its conflict of law doctrines, except to the extent that federal law requires that federal law govern, and except that all computations of time with respect to the Settlement Agreement shall be governed by Federal Rule of Civil Procedure 6.

11.10 Disputes Concerning Compliance with Settlement Agreement. Class Counsel, Defendants' Counsel, and the Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement shall be exclusively resolved as follows:

(a) If Class Counsel, Defendants' Counsel, or a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; and (c) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;

(b) Within ten (10) business days after receiving the notice described in Section 11.10(a), the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;

(c) For a period of not more than ten (10) business days following mailing of the response described in Section 11.10(b), the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;

(d) If the dispute is not resolved during the period described in Section 11.10(c), the Parties shall retain a mediator to conduct a mediation expressly limited to the dispute, which shall be held on the earliest reasonably practicable date;

(e) The Settling Parties intend to resolve any disputes quickly, expeditiously, and inexpensively. Accordingly, there shall be no discovery allowed in connection with mediation under Section 11.10(d), and no witnesses shall be presented or examined during the mediation. The mediator will make a final decision resolving the dispute based solely on the papers, documents, and arguments of counsel presented to the mediator;

(f) In connection with any disputes concerning compliance with the Settlement Agreement, the Settling Parties agree that each party shall bear its own fees and costs unless the Court orders otherwise.



11.11 Fees and Expenses. Except as otherwise expressly set forth herein, each Settling Party shall pay its own fees, costs, and expenses incurred in connection with the Action, including fees, costs, and expenses incident to the negotiation, preparation, or compliance with the Settlement Agreement, and including any fees, expenses, and disbursements of its counsel and other advisors. Nothing in the Settlement Agreement shall require Defendants or any Released Party to pay any monies other than as expressly provided herein.

11.12 Execution in Counterparts. The Settlement Agreement may be executed in one or more counterparts and may be executed by electronic signature or facsimile signature. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Settling Parties shall exchange among themselves signed counterparts.

11.13 Notice. Unless otherwise provided herein, any notice, demand, or other communication under the Settlement Agreement (other than Notice to Settlement Class Members or other notice provided at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and delivered by hand, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier as follows:

(a) if to the Named Plaintiff:

Mark Thomson  
Carl Engstrom  
ENGSTROM LEE LLC  
729 N. Washington Ave., Ste. 600  
Minneapolis, MN 55401

(b) if to Defendants:

Michael Prame  
Hannah Stephens  
GROOM LAW GROUP, CHARTERED  
1701 Pennsylvania Ave., NW  
Washington, DC 20006



AGREED TO BY THE PARTIES as of February 16, 2024

**ENGSTROM LEE LLC**

/s/ Mark E. Thomson

Mark E. Thomson, MN No. 0398260\*  
Carl F. Engstrom, MN No. 0396298\*  
729 N. Washington Ave., Suite 600  
Minneapolis, MN 55401  
Telephone: (612) 305-8349  
cengstrom@engstromlee.com  
mthomson@engstromlee.com  
\* By Special Admission

**MORGAN & MORGAN, P.A.**

/s/ Marc R. Edelman

Marc R. Edelman, FL No. 0096342  
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**WENZEL FENTON CABASSA**

/s/ Brandon J. Hill

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Luis A. Cabassa, FL No. 0053643  
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*Attorneys for Plaintiff*

**GROOM LAW GROUP,  
CHARTERED**

/s/ Michael J. Prame

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Hannah M. Stephens (Special Admission)  
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**GORDON REES SCULLY  
MANSUKHANI**

/s/ Kristina L. Marsh

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Tampa, FL 33602  
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Telephone (Direct): 813-523-4935  
Facsimile: 813-377-3505

*Attorneys for Defendants George M. Adams,  
Jr., Sandra Brock, Shaker Brock,  
Kelly A. Pound, and Harold Irwin*

# **EXHIBIT 1**

**NOTICE OF CLASS ACTION SETTLEMENT**  
*in*  
**ELECTRIC SUPPLY ESOP LITIGATION**  
*Cothran v. Adams, et al., Case No. 8:2023-cv-00518 (M.D. FL.)*

**PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.**

**This is a notice of a proposed class action settlement in the above-referenced lawsuit.**

**If you are a member of the Class, the settlement will affect your legal rights.**

**This is not a solicitation from a lawyer.**

**You have not been sued.**

- A Settlement has been reached in a class action lawsuit with respect to the Electric Supply Employee Stock Ownership Plan (the “Plan”). The class action lawsuit involves whether the Plan, which terminated in 2021, had been administered by Defendants George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin (collectively, “Defendants”) in accordance with certain provisions of the Employee Retirement Income Security Act of 1974 (“ERISA”). ERISA is the federal law that regulates and sets minimum standards for the administration of most retirement plans in the private sector, including the Plan. Defendants deny all claims, and nothing in the Settlement is an admission or concession on Defendants’ part of any fault or liability whatsoever.
- The Settlement will provide, among other things, for a \$1.1 million Settlement Fund that will be allocated to eligible Settlement Class Members after any Court-approved deductions for Attorneys’ Fees and Costs, Administrative Expenses, and General Release Compensation. Settlement Class Members will receive their settlement payment in the form of a check, or in the form of a tax-qualified rollover to an individual retirement account or other eligible employer plan if they elect a rollover. **A Rollover Form allowing you to elect to receive your distribution in the form of a rollover is attached to this Notice.**
- The terms and conditions of the Settlement are set forth in the Settlement Agreement dated [DATE]. Capitalized terms used in this Notice but not defined in this Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at [www.settlementwebsite.com]. Certain other documents also will be posted on that website. You should visit that website if you would like more information about the Settlement or the lawsuit. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>.
- The Settlement Class included all participants of the Electric Supply Employee Stock Ownership Plan who had an account balance greater than zero at any time between January 1, 2016 and April 14, 2021, excluding Defendants.
- Your rights and the choices available to you—and the applicable deadlines to act—are explained in this Notice. Please note that neither Electric Supply nor any employees, attorneys, or representatives of Electric Supply may advise you as to what the best choice is for you or how you should proceed.

- The Court still has to decide whether to give its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement, and that final approval is upheld in the event of any appeal.
- A Fairness Hearing will take place on [DATE], at [TIME], before the Honorable Charlene Edwards-Honeywell, United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, in Courtroom XX, to determine whether to grant final approval of the Settlement and approve the requested Attorneys’ Fees and Costs, Administrative Expenses, and General Release Compensation. If the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at [www.settlementwebsite.com].
- Any objections to the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or General Release Compensation must be served in writing on Class Counsel and Defendants’ counsel, as identified on page 6 of this Settlement Notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:</b>	
<b>YOU WILL RECEIVE YOUR SHARE OF THE SETTLEMENT BY CHECK UNLESS YOU TIMELY SUBMIT A ROLLOVER FORM.</b>	You do not need to do anything to receive your share of the Net Settlement Amount by check. However, if you wish to receive your share of the Net Settlement Amount via a rollover to an individual retirement account or other tax-qualified plan, such as the Electric Supply 401(k) Retirement Savings Plan, then you must submit a Rollover Form postmarked on or before [DATE]. A Rollover Form is attached to this Notice, and also may be obtained by calling the Settlement Administrator at [telephone number] or by accessing [www.settlementwebsite.com].
<b>YOU CAN OBJECT (NO LATER THAN [DATE])</b>	If you wish to object to any part of the Settlement, or to the requested Attorneys’ Fees and Costs, Administrative Expenses, or General Release Compensation, you must submit your objection and any supporting documents to Class Counsel and Defendants’ counsel (as identified on page 6 below) at least 21 calendar days before the Fairness Hearing.
<b>YOU CAN ATTEND A HEARING ON [DATE]</b>	You may also attend the Fairness Hearing and speak at the Fairness Hearing on [DATE]. If you wish to attend the hearing and speak at the hearing, you must provide Class Counsel and Defendants’ counsel (as identified on page 6 below) with notice of your intent to appear at least 21 calendar days before the Fairness Hearing. Please note that you will not be permitted to make an objection to the Settlement if you do not comply with the requirements for making objections.

**The Class Action**

The case is called *Cothran v. Adams, et al.*, Case No. 8:2023-cv-00518 (M.D. Fl.) (the “Action” or “lawsuit”). It has been pending since March 8, 2023. The Court supervising the case is the United States District Court for the Middle District of Florida. The individual who brought this lawsuit is called the Class Representative, and the persons that were sued are called the Defendants. The Class Representative, Robert Cothran, is a former participant in the Plan. Defendants are

George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin. The claims in the lawsuit are described below on page 4, and additional information about them, including a copy of the operative Amended Complaint, is available at [www.settlementwebsite.com](http://www.settlementwebsite.com).

### **The Settlement**

Following negotiations between the Class Representative, Class Counsel, Defendants, and Defendants' counsel, a Settlement has been reached. As part of the Settlement, a Qualified Settlement Fund of \$1,100,000 will be established to resolve the claims against Defendants in the Action. The "Net Settlement Amount" is \$1,100,000 minus any Administrative Expenses (including taxes, tax expenses, and certain other expenses), Court-approved Attorneys' Fees and Costs, and General Release Compensation. The Net Settlement Amount will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court and further described below.

### **Statement of Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation Sought in the Class Action**

Class Counsel has devoted many hours to investigating the facts, prosecuting the lawsuit, reviewing documents obtained from Defendants, and negotiating the Settlement. During that time, they also have advanced costs necessary to pursue the case. Class Counsel took the risk of litigation and have not been paid for any of their time or for any of these costs throughout the time this case has been pending.

Class Counsel will apply to the Court for payment of Attorneys' Fees for their work in the case. The amount of fees that Class Counsel will request will not exceed one-third of the Qualified Settlement Fund (\$366,666). In addition, Class Counsel also will seek to recover their litigation costs and administrative expenses associated with the Settlement. Any Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full and formal application for Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation will be filed with the Court on or before [\[DATE\]](#). This application will be made available at [www.settlementwebsite.com](http://www.settlementwebsite.com). You may also obtain a copy of this application through the Public Access to Court Electronic Records System (PACER) at <http://www.pacer.gov>, or by appearing in person during regular business hours at the Office of the Clerk of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602.

#### **1. Why Did I Receive This Settlement Notice?**

The Court caused this Notice to be sent to you because our records indicate that you may be a Settlement Class Member. If you fall within the definition of the Settlement Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Settlement Class Members according to a Court-approved Plan of Allocation.



## **2. What Is the Class Action About?**

In the Class Action, the Class Representative claims that the Defendants improperly invested Plan assets that were not invested in company stock. The Class Representative also alleged that the company stock was undervalued. Defendants deny all claims and assert that they have always acted prudently and in the best interests of participants and beneficiaries.

## **3. Why Is There A Settlement?**

The Court has not reached a final decision as to the Class Representative's claims. Instead, the Class Representative and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between the Class Representative, Defendants, and their counsel. The parties to the Settlement have taken into account the uncertainty, risks, and costs of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representative and Class Counsel believe that the Settlement is best for the Settlement Class. Nothing in the Settlement Agreement is an admission or concession on Defendants' part of any fault or liability whatsoever. They have entered into the Settlement Agreement to avoid the uncertainty, expense, and burden of additional litigation.

## **4. What Does the Settlement Provide?**

Under the Settlement, Defendants or their insurers will pay \$1,100,000 into a Qualified Settlement Fund to resolve the claims of the Settlement Class against Defendants. The Net Settlement Amount (after deduction of any Court-approved Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation) will be allocated to Settlement Class Members according to a Plan of Allocation to be approved by the Court (as explained further on page 5 below). Settlement Class Members who are entitled to a distribution may receive their distribution as a check or, if they choose, as a rollover to a qualified retirement account.

All Settlement Class Members and anyone claiming through them will fully release the Plan as well as Defendants and the Released Parties from certain Released Claims, as defined in the Settlement Agreement. The Released Parties include each Defendant and certain related parties as outlined in the Settlement Agreement. The Released Claims include any claims against any of the Released Parties with respect to the Plan that were asserted in the Action against Defendants or could have been asserted against Defendants.

This is *only* a summary of the Released Claims, and is not a binding description. The governing releases are found within the Settlement Agreement, which is available at [\[www.settlementwebsite.com\]](http://www.settlementwebsite.com).

## **5. How Much Will My Distribution Be?**

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper. Calculations regarding individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To receive a distribution from the Net Settlement Amount, you must either be a (1) “Settlement Class Member” as described on page 1; or (2) a Beneficiary or Alternate Payee of a person identified in (1).

There are 197 Settlement Class Members. The Net Settlement Amount will be divided *pro rata* among Settlement Class Members (and their Beneficiaries and Alternate Payees) based on Settlement Class Members’ average yearly balance in the Plan’s Other Investments Account. A more complete description regarding the details of the Plan of Allocation can be found in Article V of the Settlement Agreement, which is available at [www.settlementwebsite.com](http://www.settlementwebsite.com).

#### **6. How Can I Receive My Distribution?**

**According to our records, you are a Settlement Class Member. If you wish to receive your share of the Net Settlement Amount via a rollover to an individual retirement account or other tax-qualified retirement account, such as the Electric Supply 401(k) Retirement Savings Plan, then you must submit a Rollover Form.** A Rollover Form is attached to this Notice and explains the steps necessary to receive your distribution via rollover. You may also obtain the Rollover Form on the Settlement Website at [www.settlementwebsite.com](http://www.settlementwebsite.com) or by calling the Settlement Administrator at [telephone number](tel:). If you are a Settlement Class Member but do not submit a timely, valid Rollover Form, you will receive your distribution via check.

#### **7. When Will I Receive My Distribution?**

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the Court’s final approval of the Settlement and any approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court and there are no appeals, the Settlement distribution likely will occur within approximately four months of the Court’s Final Approval Order, unless there are unforeseen circumstances. There will be no payments under the Settlement if the Settlement Agreement is terminated.

#### **8. Can I Exclude Myself from The Settlement?**

No. The Settlement Class has been certified for settlement purposes under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Settlement Class Member, you are bound by the Settlement (if it receives final Court approval) and any judgments or orders that are entered in the Action. If you wish to object to any part of the Settlement, you may write to Class Counsel and Defendants’ counsel about why you object to the Settlement, as discussed below.

#### **9. Do I Have A Lawyer in The Case?**

The Court has appointed the law firms of Engstrom Lee LLC in Minneapolis, Minnesota, Morgan & Morgan, P.A. in Tampa, Florida, and Wenzel Fenton Cabassa, P.A. in Tampa, Florida as Class Counsel in the Class Action. If you want to be represented by your own lawyer, you may hire one at your own expense.

#### **10. How Will the Lawyers Be Paid?**

Class Counsel will file a motion for an award of Attorneys’ Fees and Costs, Administrative Expenses, and General Release Compensation at least 30 days prior to the objection deadline. This

motion will be considered at the Fairness Hearing. Class Counsel will limit their application for Attorneys’ Fees to not more than one-third of the Qualified Settlement Fund. Class Counsel also will seek to recover all actual and anticipated litigation costs and administrative expenses associated with the Settlement. The Court will determine the amount of fees, costs, and administrative expenses that will be awarded, if any. All papers filed in this Action, including Class Counsel’s motion for Attorneys’ Fees and Costs, Administrative Expenses, and General Release Compensation will be available for review via the Public Access to Court Electronic Records System (PACER), available online at <http://www.pacer.gov>.

**11. How Do I Tell the Court If I Don’t Like the Settlement?**

If you are a Settlement Class Member, you can object to the Settlement by mailing to Class Counsel and to Defendants’ counsel at the addresses below a written objection explaining why you object and any supporting documents. Your written objection must: (1) clearly identify the case name and number: *Cothran v. Adams, et al.*, Case No. 8:2023-cv-00518; (2) include your full name, current address, and telephone number; (3) describe the position you wish to assert, including the factual and legal grounds for the position; (4) provide copies of all documents that you wish to submit in support of your position; (5) provide the name(s), address(es) and phone number(s) of any attorney(s) representing you; and (6) include your signature. Your written objection and supporting documents must be mailed to Class Counsel and Defendants’ counsel no later than **[21 days prior to Fairness Hearing]** to be considered. Class Counsel and Defendants will have an opportunity to respond to your objection.

CLASS COUNSEL	DEFENDANTS’ COUNSEL
Mark Thomson Carl Engstrom ENGSTROM LEE LLC 729 N. Washington Ave., Ste. 600 Minneapolis, MN 55401	Michael Prame Hannah Stephens GROOM LAW GROUP, CHARTERED 1701 Pennsylvania Ave., NW Washington, DC 20006

**12. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a Fairness Hearing at **[TIME]** on **[DATE]**, at United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, in Courtroom **XX**. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court also will consider the motion for Attorneys’ Fees and Costs, Administrative Expenses, and General Release Compensation. If there are objections, the Court will consider them then. Please note that if the Fairness Hearing is rescheduled, or if it is held by video conference or telephone, a notice will be posted on the Settlement Website at **[www.settlementwebsite.com]**.

**13. Do I Have to Attend the Fairness Hearing?**

No, but you are welcome to come at your own expense. You may also make an appearance through an attorney at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it.



**14. May I Speak at The Fairness Hearing?**

Yes. If you wish to attend the hearing and speak at the hearing, you must serve Class Counsel and Defendants' counsel (as identified on page 6) with a notice of intent to appear at least 21 calendar days before the Fairness Hearing. You must also comply with the requirements for making an objection (described above) if you wish to object to the Settlement.

**15. What Happens If I Do Nothing at All?**

If you are a "Settlement Class Member" as described on page 1, and you do nothing, you will receive your *pro rata* share of the Net Settlement Amount via check if you do not submit a rollover form and the Settlement is finally approved.

**16. How Do I Get More Information?**

If you have questions regarding the Settlement, you can visit [[www.settlementwebsite.com](http://www.settlementwebsite.com)], call [[phone number](#)], or write to the Settlement Administrator at [[mailing address](#)]. All papers filed in this lawsuit are also available for review via the Public Access to Court Electronic Records System (PACER), at <http://www.pacer.gov>, and can be reviewed in person during regular business hours at the Office of the Clerk of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602. Please note that neither Electric Supply nor any employees, attorneys, or representatives of Electric Supply may advise you regarding the Settlement or how you should proceed.

# **EXHIBIT 2**

Electric Supply ESOP Settlement Administrator

P.O. Box 2005

Chanhassen, MN 55317-2005

[www.settlementwebsite.com](http://www.settlementwebsite.com)

**ROLLOVER FORM**

ABC1234567890

Claim Number: 1111111



JOHN Q CLASSMEMBER

123 MAIN ST

APT 1

ANYTOWN, ST 12345

Settlement Class Members who would like to elect to receive their settlement payment through a rollover to a qualified retirement account must complete, sign, and mail this form with a postmark on or before [RETURN DATE SET FORTH IN PRELIMINARY APPROVAL ORDER]. Please review the instructions below carefully. **Settlement Class Members who do not complete and timely return this form will receive their settlement payment by a check.** If you have questions regarding this form, you may contact the Settlement Administrator as indicated below:

[www.settlementwebsite.com](http://www.settlementwebsite.com) or call [Phone Number]

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**PART 1: INSTRUCTIONS FOR COMPLETING ROLLOVER FORM**

1. If you would like to receive your settlement payment through a rollover to a qualified retirement account, such as the Electric Supply 401(k) Retirement Savings Plan, complete this rollover form. You should also keep a copy of all pages of your Rollover Form, including the first page with the address label, for your records.
2. **Mail your completed Rollover Form postmarked on or before [RETURN DATE SET FORTH IN PRELIMINARY APPROVAL ORDER] to the Settlement Administrator at the following address:**

**Electric Supply ESOP Settlement Administrator**

**P.O. Box 2005**

**Chanhassen, MN 55317-2005**

**It is your responsibility to ensure the Settlement Administrator has timely received your Rollover Form.**

3. Other Reminders:
  - You must provide date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as part 5 to this form.
  - If you desire to do a rollover and you fail to complete all of the rollover information in Part 4, below, payment will be made to you by check.
  - If you change your address after sending in your Rollover Form, please provide your new address to the Settlement Administrator.
  - **Timing of Payments to Eligible Settlement Class Members.** The timing of the distribution of the Settlement payments are conditioned on several matters, including the Court's final approval of the Settlement and any approval becoming final and no longer subject to an appeal in any court. An appeal of the final approval order may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur within four months of the Court's Final Approval Order.
4. **Questions?** If you have any questions about this Rollover Form, please call the Settlement Administrator at [phone number]. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement and the Settlement administration is available on the settlement website, [[www.settlementwebsite.com](http://www.settlementwebsite.com)].

***[ROLLOVER FORM CONTINUES ON THE NEXT PAGE]***



**PART 4: PAYMENT ELECTION**

**Direct Rollover to an Eligible Plan** – Check only one box below and complete the Rollover Information Section below:

- Government 457(b)                       401(a)/401(k)                       403(b)
- Direct Rollover to a Traditional IRA                       Direct Rollover to a Roth IRA (*subject to ordinary income tax*)

**Rollover Information:**

Company or Trustee's Name (*to whom the check should be made payable*)

[Grid for Company or Trustee's Name]

Company or Trustee's Mailing Address 1

[Grid for Company or Trustee's Mailing Address 1]

Company or Trustee's Mailing Address 2

[Grid for Company or Trustee's Mailing Address 2]

Company or Trustee's City

[Grid for Company or Trustee's City]

State

[Grid for State]

Zip Code

[Grid for Zip Code]

Your Account Number

[Grid for Your Account Number]

Company or Trustee's Phone Number

[Grid for Company or Trustee's Phone Number]

**PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9**

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS ROLLOVER FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS ROLLOVER FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. person (including a U.S. resident alien).

\_\_\_\_\_  
**Settlement Class Member Signature (Required)**

M M	D D	Y Y Y Y
[ ] [ ]	[ ] [ ]	[ ] [ ] [ ] [ ]

**Date Signed (Required)**

Note: If you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

**QUESTIONS? VISIT: [WWW.SETTLEMENTWEBSITE.COM](http://WWW.SETTLEMENTWEBSITE.COM), OR CALL [PHONE NUMBER]**

# **EXHIBIT 3**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

Robert Cothran, as the representative of a class of similarly situated persons, and on behalf of the Electric Supply Employee Stock Ownership Plan,

Plaintiff,

v.

George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin,

Defendants.

Case No. 8:23-cv-00518-CEH-CPT

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT, APPROVING PROCEDURE AND  
FORM OF NOTICE, AND SCHEDULING FINAL APPROVAL HEARING**

This matter came before the Court on Plaintiff’s Motion for Preliminary Approval (“Motion For Preliminary Approval”) of a proposed class action settlement of the above-captioned action (“Action”) between Named Plaintiff Robert Cothran, on behalf of a class of participants in the Electric Supply Employee Stock Ownership Plan (“Plan”), and Defendants George M. Adams Jr., Sandra Brock, Shaker Brock, Kelly A. Pound, and Harold Irwin (collectively, “Defendants”), as set forth in the Settling Parties’ Class Action Settlement Agreement (“Settlement Agreement”). Having duly considered the terms of the Settlement Agreement and the motion papers and arguments of counsel, the Court hereby finds and orders as follows:

1. Based on the Court’s review, the Court finds, on a preliminary basis, that:  
(i) the Settlement Agreement is fair, reasonable, and adequate, and within the range of possible approval, (ii) the Settlement Agreement has been negotiated in good faith at arms-length between

experienced attorneys familiar with the legal and factual issues of this case following substantial discovery, (iii) the form and method of notice of the Settlement and of the Fairness Hearing is appropriate; and (iv) the Settlement Agreement meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and applicable Eleventh Circuit precedents. Accordingly, the Court preliminarily approves the Settlement Agreement in its entirety.

2. For settlement purposes, the Court preliminarily certifies the following Settlement Class:

All participants of the ESOP who had an account balance greater than zero at any time between January 1, 2016 and April 14, 2021, excluding Defendants.

Named Plaintiff Robert Cothran is appointed as the Class Representative, and Engstrom Lee LLC, Morgan & Morgan, P.A., and Wenzel Fenton Cabassa, P.A. are appointed as Class Counsel for the Settlement Class.

3. The Court approves the proposed Notice of Settlement (Exhibit 1 to the Settlement Agreement) and the method of giving direct notice to Settlement Class Members by U.S. mail. The Court finds that the proposed Notice fairly and adequately provide information to the Settlement Class regarding, among other things: (1) the nature of the claims asserted in the Action; (2) the scope of the Settlement Class; (3) the terms of the Settlement Agreement; (4) the process for submitting a Rollover Form; (5) Settlement Class Members' right to object to the Settlement and the deadline for doing so; (6) the Settlement Class's release; (7) the identity of Class Counsel and the amount of compensation they will seek in connection with the Settlement; (8) the amount of the proposed General Release Compensation to the Named Plaintiff; (9) the date, time, and location of the Fairness Hearing; and (10) Settlement Class Members' right to appear at the Fairness Hearing. Pursuant to Rules 23(c)(2) and (e) of the Federal Rules of Civil Procedure, the mailing of this Notice constitutes the best notice practicable under the



circumstances, provides due and sufficient notice of the Fairness Hearing and of the rights of all Settlement Class Members, and complies fully with the requirements of Federal Rule of Civil Procedure 23 and due process.

4. No later than thirty (30) calendar days following the entry of this Preliminary Approval Order, the Settlement Administrator shall distribute the proposed Notice to the Settlement Class by first class mail, and shall include a Rollover Form (Exhibit 2 to the Settlement Agreement) along with the Notice. A Settlement Class Member must submit a completed, satisfactory Rollover Form to the Settlement Administrator no later than fourteen (14) calendar days before the Fairness Hearing in order to be considered eligible for a rollover in lieu of a check.

5. In accordance with the Settlement Agreement, the Settlement Administrator also shall establish a Settlement Website and toll-free telephone line relating to the Settlement no later than thirty (30) calendar days following the entry of this Preliminary Approval Order.

6. Pursuant to the Settlement Agreement, Analytics Consulting LLC is hereby appointed as the Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Settlement Agreement and this Order.

7. On [date] at [time], or at such other date and time later set by Court Order,<sup>1</sup> in courtroom [ ] of the United States District Court for the Middle District of Florida, 801 North Florida Avenue, Tampa, Florida 33602, this Court will hold a Fairness Hearing to: (1) give final consideration to the fairness, reasonableness, and adequacy of the Settlement

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<sup>1</sup> Any change in the date, time, location, or format of the Fairness Hearing shall be posted on the Settlement Website.

Agreement, (2) review any comments or objections regarding the Settlement Agreement, (3) consider whether the Court should issue a Final Approval Order approving this Settlement Agreement, (4) consider any proposed Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation; and (5) consider any other matters that the Court may deem appropriate in connection with the Settlement.

8. Any Settlement Class Member may comment in support of or in opposition to the Settlement Agreement; provided, however, that all comments and objections shall only be considered by the Court at the Fairness Hearing if they have been timely sent to Class Counsel and Defendants' Counsel. To be timely, the comment and/or objection and any supporting documents must be mailed or otherwise delivered to Class Counsel and Defendants' Counsel no later than twenty-one (21) calendar days prior to the date of the Fairness Hearing. The comment and/or objection also must: (1) clearly identify the case name and number of this Action; (2) include the Settlement Class Member's full name, current address, and telephone number; (3) describe the position the Settlement Class Member wishes to assert, including the factual and legal grounds for the position; (4) provide copies of all documents that the Settlement Class Member wishes to submit in support of his or her position; (5) provide the name(s), address(es) and phone number(s) of any attorney(s) representing the Settlement Class Member; and (6) include the Settlement Class Member's signature. A Settlement Class Member who submits a comment or objection regarding the Settlement Agreement need not appear at the Fairness Hearing for the Settlement Class Member's comment or objection to be considered by the Court. Any Settlement Class Member wishing to speak at the Fairness Hearing shall serve a notice of intent to appear on Class Counsel and Defendants' Counsel at least twenty-one (21)

calendar days prior to the Fairness Hearing. Any Settling Party may file a response to an objection before the Fairness Hearing.

9. Any application for Attorneys' Fees and Costs, Administrative Expenses, and General Release Compensation shall be filed no later than thirty (30) calendar days prior to the deadline for objections.

10. No later than fourteen (14) calendar days prior to Fairness Hearing, Class Counsel shall file papers in support of Final Approval of the Settlement Agreement. Class Counsel shall file any objections to the Settlement with the motion for Final Approval of the Settlement.

11. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived such Settlement Class Member's objections and shall forever be barred from making any such objections in this Action or in any other action or proceeding.

12. Each Settlement Class Member, and his or her respective heirs, executors, estates, beneficiaries, administrators, successors, agents, attorneys, and assigns, is preliminarily enjoined from suing Defendants or other Released Parties in any action or proceeding alleging any of the Released Claims, even if any Settlement Class Member may thereafter discover facts in addition to or different from those which the Settlement Class Members or Class Counsel now know or believe to be true with respect to the Action and the Released Claims. Further, pending final determination of whether the Settlement Agreement should be approved, no Settlement Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants or Released Parties.

13. The Settlement Agreement, the proceedings relating to the approval of the Settlement Agreement, and this Preliminary Approval Order are not and shall not be construed as evidence or an admission of any liability, responsibility, fault, or wrongdoing on the part of the Settling Parties or any Released Party. In the event that the Settlement Agreement is terminated pursuant to its terms or is not finally approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other court, then the Settling Parties and Settlement Class Members will be restored to their respective positions immediately before the execution of the Settlement Agreement, this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, and any order entered by the Court pursuant to the terms of the Settlement Agreement shall be treated as vacated *nunc pro tunc*.

**SO ORDERED.**

This is the \_\_\_\_ day of \_\_\_\_\_, 2024.

BY THE COURT

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Honorable Charlene Edwards Honeywell  
United States District Court Judge