


CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: Authority Board Members

FROM: Claude Miller 
Director of Procurement

DATE: January 27, 2015

RE: Authorization to Execute Cooperative Purchase Agreement with
Kelly, Collins & Gentry, Inc., for Right of Way Support Services
Contract No. 001099

Board approval is requested to execute an agreement with Kelly, Collins & Gentry, Inc. (KCG) in the not-to-exceed amount of \$300,000.00 for an initial three-year term to provide right of way support services including land planning, engineering, site development, surveying, landscape, cost to cure, and specialty services such as sign specialists, personal property appraisers, general contractors and other specialists as needed.

This will be a cooperative purchase (piggyback) agreement based on a contract between KCG and FDOT District 5 (Contract No. DNE23) for the same services which will allow us to take advantage of the favorable rates already negotiated by FDOT.

cc: Joe Berenis, Deputy Executive Director, Engineering, Operations, Construction and Maintenance
Laura Kelley, Deputy Executive Director, Finance and Administration
Joe Passiatore, General Counsel
Glenn Pressimone, Director of Engineering
Contract File

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
COOPERATIVE PURCHASE AGREEMENT
RIGHT OF WAY SUPPORT SERVICES
CONTRACT NO. 001099**

This Contract is made this 12th day of February, 2015, between the CENTRAL FLORIDA COUNTY EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called the AUTHORITY and KELLY, COLLINS & GENTRY, INC., hereinafter the CONTRACTOR:

WITNESSETH:

WHEREAS, the AUTHORITY was created by statute and is charged with acquiring, constructing, operating and maintaining a system of limited access roadways known as the Central Florida Expressway System; and,

WHEREAS, the AUTHORITY has been granted the power under Section 348.754(2)(m) of Florida Statutes, “to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority, in order to carry out the powers granted to it (by state law);” and,

WHEREAS, the AUTHORITY has determined that it is necessary and convenient in the conduct of its business to retain the services of a contractor to provide right of way support services as detailed in the Scope of Services included in the CONTRACTOR’s contract with FDOT; and,

WHEREAS, on or about June 18, 2012, the CONTRACTOR entered into an agreement with the Florida Department of Transportation (FDOT) under its Contract No. DNE23 to provide the same services as required by the AUTHORITY; and,

WHEREAS, a Request for Proposals seeking qualified contractors to perform such services for the AUTHORITY was not required because the CONTRACTOR has an existing contract with FDOT for the same services to be provided hereunder and the AUTHORITY has decided to contract with CONTRACTOR for the performance of the services described herein under the same conditions previously negotiated by FDOT; and,

WHEREAS, the CONTRACTOR agrees to provide the services under the same terms and conditions as included in its contract with FDOT, a copy of which is attached to this Contract, and such additional terms and conditions as detailed below;

NOW THEREFORE, in consideration of the mutual covenants and benefits set forth herein and other good and valuable consideration, the receipt and sufficiency of which being hereby acknowledged by each party to the other, the parties hereto agree as follows:

1. SERVICES TO BE PROVIDED

The CONTRACTOR shall, for the consideration herein stated and at its cost and expense, do all the work and furnish all equipment, supplies, labor and incidentals necessary to perform this Contract in the manner and to the full extent as required by the AUTHORITY.

2. CONTRACT TERM AND TERMINATION

The term of the Contract will be three (3) years from the Notice to Proceed issued by the AUTHORITY. There shall be two renewal options of 1 year each. The options to renew are at the sole discretion and election of the AUTHORITY. Renewals will be based, in part, on a determination by the AUTHORITY that the value and level of service provided by the CONTRACTOR are satisfactory and adequate for the AUTHORITY's needs. If a renewal option is exercised, the AUTHORITY will provide the CONTRACTOR with written notice of its intent at least 60 days prior to the expiration of the initial three-year Contract Term.

Termination shall be according to the CONTRACTOR's agreement with FDOT.

3. COMPENSATION FOR SERVICES

The Contract amount for the initial Contract term will be \$300,000.00. Compensation shall be in accordance with the Method of Compensation included in the CONTRACTOR's contract with the FDOT.

4. CONTRACTOR INSURANCE

CONTRACTOR shall carry and keep in force during the period of this Contract, the required amount of coverage as stated in the CONTRACTOR's contract with FDOT. Compliance with these insurance requirements shall not relieve or limit the CONTRACTOR's liabilities and obligations under this Agreement. Failure of the AUTHORITY to demand such certificate or evidence of full compliance with these insurance requirements or failure of the AUTHORITY to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance. The acceptance of delivery by the AUTHORITY of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by the AUTHORITY that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

5. INDEMNITY

The CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY and all of its respective officers, agents, CONTRACTOR's or employees from all suits, actions, claims, demands, costs as defined elsewhere herein, expenses (including reasonable attorneys' fees as defined elsewhere herein), judgments, liabilities of any nature whatsoever (collectively, "Claims") arising out of, because of, or due to breach of the Contract by the CONTRACTOR (its

subcontractors, officers, agents or employees) or due to any negligent or intentional act or occurrence of omission or commission of the CONTRACTOR (its subcontractors, officers, agents or employees). CONTRACTOR will not be liable for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the AUTHORITY or any of its officers, agents or employees.

6. PUBLIC RECORDS

Upon receipt of any request by a member of the public for any documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, made or received by CONTRACTOR in conjunction with this Contract (including without limitation CONTRACTOR Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify the AUTHORITY. Thereafter, CONTRACTOR shall follow AUTHORITY'S instructions with regard to such request. To the extent that such request seeks non-exempt public records, the AUTHORITY shall direct CONTRACTOR to provide such records for inspection and copying in compliance with Chapter 119. A subsequent refusal or failure by CONTRACTOR to timely grant such public access will be grounds for immediate, unilateral cancellation of the Contract by AUTHORITY.

7. PRESS RELEASES

CONTRACTOR shall make no statements, press releases or publicity releases concerning the Contract or its subject matter, or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished under the Contract, or any particulars thereof, without first notifying AUTHORITY and securing its consent in writing.

8. PERMITS, LICENSES, ETC.

Throughout the term of the Contract, the CONTRACTOR shall procure and maintain, at its sole expense, all permits and licenses that may be required in connection with the performance of Services by CONTRACTOR; shall pay all charges, fees, royalties, and taxes; and shall give all notices necessary and incidental to the due and lawful prosecution of the Services. Copies of required permits and licenses shall be furnished to AUTHORITY upon request.

9. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

CONTRACTOR acknowledges that AUTHORITY officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with the AUTHORITY in accordance with the AUTHORITY's Ethics Policy. The CONTRACTOR acknowledges that it has read, and to the extent applicable, acknowledges that it will comply with the aforesaid Ethics Policy in connection with performance of the Contract.

In the performance of the Contract, CONTRACTOR shall comply with all applicable local, state, and federal laws and regulations and obtain all permits necessary to provide the Contract services.

CONTRACTOR covenants and agrees that it and its employees, officers, agents, and subcontractors shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under this Contract, which standards will by reference be made a part of this Contract as though set forth in full.

10. NONDISCRIMINATION

CONTRACTOR, its employees, officers, agents, and subcontractors shall not discriminate on the grounds of race, color, religion, sex, national origin, or other protected class, in the performance of work or selection of personnel under this Contract.

11. SUBLETTING AND ASSIGNMENT

CONTRACTOR shall not sublet, sell, transfer, assign, delegate, subcontract, or otherwise dispose of this Contract or any portion thereof, or of the CONTRACTOR's right, title, or interest therein without the written consent of the AUTHORITY, which may be withheld in the AUTHORITY'S sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without AUTHORITY'S written consent shall be null and void and shall, at AUTHORITY's option, constitute a default under the Contract.

12. PREVAILING PARTY ATTORNEY'S FEES

If any contested claim arises hereunder or relating to the Contract (or CONTRACTOR's work hereunder), and either party engages legal counsel, the prevailing party in such dispute, as "prevailing party" is hereinafter defined, shall be entitled to recover reasonable attorneys' fees and costs as defined herein, from the non-prevailing party.

In order for CONTRACTOR to be the prevailing party, CONTRACTOR must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with AUTHORITY, failing which AUTHORITY will be deemed the prevailing party for purposes of this Contract.

For purposes of determining whether the judgment of award is eighty percent (80%) or more of the contested claims, "adjusted award" or "adjusted judgment" shall mean the amount designated in the award or final judgment as compensation to CONTRACTOR for its claims (exclusive of interest, cost or expenses), less: (i) any amount awarded to AUTHORITY (exclusive of interest, costs or expenses) on claims asserted by AUTHORITY against CONTRACTOR in connection with the Contract, and (ii) any amount offered in settlement prior to initiation of CONTRACTOR litigation (exclusive of interest, cost or expense), which for purposes of enforcing this section only shall be admissible into evidence.

The term "contested claim" or "claims" shall include "Claims" as defined in Section 11, as well as the initial written claim (s) submitted to AUTHORITY by CONTRACTOR (disputed by AUTHORITY) which have not otherwise been resolved through ordinary close-out procedures

of the Contract prior to the initiation of litigation. CONTRACTOR claims or portions thereof, which AUTHORITY agrees or offers to pay prior to initiation of litigation, shall not be deemed contested claims for purposes of this provision. If CONTRACTOR submits a modified, amended or substituted claim after its original claim and such modified, amended or substituted claim(s) is for an amount greater than the prior claim(s), the higher amount shall be the claim(s) for purposes of determining whether the award is at least eighty percent (80%) of CONTRACTOR's claim(s).

Attorneys' fees and costs awarded to the prevailing party shall mean reasonable fees and costs incurred in connection with and measured from the date a claim is initially submitted to AUTHORITY through and including trial, appeal and collection. In the circumstance where an original claim is subsequently modified, amended or a substituted claim is filed therefore, fees and costs shall accrue from the date of the first written claim submitted, regardless of whether the original or subsequent claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

"Attorneys' fees" shall include but not be limited to fees and charges of attorneys, paralegals, legal assistants, attorneys' CONTRACTOR's, expert witnesses, court reporters, photocopying, telephone charges, travel expenses, or any other charges, fees, or expenses incurred through use of legal counsel, whether or not such fees are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial fees (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation, or administrative proceedings arising out of this Contract.

"Costs" shall include but not be limited to any filing fees, application fees, expert witnesses' fees, court reporters' fees, photocopying costs, telephone charges, travel expenses, or any other charges, fees, or expenses incurred whether or not legal counsel is retained, whether or not such costs are provided by statute or contained in State-Wide guidelines, and shall apply to any pretrial costs (whether or not an action is filed), trial, appeal, collection, bankruptcy, arbitration, mediation or administrative proceeding arising out of this Contract.

As a condition precedent to filing a claim with any legal or administrative tribunal, CONTRACTOR shall have first submitted its claim (together with supporting documentation) to AUTHORITY, and AUTHORITY shall have had sixty (60) days thereafter within which to respond thereto.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, AUTHORITY and CONTRACTOR agree that neither party shall avail itself of Section 768.79, Florida Statutes, or any other like statute or rule involving offers of settlement or offers of judgment, it being understood and agreed that the purpose of such statute or rule are being served by this provision.

Should this section be judged void, unenforceable or illegal, in whole or in substantial part, by a court of competent jurisdiction, this section shall be void in its entirety and each party shall bear its own attorneys' fees and costs.

13. OTHER SEVERABILITY

If any section of this Contract be judged void, unenforceable or illegal, then the illegal provision shall be, if at all possible, interpreted or re-drafted into a valid, enforceable, legal provision as close to the parties' original intention, and the remaining portions of the Contract shall remain in full force and effect and shall be enforced and interpreted as closely as possible to the parties' intention for the whole of the Contract.

14. GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of Florida. Venue of any legal or administrative proceedings arising out of this Contract shall be exclusively in Orange County, Florida.

15. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between AUTHORITY and CONTRACTOR or CONTRACTOR's employees. CONTRACTOR shall be responsible for all direction and control of its employees and payment of all wages and salaries and other amounts due its employees. CONTRACTOR shall be responsible for all reports and obligations respecting such employees, including without limitation social security tax and income tax withholding, unemployment compensation, workers compensation, and employment benefits.

Any approval by AUTHORITY of a subcontract or other matter herein requiring AUTHORITY approval for its occurrence shall not be deemed a warranty or endorsement of any kind by AUTHORITY of such subcontract, subcontractor, or matter.

16. SURVIVAL OF EXPIRATION OR TERMINATION

Any clause, sentence, paragraph, or section providing for, discussing, or relating to any of the following shall survive the expiration or earlier termination of the Contract:

16.1 Payment to CONTRACTOR for satisfactory work performed or for termination expenses, if applicable; and

16.2 Any other term or terms of this Contract which by their nature or context necessarily survive the expiration or earlier termination of the Contract for their fulfillment.

17. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

CONTRACTOR shall initiate settlement of all outstanding liabilities and claims arising out of the Contract and any subcontracts or vending agreements to be canceled. All settlements shall be subject to the approval of AUTHORITY.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties on the date below. This Contract was awarded by the Authority's Board of Directors at its meeting on February 12, 2015.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

KELLY, COLLINS & GENTRY, INC.

By: _____
Signature

Print Name

Title

Attest: _____(Seal)

Approved as to form and execution, only.

General Counsel for the AUTHORITY

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION
STANDARD PROFESSIONAL SERVICES AGREEMENT

375-030-12
PROCUREMENT
OGC - 06/11
Page 1 of 2

Contract No. DNE23
FDOT Financial ID No.(s) 241068-1-4B-XX

Appropriation Bill Number(s)/Line Item Number(s) for
1st year of contract, pursuant to s. 216.313, F.S. N/A

F.A.P. No. TBD

(required for contracts in excess of \$5 million)

THIS AGREEMENT, made and entered into this 18th day of JUNE 2012, by and
(This date to be entered by DOT only)
between the STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, an agency of the State of Florida, hereinafter called the
Department and Kelly, Collins & Gentry, Inc.

(F.E.I.D. No. F593343303) of 1700 N. Orange Avenue, Suite 400, Orlando, Florida 32804

authorized to conduct business in the State of Florida, hereinafter called the Consultant, agree as follows:

The Consultant and the Department mutually agree to abide by the Department's Standard Professional Services Agreement, Terms, dated June, 2011 which are available as an appendix to this form in the Department's Professional Services web site or from the Department's Office of Procurement. The Standard Professional Services Agreement Terms, with the exception of the following non-applicable sections:

are incorporated by reference and made a part of this Agreement.

1. **SERVICES AND PERFORMANCE**

- A. The Department does hereby retain the Consultant to furnish certain services as described in Exhibit "A", attached hereto and made a part hereof, in connection with
Continuing Services Contract for Right of Way and Appraisal Support
- B. Unless changed by written agreement, the site for inspection of work referenced in Section 1.1 of the Standard Professional Services Terms, will be 1700 N. Orange Ave., Suite 400, Orlando, FL 32804

2. **TERM**

- A. Unless otherwise provided herein or by Supplemental Agreement or Amendment, the provisions of this Agreement will remain in full force and effect through completion of all services required of the Consultant or a 5 year term from the date of execution of this Agreement, whichever occurs first.
- B. Check applicable terms
- ☐ The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's _____ which notice to proceed will become part of this Agreement.
The Consultant will complete scheduled project services within _____ months of the commencement date specified in the notice to proceed or as modified by subsequent Amendment of Supplemental Agreement.
- ☒ The project services to be rendered by the Consultant for each task assignment will commence, upon written notice from the Department's Director or Designee, and will be completed within the time period specified in each task assignment. All services performed under this contract will be completed within 60 months from the date of this Agreement. The total fee for all accumulated task assignments may not exceed \$5,000,000.00.
- ☐ The scheduled project services to be rendered by the Consultant will commence, subsequent to execution of this Agreement, on the date specified in the written notice to proceed from the Department's _____ which notice to proceed will become part of this Agreement.
The Consultant will complete scheduled project services within _____ calendar days following completion of the construction contract(s) with which consultant services are associated. The anticipated length of the consultant services is _____ months.

3. **INSURANCE**

The amount of liability insurance to be maintained by the Consultant in accordance with Section 4.B of the Standard Professional Services Agreement Terms is 250,000.00

4. **SUBCONTRACTS**

The following subconsultants are authorized under this Agreement in accordance with Section 7.A. of the

Standard Professional Services Agreement Terms:

Lotspeich & Associates, Inc.; W. D. Richardl, Inc.; Speer Construction, LLC; Cornerstone Land Surveying, Inc.;
The Spivey Group, Inc.; Computer Graphics Studio, Inc.; Gulf Atlantic Consultants, Inc.; Fred B. La Due & Associates, Inc.;
Carr, Riggs & Ingram, LLC; RC Development Group, Inc.; Timothy Gaus, ATA, LLC; David Lee Constantine LLC;
Land Resource Design Group, Inc.; Leftwich Consulting Engineers, Inc.

5. **COMPENSATION**

The Department agrees to pay the Consultant compensation as detailed in Exhibit "B", attached hereto and made a part hereof.

6. **MISCELLANEOUS**

A. Reference in this Agreement to Director will mean the Director of Transportation Development

B. The services provided herein ☒ do ☐ do not involve the expenditure of federal funds. In the event federal funds are involved, Section 9 of the **Standard Professional Services Agreement Terms** is incorporated by reference.

C. The following attachments are hereby incorporated into this Agreement as part hereof as though fully set forth herein.

Page A-1 through Page A- 6 : Exhibit "A", Scope of Services

Page B-1 through Page B- 8 : Exhibit "B", Method of Compensation

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers on the day, month and year set forth above.

Kelly, Collins & Gentry, Inc.

Name of Consultant

BY: Harold Collins

Authorized Signature

Harold H. Collins, Jr.

(Print/Type)

Title: V. President

**STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION**

BY: Frank J. O'Dea

FOR

Frank J. O'Dea, P.E.

(Print/Type)

Title: Director of Transportation Development

FOR DEPARTMENT USE ONLY

APPROVED:

Michelle Sloan

Professional Services Unit

LEGAL REVIEW:

Frank J. O'Dea
General Counsel Office

**State of Florida Department of Transportation
STANDARD PROFESSIONAL SERVICES AGREEMENT TERMS
June, 2011**

1. SERVICES AND PERFORMANCE

- A. Before making any additions or deletions to the work described in the Agreement, and before undertaking any changes or revisions to such work, the parties will negotiate any necessary cost changes and will enter into a Supplemental Agreement covering such work and compensation. Reference herein to the Agreement will be considered to include any Supplemental Agreement.
- B. In the performance of professional services, the Consultant will use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The Consultant will use due care in performing its services and will have due regard for acceptable engineering standards and principles. Consultant's standard of care shall not be altered by the application, interpretation, or construction of any other provision of this Agreement.
- C. The Consultant agrees to provide project schedule progress reports in a format acceptable to the Department and at intervals established by the Department. The Department will be entitled at all times to be advised, at its request, as to the status of work being done by the Consultant and of the details thereof. Coordination will be maintained by the Consultant with representatives of the Department, or of other agencies interested in the project on behalf of the Department. Either party to the Agreement may request and be granted a conference.
- D. All services will be performed by the Consultant to the satisfaction of the Director who will decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of the Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and the decision upon all claims, questions and disputes will be final and binding upon the parties hereto. Adjustments of compensation and contract time because of any major changes in the work that may become necessary or desirable as the work progresses will be subject to mutual agreement of the parties, and Supplemental Agreement(s) of such a nature as required will be entered into by the parties in accordance herewith.

In the event that the Consultant and the Department are not able to reach an agreement as to the amount of compensation to be paid to the Consultant for supplemental work desired by the Department, the Consultant will be obligated to proceed with the supplemental work in a timely manner for the amount determined by the Department to be reasonable. In such event, the Consultant will have the right to file a claim with the Department for such additional amounts as the consultant deems reasonable; however, in no event will the filing of the claim or the resolution or litigation thereof through administrative procedures or the courts relieve the Consultant from the obligation to timely perform the supplemental work.

- E. In the event the work covered by this Agreement includes the preparation of construction plans, it is understood that the work may be divided into two or more construction projects by the Director and that, if this is done, the Consultant will supply construction plans for each project.
- F. The Consultant is authorized to use the Department's computer facilities utilizing Department programs required for the performance of the services herein. The Consultant will identify the programs required and submit a written request to the Department's Project Manager for approval.
- G. All design work performed by the Consultant for projects where anticipated construction cost is one million dollars (\$1,000,000) or more will be subject to Value Engineering. The Department further reserves the right to subject projects of lesser construction cost to Value Engineering should the Department deem circumstances are present that warrant such a decision. Value Engineering may be performed at any stage of the design process. Unless specifically identified in the Agreement, the Consultant will not be required to perform the Value Engineering analysis.

- H. The Consultant will not be liable for use by the Department of plans, documents, studies or other data for any purpose other than intended by the terms of this Consultant Agreement.
- I. All tracings, plans, specifications, maps, computer files and/or reports prepared or obtained under this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered works made for hire and will become the property of the Department upon completion or termination without restriction or limitation on their use and will be made available, upon request, to the Department at any time during the performance of such services and/or upon completion or termination of this Agreement. Upon delivery to the Department of said document(s), the Department will become the custodian thereof in accordance with Chapter 119, Florida Statutes. The Consultant will not copyright any material and products or patent any invention developed under this agreement. The Department will have the right to visit the site for inspection of the work and the products of the Consultant at any time.

2. **TERM:**

- A. Services required after completion of scheduled project services, including, but not limited to, design assistance, construction assistance, and litigation assistance, will be completed within the term of this Agreement at written direction of the department. Supplemental Agreements may be negotiated for any post project schedule services needed by the Department after scheduled project services.

In the event it becomes impracticable or impossible for the Consultant to complete the expected services within the term of this Agreement due to delays on the part of the department or circumstances beyond the control of the Consultant, the Agreement may be extended. An extension of the Agreement must be in writing.

- B. In the event there are delays caused by the Department in approval of any of the materials submitted by the Consultant or if there are delays occasioned by circumstances beyond the control and without fault or negligence of the Consultant which delay the scheduled project completion date, the Department may grant an extension of time equal to the aforementioned project schedule delay, as a minimum and not to exceed the Agreement term, by issuance of a Time Extension Letter. This letter will be for time only and does not include any additional compensation.

It will be the responsibility of the Consultant to ensure at all times that sufficient time remains in the Project Schedule within which to complete the services on the project. In the event there have been delays which would affect the project completion date, the Consultant will submit a written request to the Department which identifies the reason(s) for the delay, the amount of time related to each reason and specific indication as to whether or not the delays were concurrent with one another. The Department will review the request and make a determination as to granting all or part of the requested extension.

In the event time for performance of the scheduled project services expires and the Consultant has not requested, or if the Department has denied, an extension of the Project Schedule completion date; partial progress payments will be stopped on the date time expires. No payment shall be made for work performed after the Project Schedule completion date until a time extension is granted or all work has been completed and accepted by the Department if the Agreement term has not expired.

3. **COMPENSATION:**

- A. Bills for fees or other compensation for services or expenses will be submitted to the Department in detail sufficient for a proper preaudit and postaudit thereof. The Department will render approval or disapproval of services within five working days of the receipt of a written progress report unless otherwise stated in the Agreement. The progress report will be accompanied by an appropriate invoice.

- B. The bills for any travel expenses, when authorized by terms of this Agreement and by the Department's Project Manager, will be submitted in accordance with Section 112.061, Florida Statutes.
- C. Records of costs incurred under terms of this Agreement will be maintained and made available upon request to the Department at all times during the period of this Agreement and for three years after final payment for the work pursuant to this Agreement is made. Copies of these documents and records will be furnished to the Department upon request.
- D. Records of costs incurred will include the Consultant's general accounting records and the project records, together with supporting documents and records, of the Consultant and all subconsultants performing work on the project, and all other records of the Consultant and subconsultants considered necessary by the Department for a proper audit of project costs.
- E. The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement will be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, Rule Chapter 14-75, Florida Administrative Code, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State regulations and Federal regulations in that the more restrictive of the applicable regulations will govern.
- F. The Consultant should be aware of the following time frames. Upon receipt, the Department has five (5) working days to inspect and approve the goods and services, unless the Agreement specifies otherwise. The Department has 20 days to deliver a request for payment (voucher) to the Department of Financial Services. The 20 days are measured from the latter of the date the invoice is received or the goods or services are received, inspected and approved.
- G. If a payment is not available within 40 days, a separate interest penalty at a rate established pursuant to Section 215.422, Florida Statutes, will be due and payable, in addition to the invoice amount, to the Consultant. Interest penalties of less than one dollar will not be paid unless the Consultant requests payment. Invoices which have to be returned to a Consultant because of Consultant preparation errors will result in a delay in the payment. The invoice payment requirements do not start until a properly completed invoice is provided to the Department.
- H. A Vendor Ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment(s) from a state agency. The Vendor Ombudsman may be contacted at (850) 413-5516.
- I. Except for issues arising from contract indemnification provisions, the Department will have the right to retain out of any payment due the Consultant under this Agreement an amount sufficient to satisfy any amount due and owing to the Department by the Consultant on any other Agreement between the Consultant and the Department. The Department may withhold payment on any invoice in the event that the Consultant is in default under any provision of this Agreement or any other Agreement between the Consultant and the Department as of the time of processing the invoice or as of the time payment is made available on the invoice. This right to withhold will continue until such time as the default has been cured, and, upon cure, the Department will have the right to retain an amount equal to the damages suffered as a result of the default.
- J. It is mutually agreed and understood that the following provision will be applicable to this Agreement if the compensation to be paid to the Consultant, whether by lump sum or cost-plus-a-fixed-fee, will exceed the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY FOUR.

The Consultant hereby certifies, covenants and warrants that wage rates and other factual unit costs provided the Department to support the compensation are accurate, complete and current as of the date of this Agreement. It is further agreed that the Agreement price will be adjusted to exclude any significant sums by which the Department determines the Agreement price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such Agreement adjustments must be made within one year following the end of the Agreement. For this purpose, the end of the Agreement is the date of final billing or acceptance of the work by the Department, whichever is later.

- K. The Department, during any fiscal year, will not expend money, incur any liability, or enter into any contract which, by its terms, involves the expenditure of money in excess of the amounts budgeted as available for expenditure during such fiscal year. Any contract, verbal or written, made in violation of this subsection is null and void, and no money may be paid on such contract. The Department will require a statement from the comptroller of the Department that funds are available prior to entering into any such contract or other binding commitment of funds. Nothing herein contained will prevent the making of contracts for periods exceeding one year, but any contract so made shall be executory only for the value of the services to be rendered or agreed to be paid for in succeeding fiscal years. Accordingly, the Department's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature.

4. **INDEMNITY AND INSURANCE:**

- A. If the Consultant is an individual or entity licensed by the state of Florida who holds a current certificate of registration under Chapter 481, Florida Statutes, to practice architecture or landscape architecture, under Chapter 472, Florida Statutes, to practice land surveying and mapping, or under Chapter 471, Florida Statutes, to practice engineering, and who enters into a written agreement with the Department relating to the planning, design, construction, administration, study, evaluation, consulting, or other professional and technical support services furnished in connection with any actual or proposed construction improvement, alteration, repair, maintenance, operation, management, relocation, demolition, excavation, or other facility, land, air, water, or utility development or improvement, the Consultant will indemnify and hold harmless the Department, and its officers and employees, from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Consultant and other persons employed or utilized by the Consultant in the performance of the contract.

The parties agree that 1% of the total compensation to the Consultant for performance of this Agreement is the specific consideration from the Department to the Consultant for the Consultant's indemnity agreement.

- B. The Consultant will have and maintain during the term of this Agreement, a professional liability insurance policy or policies, or an irrevocable letter of credit established pursuant to Chapter 675 and Section 337.106, Florida Statutes, with a company or companies authorized to do business in the State of Florida, affording professional liability coverage for the professional services to be rendered in accordance with this Agreement in the amount specified in the Agreement.
- C. Under the terms of this agreement, the plans, reports and recommendations of the Consultant will be reviewed by the Department for conformity with Department standards and agreement terms. However, review by the Department does not constitute detailed review or checking of design components and related details, or the accuracy with which designs are depicted on the plans.
- D. Acceptance of the work by the Department or Agreement termination does not constitute Department approval and will not relieve the Consultant of the responsibility for subsequent corrections of any errors and/or omissions and the clarification of any ambiguities. The Consultant shall make all necessary revisions or corrections resulting from errors and/or omissions on the part of the Consultant without additional compensation. If these errors and/or omissions are discovered during the construction of the project, they shall be corrected without additional compensation.

5. **COMPLIANCE WITH LAWS:**

- A. All final plans, documents, reports, studies and other data prepared by the Consultant shall bear the professional's seal/signature, in accordance with the applicable Florida Statute that governs and Administrative Rules promulgated by the Department of Business and Professional Regulation, and guidelines published by the Department, in effect at the time of execution of this Agreement. In the event that changes in the Statute or Rules create a conflict with the requirements of the published guidelines, requirements of the Statute and/or Rules shall take precedence.
- B. Chapter 337.162 Florida Statutes applies as follows:

- (1) If the Department has knowledge or reason to believe that any person has violated the provisions of state professional licensing laws or rules, it will submit a complaint about the violations to the Department of Business and Professional Regulation. The complaint will be confidential.
 - (2) Any person who is employed by the Department and who is licensed by the Department of Business and Professional Regulation and who, through the course of his employment, has knowledge to believe that any person has violated the provisions of state professional licensing laws or rules will submit a complaint about the violations to the Department of Business and Professional Regulation. Failure to submit a complaint about the violations may be grounds for disciplinary action pursuant to Chapter 455 and the state licensing law applicable to that licensee. The complaint will be confidential.
 - (3) Any confidential information submitted to the Department of Business and Professional Regulation will remain confidential pursuant to Chapter 455 and applicable state law.
- C. The Consultant will comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and will not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the performance of work under this Agreement.
- D. The Consultant warrants that the Consultant has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm any fee, commission, percentage, gift or any other consideration, contingent upon or resulting from the award or making of this Agreement. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted. For the breach or violation of this Paragraph, the Department shall have the right to terminate this Agreement without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- E. The Consultant shall allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the Consultant in conjunction with this Agreement. Failure by the Consultant to grant such public access shall be grounds for immediate unilateral cancellation of this Agreement by the Department.
- F. The Consultant agrees that it will make no statements, press releases or publicity releases concerning this Agreement or its subject matter or otherwise disclose or permit to be disclosed any of the data or other information obtained or furnished in compliance with this Agreement, or any particulars thereof, during the period of the Agreement, without first notifying the Department and securing its consent in writing. The Consultant also agrees that it will not publish, copyright or patent any of the data developed under this Agreement, it being understood that such data or information is the property of the Department.
- G. Consultant covenants and agrees that it and its employees will be bound by the standards of conduct provided in applicable Florida Statutes and applicable rules of the Department of Business and Professional Regulation as they relate to work performed under this Agreement. Consultant further covenants and agrees that when a former state employee is employed by the Consultant, the Consultant will require that strict adherence by the former state employee to Florida Statutes 112.313(9) and 112.3185 is a condition of employment of said former state employee. These statutes will by reference be made a part of this Agreement as though set forth in full. Consultant agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed pursuant to this Agreement.
- H. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.
- I. The Department will consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation will be cause for unilateral cancellation of this Agreement, by the Department, if the Consultant knowingly employs unauthorized aliens.

- J. **DISCRIMINATION:** An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid on a contract to provide goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not award or perform work as a contractor, supplier, subcontractor, or consultant under contract with any public entity, and may not transact business with any public entity.

6. **TERMINATION AND DEFAULT**

- A. The Department may terminate this Agreement in whole or in part at any time the interest of the Department requires such termination, as follows:
- (1) If the Department determines that the performance of the Consultant is not satisfactory, the Department may notify the Consultant of the deficiency with the requirement that the deficiency be corrected within a specified time; but not less than 10 days. Otherwise the Agreement will be terminated at the end of such time or thirty (30) days whichever is sooner.
 - (2) If the Department requires termination of the Agreement for reasons other than unsatisfactory performance of the Consultant, the Department will notify the Consultant of such termination, with instructions as to the effective date of work stoppage or specify the stage of work at which the Agreement is to be terminated.
 - (3) If the Agreement is terminated before performance is completed, the Consultant will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement.
- B. The Department reserves the right to cancel and terminate this Agreement in the event the Consultant or any employee or agent of the Consultant is convicted for any crime arising out of or in conjunction with any work being performed by the consultant for or on behalf of the Department, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans specifications, computer files, maps, and data prepared or obtained under this Agreement will immediately be turned over to the Department. The Department reserves the right to terminate or cancel this Agreement in the event the Consultant will be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. The Department further reserves the right to suspend the qualifications of the Consultant to do business with the Department upon any such conviction.
- C. If the Agreement is for goods or services of \$1 million or more and was entered into or renewed on or after July 1, 2011 and the Department determines that the Vendor submitted a false certification under Section 287.135(5), Florida Statutes, or if the Vendor has been placed on the Scrutinized Companies with Activities in the Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, the Department shall have the option of (1) terminating the Agreement after it has given the Vendor notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

7. **ASSIGNMENT AND SUBCONTRACTORS**

- A. The Consultant will maintain an adequate and competent professional staff so as to enable Consultant to timely perform under this Agreement and must be authorized to do business within the State of Florida and may associate with it such subconsultants, for the purpose of its services hereunder, without additional cost to the Department, other than those costs negotiated within the limits and terms of this Agreement. The Consultant is fully responsible for satisfactory completion of all subcontracted work. The Consultant, however, will not sublet, assign or transfer any work under this Agreement to other than subconsultants specified in the Agreement without the written consent of the Department.
- B. The Consultant must state in all subcontracts that services performed by any such subconsultant will be subject to the Professional Consultant Work Performance Evaluation System as defined in Chapter 14-75, Florida Administrative Code.
- C. The following provision is hereby incorporated in and made a part of this Agreement when the services provided herein do not involve the expenditure of Federal funds:

It is expressly understood and agreed that any articles which are the subject of, or required to carry out this contract will be purchased from the Corporation identified under Chapter 946, Florida Statutes, in the same manner and under the same procedures set forth in Section 946.515(2) and (4), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract will be deemed to be substituted for this agency insofar as dealings with such Corporation.

The Corporation referred to in the above paragraph is Prison Rehabilitative Industries and Diversified Enterprises, Inc. Available pricing, products, and delivery schedules may be obtained by contacting:

PRIDE Enterprises
12425 28th Street North
Suite 300
St Petersburg, Florida 33716

8. **MISCELLANEOUS**

- A. All words used herein in the singular form will extend to and include the plural. All words used in the plural form will extend to and include the singular. All words used in any gender will extend to and include all genders.
- B. In the event that a court of valid jurisdiction finally determines that any provision of this Agreement is illegal or unenforceable, this Agreement will be construed as not containing such provision, and all other provisions which are otherwise lawful will remain in full force and effect, and to this end the provisions of this Agreement are declared to be severable.
- C. There are no understandings or agreements except as herein expressly stated.
- D. This Agreement will be governed by and construed in accordance with the laws of the State of Florida.
- E. In any legal action related to this Agreement, instituted by either party, Consultant hereby waives any and all privileges and rights it may have under chapter 47 and Section 337.19, Florida Statutes, relating to venue, as it now exists or may hereafter be amended, and any and all such privileges and rights it may have under any other statute, rule or case law, including, but not limited to those grounded on convenience. Any such legal action may be brought in the appropriate Court in any county chosen by the Department and in the event that any such legal action is filed by Consultant, Consultant hereby consents to the transfer of venue to the county chosen by the Department upon the Department filing a motion requesting the same.
- F. Consultant:
 - 1. shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Consultant during the term of the contract; and
 - 2. shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract term.

9. **TERMS FOR FEDERAL AID CONTRACTS (APPENDIX I):**

The following terms apply to all contracts in which it is indicated in Section 6.B of the Standard Professional Services Agreement that the services involve the expenditure of federal funds:

- A. It is understood and agreed that all rights of the Department relating to inspection, review, approval, patents, copyrights, and audit of the work, tracing, plans, specifications, maps, data, and cost records relating to this Agreement shall also be reserved and held by authorized representatives of the United States of America.
- B. It is understood and agreed that, in order to permit federal participation, no supplemental agreement of any nature may be entered into by the parties hereto with regard to the work to be performed hereunder without the approval of the U.S. Department of Transportation, anything to the contrary in this Agreement notwithstanding.
- C. Compliance with Regulations: The Consultant shall comply with the Regulations of the U.S. Department of Transportation Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.
- D. Nondiscrimination: The Consultant, with regard to the work performed during the contract, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurements of material and leases of equipment. The Consultant will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

- E. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations made by the Consultant, either by competitive bidding or negotiation for work to be performed under a subcontract, including procurements of materials and leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract and the Regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.
- F. Information and Reports: The Consultant will provide all information and reports required by the Regulations, or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration as appropriate, and shall set forth what efforts it has made to obtain the information.
- G. Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this contract, the Florida Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or Federal Motor Carrier Safety Administration may determine to be appropriate, including, but not limited to,
1. withholding of payments to the Consultant under the contract until the Consultant complies and/or
 2. cancellation, termination or suspension of the contract, in whole or in part.
- H. Incorporation or Provisions: The Consultant will include the provisions of Paragraph C through H in every subcontract, including procurements of materials and leases of equipment unless exempt by the Regulations, order, or instructions issued pursuant thereto. The Consultant will take such action with respect to any subcontract or procurement as the Florida Department of Transportation, Federal Highway Administration, Federal Transit Administration, Federal Aviation Administration, and/or the Federal Motor Carrier Safety Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Florida Department of Transportation to enter into such litigation to protect the interests of the Florida Department of Transportation, and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
- I. Interest of Members of Congress: No member of or delegate to the Congress of the United States will be admitted to any share or part of this contract or to any benefit arising therefrom.
- J. Interest of Public Officials: No member, officer, or employee of the public body or of a local public body during his tenure or for one year thereafter shall have any interest, direct or indirect, in this contract or the proceeds thereof. For purposes of this provision, public body shall include municipalities and other political subdivisions of States; and public corporations, boards, and commissions established under the laws of any State.
- K. Participation by Disadvantaged Business Enterprises: The Consultant shall agree to abide by the following statement from 49 CFR 26.13(b). This statements shall be included in all subsequent agreements between the Consultant and any subconsultant or contractor.
- The Consultant, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this contract, which may result in termination of this contract or other such remedy as the recipient deems appropriate.
- L. It is mutually understood and agreed that the willful falsification, distortion or misrepresentation with respect to any facts related to the project(s) described in this Agreement is a violation of the Federal Law. Accordingly, United States Code, Title 18, Section 1020, is hereby incorporated by reference and made a part of this Agreement.
- M. It is understood and agreed that if the Consultant at any time learns that the certification it provided the Department in compliance with 49 CFR, Section 26.51, was erroneous when submitted or has become erroneous by reason of changed circumstances, the Consultant shall provide immediate written notice to the Department. It is further agreed that the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction" as set forth in 49 CFR, Section 29.510, shall be included by the Consultant in all lower tier covered transactions and in all aforementioned federal regulation.

N. The Department hereby certifies that neither the consultant nor the consultant's representative has been required by the Department, directly or indirectly as an express or implied condition in connection with obtaining or carrying out this contract, to

1. employ or retain, or agree to employ or retain, any firm or person, or
2. pay, or agree to pay, to any firm, person, or organization, any fee, contribution, donation, or consideration of any kind;

The Department further acknowledges that this agreement will be furnished to a federal agency, in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

O. The Consultant hereby certifies that it has not:

1. employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above contractor) to solicit or secure this contract;
2. agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out this contract; or
3. paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for the above contractor) any fee contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

The consultant further acknowledges that this agreement will be furnished to the State of Florida Department of Transportation and a federal agency in connection with this contract involving participation of Federal-Aid funds, and is subject to applicable State and Federal Laws, both criminal and civil.

EXHIBIT "A"
SCOPE OF SERVICES
Continuing Services Contract for Right of Way and Appraisal Support
Financial Project ID No. 241068-1-4B-XX

I PURPOSE:

The Consultant shall provide to the Florida Department of Transportation (FDOT), District 5 hereinafter called "Department," on an as needed basis, certain services in support of appraisal and related right of way activities as further described in Section II, Services, below.

II SERVICES:

The Consultant shall provide all required right of way support service, including, but not limited to Professional Land Planning Service, Engineering Services, Site Development Services; Environmental Services, Surveying Services, Landscape Service, Cost to Cure and Specialty Services such as Sign Specialists, Personal Property Appraisers (including Mobile Home), general contractors, and any other specialists as needed.

The Consultant shall interact with local government agencies to identify pending or proposed government regulations that may impact land values within the project area and maintain information on pending zoning or land use changes within the project corridor area.

The Consultant's final work product shall be provided to the Department's Contract Fee Appraiser no later than two weeks prior to the scheduled submission date of each parcel.

The Consultant shall provide any one or more of the services described below for each work order subsequently issued/identified by the Department (including Litigation Services). The Consultant may also be required to provide other services determined by the Department to be necessary to support appraisal, negotiation or litigation by the Department.

A. ZONING

1. Determine and verify zoning designations for each parcel with appropriate government entity.
2. Determine and verify status of parcel prior to and after the Department's acquisition with respect to:
 - a. Existing and pending variance applications
 - b. Legal con-conformities
 - c. Illegal non-conformities
 - d. Any previous or pending zoning applications, or conditional use applications.

B. COMPREHENSIVE LAND USE REQUIREMENT

1. Determine and verify comprehensive land use for each parcel with the local Planning Department.
2. Determine and verify use of property before the Department's acquisition for conformance with comprehensive land use plan.
3. Determine and verify use of property after acquisition for conformance with use plan.

C. CONCURRENCY

1. Obtain concurrency ordinances from both municipal and county governmental entities.
2. Determine and verify concurrence ordinance provisions before the Department's acquisition.
3. Determine and verify the change in concurrency ordinance effect after the Department's acquisition.

D. IMPACT FEES

1. Determine and verify the change in impact fees by parcel after the Department's acquisition, if different from prior to the acquisition.
2. Provide a complete breakdown by category of all impact fees applicable to the parcel.

E. ENVIRONMENTAL REGULATIONS

1. Investigate the current environmental regulations from the appropriate federal, state, municipal, county and regulatory agencies.
2. Determine and verify the effect of environmental regulations on a parcel by parcel basis prior/subsequent to the Department's acquisition.
3. Determine any special items related to the cost to cure estimate with regard to factors related to environmental regulation.

F. SITE INSPECTION

Inspect subject parcel site with Department's real property appraiser and business damage expert, as required.

G. PARKING LOT DESIGN

1. Evaluate the parking design of the subject property before the Department's

acquisition in the following areas:

- a. Potential number of spaces (designated parking)
- b. Configuration
- c. Adherence to applicable zoning
- d. Adherence to applicable parking design standards
- e. Encroachments on existing right of way, if applicable
- f. Investigate leases, easements, and restrictions and cross parking agreements including recorded joint-use agreements and platted out parcels

2. Design parking after the Department's acquisition to provide the greatest utilization of parking, as minimum, the Consultant shall evaluate the following:

- a. Compliance with zoning
- b. Compliance with applicable parking design standards (ADA requirements)
- c. Consultation(s) with the real property appraiser of proposed parking re-configuration(s)
- d. Consultations with the business damage expert in order to access business damage effects of proposed parking reconfiguration(s)
- e. Potential number of spaces (designated)
- f. Investigate leases, easements, and restrictions and cross parking agreements.

H. SITE ACCESS (INGRESS AND EGRESS REQUIREMENTS)

1. Based on alternative cost to cure scenarios, evaluate site access requirements for compatibility with proposed cures.
2. Evaluate what kinds of driveways are permitted subsequent to Right of Way acquisition. Driveway location must be compatible with access management policies. (Chapter 14-96, 14-87 and any district access management implementation plans.)

I. BUILDING FLOOR PLANS AND STRUCTURE DESIGN

1. If primary parcel structures are to be affected by the Department's proposed right of way, provide a drawing to scale for the improvements prior to the Department's acquisition.
2. Provide a drawing to scale of the primary improvements of the subject parcel after the Department's acquisition, as provided for in the final cure scenario.

J. SITE DRAINAGE DESIGN

1. Adequacy of the existing on site drainage ponds after the Department's Right of Way Acquisition.

2. Alternative on site locations for ponds if existing is not adequate.
3. Adequacy of the Department's drainage system to accommodate off site drainage, if 1 or 2 above are not feasible or cost effective.

K. ON-SITE TRAFFIC STUDIES

1. Provide a written analysis of the on site traffic circulation pattern and parking utilization prior to the Department's acquisition.
2. Formulate, analyze, and select an on site traffic circulation pattern scenario after the Department's acquisition. The selected scenario shall be discussed and coordinated with the Department's real property appraiser and/or business damage expert.

L. COST TO CURE ESTIMATE

In conjunction with the Department's Real Property Appraiser the consultant shall select the most feasible cure for the subject parcel by evaluating, as a minimum, each of the following areas:

1. Zoning
2. Land Use Requirements
3. Impact Fees
4. Concurrency
5. Environmental Regulations
6. Parking Design Standards
7. Site Drainage Design
8. Building Floor Plans and Structural Design
9. Deed Restrictions
10. Easements
11. Access Driveway Locations
12. Cross Parking Arrangements
13. Local building codes
14. Topography
15. Grade changes (check possible cost to cure when right of entries are not obtained for blending of roadway).
16. General Contractor's bid for providing cost to cure.

M. SPECIALTY ESTIMATES

1. Building Improvement
 - a. Reproduction /Replacement by a Licensed General Contractor
 - b. Demolition
 - c. Salvage Value

d. Move on site

2. Furniture, Fixtures and Equipment

- a. Cost to move (or remove) on site
- b. Reproduction/replacement cost
- c. Depreciated reproduction/replacement cost
- d. Salvage value

3. Site Improvements, e.g., lights, landscaping, walls

- a. Cost to move
- b. Reproduction/replacement cost
- c. Depreciated reproduction/replacement cost
- d. Salvage value

N. SURVEYING AND MAPPING SERVICES

- 1. Creation of Photo-realistic “before” and “after” photography of the project and individual parcels using imaging. Resolution will be at least 1200 x 1200 pixels.
- 2. Preparation of scaled vertical type aerials consisting of two views per 24” x 36” FDOT plan sheet at 1:100 SCALE (unless otherwise requested by FDOT) showing the new versus the old Right of Way line locations.
- 3. Superimposing the new constructions plans over the aerials and production of “after” views to show photo-realistic changes and additions including the proposed road widening, medians, sidewalks, pavement markings, and car. Existing curb cuts will be connected.
- 4. Review any “cost to cure” or other diagrams provided by the FDOT or its experts that may require a visual aid to be provided by you.
- 5. Show the redesign of the curb cuts, drainage, parking, and buildings in subsequent versions of the photos when directed by FDOT.

O. LITIGATION AND SUPPORT SERVICES

Litigation services may include, but are not limited to, the following:

- 1. Pre-trial or pre-hearing preparation.
- 2. Participation in mediation proceedings.
- 3. Preparation of court exhibits.
- 4. Attendance at depositions, pre-trial hearings, or other court hearing.
- 5. Appearance at Order of Taking hearings or trials.
- 6. Any other services deemed necessary by the assigned attorney to successfully

litigate and defend the Department's position in court.

P. MEETINGS AND REVIEWS

III. PROVISIONS OF WORK

A. COMPUTER SERVICES

1. The Consultant shall be authorized to use computer programs of the Department.
2. Computations based on computer programs other than the Department's must conform to the Department's general format. (See the Department's "Roadway and Bridge Plans Preparation Manual".)

B. COMPUTER-AIDED DRAFTING & DESIGN (CADD)

1. The use of CADD is permitted for the performance of services required in connection with this project.
2. If CADD is utilized, the deliverable material shall be provided to the level of quality by the Department's "Plans Preparation Manual" and Intergraph Roadway Procedure Manual (CADD)." All files shall be in a form which is compatible with the Department's Intergraph CADD system. All digitized plans and computer files shall be accomplished using the Department's symbol and notation format.

IV. LITIGATION AND SUPPORT SERVICES

If notified in writing by the Department, the Consultant agrees to enter into a separate expert witness contract to provide litigation support services on parcels requested by the Department.

EXHIBIT "B"
METHOD OF COMPENSATION

**Continuing Services Contract for Right of Way and Appraisal Support
Financial Project ID No. 241068-1-4B-XX**

1.0 PURPOSE

This exhibit defines the method and limits of compensation to be made to the Consultant for the services described in Exhibit "A" Scope of Services, and the method by which payments will be made.

This is a Continuing Services Contract subject to Department periodic review, approval, and satisfaction with the Consultant's performance. This contract may be terminated by the Department at any time in accordance with Section 6, Termination and Default, (page 6 of 9) of the Standard Professional Services Agreement Terms, dated June 2011.

The DEPARTMENT shall request Consultant services on an as-needed basis. There is no guarantee that any or all of the services described in Exhibit "A" of this Agreement will be assigned during the term of this Agreement. Further, the Consultant is providing these services on a non-exclusive basis. The DEPARTMENT may, at its option, elect to have any of the services set forth herein performed by other consultants or DEPARTMENT staff.

2.0 COMPENSATION

For satisfactory completion of services authorized under this Agreement, the DEPARTMENT will pay the CONSULTANT a Total Maximum Limiting Amount not to exceed \$5,000,000.00. This is a task assignment type agreement. The DEPARTMENT will furnish the Consultant a task work order specifying the services to be performed and the fees to be paid for each project assigned under this agreement. The DEPARTMENT will confirm funds availability prior to issuing a task work order to the CONSULTANT.

The total amount of this agreement is expected to be funded by multiple appropriations. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. Therefore, it is agreed that the CONSULTANT shall not be obligated to perform services nor incur costs which would result in exceeding the amount established for each assignment, nor will the DEPARTMENT be obligated to reimburse the CONSULTANT for costs or make fee payments in excess of currently established funding. The DEPARTMENT will provide written authorization through supplemental amendments when appropriations for subsequent fiscal years are available for this project.

It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient funding remains within the amount established for each assignment to complete authorized services.

Changes to the amounts established for each work assignment shall require a supplemental amendment to the assignment. The CONSULTANT shall not be obligated to perform services nor incur costs which would result in exceeding the amount established for each assignment, nor will the DEPARTMENT be obligated to reimburse the CONSULTANT for costs or make fee payments in excess of the total funding established for each assignment, except when such amount is increased by a supplemental amendment.

At the Department's option additional financial project numbers and associated funding may be added and authorized by task work order execution contingent upon legislative appropriation and budget approval.

When federal funds are to be utilized, the Department will provide the Consultant written authorization for each Task Work Order subsequent to Federal Highway Administration (FHWA) approval.

The following firms are subject to a contract fee limit up to but less than \$250,000.00 for the term of the Agreement: Lotspeich & Associates, Inc.; W. D. Richardi, Inc.; Speer Construction, LLC; Cornerstone Land Surveying, Inc.; The Spivey Group, Inc.; Computer Graphics Studio, Inc.; Gulf Atlantic Consultants, Inc.; Fred B. La Due & Associates, Inc.; Carr, Riggs & Ingram, LLC; RC Development Group, Inc.; Timothy Gaus, AIA, LLC; David Lee Constantine LLC; Land Resource Design Group, Inc.. This contract fee limitation may be removed at such time as the subconsultant firm submits an FDOT approved overhead audit performed by an independent CPA. It is the responsibility of the prime consultant to ensure that this limitation is adhered to.

At such time as each firm obtains a DEPARTMENT approved audited overhead rate, an amendment may be issued to remove this limitation to its participation in this agreement.

2.1 Summary of Compensation:

Fees for each task work order will be negotiated either as a lump sum amount (fixed price), a limiting amount (cost reimbursement), or as a combination lump sum and limiting amount. Where lump sum amounts are established, fees will be negotiated in accordance with Section 2.2. Where limiting amount fees are established, compensation will be in accordance with Section 2.2. Compensation for direct expense costs may be included in task work order fees, in accordance with Section 2.2.

This Agreement does not involve the purchase of Tangible Personal Property, as defined in Section 273.02 Florida Statutes.

2.2 Details of Compensation:

In the event that federal funds are utilized on a task work order, Operating Margin will be established as a lump sum compensation element (fixed fee).

LUMP SUM AMOUNTS

For task work order compensation elements established as lump sum, the Department may compensate the Consultant in accordance with one or more of the following methods of payment.

Basic Services (LS-2):

The Consultant will receive progress payments for these services based on the percentage of services that have been completed and accepted by the Department during the billing period.

Fixed Fee (when direct labor is a limiting amount, LS-12):

In the event that federal funds are utilized on a task work order, operating margin will be established as a lump sum compensation element (fixed fee). The Consultant will receive progress payments based on the percentage provided for operating margin in Table 4 of Section 5.0. Payments will be the tabulated percentage applied to approved direct labor (unburdened). Any balance remaining upon completion and approval of project services will be due at that time.

LIMITING AMOUNTS

For the following elements which are established as limiting amounts, the Department will compensate the Consultant for all reasonable, allocable and allowable costs incurred in the categories defined below. The reasonableness, allocability and allowability of reimbursements sought under this Agreement are expressly made subject to the terms of this Agreement; Federal Acquisition Regulations; Office of Management and Budget Circulars A-21, A-87, A-102, and A-110; and any pertinent Federal and State law.

Salary Related Costs (LA3):

Subject to the established limiting amount, the Consultant will receive progress payments for direct salaries and wages for time/work effort expended by personnel in the performance of authorized work during the billing period, at the contract rates established in Table 5 of Section 5.0.

Administrative overhead and fringe benefit costs will be applied to approved salary and wage costs at the combined overhead rate provided in Table 5 of Section 5.0.

Operating Margin will be applied to approved direct salary costs at the rate provided in Table 5A of Section 5.0.

The Consultant will receive compensation for allowable Facilities Capital Cost of Money (FCCM) in association with salaries. FCCM will be calculated as a percentage of chargeable direct salaries and wages, at the rate provided in Table 5 of Section 5.0.

The Consultant will be compensated for direct expenses in association with

salaries. Direct Expenses will be calculated as a percentage of chargeable direct salaries and wages, exclusive of premium overtime, at the rates provided in Table 5 of Section 5.0.

Salary Related Costs when Fixed Fee is Lump Sum (LA-3):

Subject to the established limiting amount, the Consultant will receive progress payments for direct salaries and wages for time/work effort expended by personnel in the performance of authorized work during the billing period, at the contract rates established in Table 5 of Section 5.0.

Administrative overhead and fringe benefit costs will be applied to approved salary and wage costs at the combined overhead rate provided in Table 5 of Section 5.0.

The Consultant will receive compensation for allowable Facilities Capital Cost of Money (FCCM) in association with salaries. FCCM will be calculated as a percentage of chargeable direct salaries and wages, at the rate provided in Table 5 of Section 5.0.

The Consultant will be compensated for direct expenses in association with salaries. Direct Expenses will be calculated as a percentage of chargeable direct salaries and wages, exclusive of premium overtime, at the rates provided in Table 5 of Section 5.0.

Basic Services (Loaded Billing Rates (LA-4):

Subject to the established limiting amount, the CONSULTANT will be compensated for these services based on the rates provided in Table 6 of Section 5.0. No Multipliers will be applied to these rates. Payment for such services will be based on approved time incurred during the billing period.

Survey Services (Loaded Billing Rates (LA-4):

Subject to the established limiting amount, the CONSULTANT will be compensated for these services based on the rates provided in Table 6 of Section 5.0. No Multipliers will be applied to these rates. Payment for such services will be based on approved time incurred during the billing period.

3.0 INVOICING PROCEDURE

The Consultant will be eligible for progress payments under this agreement at intervals not less than monthly or when individual tasks or mileposts defined in this agreement are completed or reached.

Invoices for this Agreement will be prepared by the Consultant and submitted to the Department on DOT Form 375-030-05E or 375-030-05B, or will be submitted through the Department's Computerized Invoice Transmission System, at the option of the

DEPARTMENT. The invoices will be submitted in quintuplicate and will be supported by such information as may be required by Department procedures to substantiate the charges being invoiced. The Consultant will maintain for this purpose a job cost accounting system that is acceptable to the Department.

If requested by the Department, the final invoice for this agreement will be accompanied by a certified job cost summary report generated by the accounting system. The report will include at a minimum the total number of hours and salary cost actually charged to the project, the total direct vehicle expense, the total miscellaneous direct expense, and total subconsultant cost charged to the project.

Monthly, at the time of invoice submittal, the Consultant will report subconsultant payments through the Department's Equal Opportunity Reporting System on the Internet. Failure to submit a properly completed report may be cause for rejection of the invoice. Within thirty days after receipt of final payment, the Consultant will submit a final subconsultant payment report. The Consultant will pay all subconsultants their proportionate share of payments received from the Department within thirty days of the Consultant's receipt of payment from the Department.

The Department will render a decision on the acceptability of services within five working days of receipt of either the services or invoice, whichever is later. The Department reserves the right to withhold payments for work not completed, or work completed unsatisfactorily, or work that is deemed inadequate or untimely by the Department. Any payment withheld will be released and paid to the Consultant promptly when work is subsequently performed.

4.0 PROJECT CLOSEOUT

4.1 Final Audit

If requested, the Consultant will permit the Department to perform an audit of the records of the Consultant and any or all subconsultants to support the compensation paid the Consultant. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the Consultant under this Agreement are subsequently properly disallowed by the Department because of accounting errors or charges not in conformity with this Agreement, the Consultant agrees that such disallowed costs are due to the Department upon demand. Further, the Department will have the right to deduct from any payment due the Consultant under any other contract any amount due the Department.

4.2 Certificate of Completion

A Certificate of Completion will be prepared for execution by both parties stating the total compensation due the Consultant, the amount previously paid, and the difference.

Upon execution of the Certificate of Completion, the Consultant will either submit a termination invoice for an amount due or a refund for the overpayment, provided the net difference is not zero.

5.0 COMPENSATION RATES

The following tables are provided for definition of contractual rates. Table numbers not listed are not included in this document.

Table 4	SALARY MULTIPLIERS
Table 5	UNLOADED HOURLY RATES
Table 6	LOADED BILLING RATES

Table 4 SALARY MULTIPLIERS	
These rates are fixed and not subject to audit adjustment during the term of the agreement.	
CONSULTANT	OPERATING MARGIN %
Kelly, Collins & Gentry, Inc.	32%
Lotspeich & Associates, Inc.	25%
Leftwich Consulting Engineers, Inc.	32%

Table 5 UNLOADED HOURLY RATES				
A. Multipliers for Rates				
The rates for overhead, expense, and FCCM are fixed and not subject to audit adjustment during the term of the agreement.				
CONSULTANT	OVERHEAD	FCCM	EXPENSE	OPERATING MARGIN
Kelly, Collins & Gentry, Inc.	182.75%	0.113%	7.37%	32%
Lotspeich & Associates, Inc.	172.58%	N/A	10.72%	25%
Leftwich Consulting Engineers, Inc.	200.86%	9.854%	0.35%	32%

B. Contract Rates		
CONSULTANT	JOB CLASS	RATE
Kelly, Collins & Gentry, Inc.	Chief Engineer	\$57.40
	Project Manager	\$45.19
	Senior Engineer	\$48.26
	Senior Planner	\$37.70
	Senior Designer	\$31.86
	Senior Engineering Technician	\$23.00
	Secretary/Clerical	\$25.53
Lotspeich & Associates, Inc.	Senior Specialist	\$39.90
	Project Manager	\$43.27
	Environmental Specialist	\$24.49
	GIS Specialist	\$25.25
	CADD Technician	\$23.85
	Contract Coordinator	\$23.58
	Secretary/Clerical	\$22.05
Leftwich Consulting Engineers, Inc.	Principal/Chief Engineer	\$120.00
	Senior Engineer	\$50.48
	Engineer	\$35.00
	Project Manager	\$38.46

Table 6
LOADED BILLING RATES

No multipliers will be added to the following rates.

CONSULTANT	ITEM	UNIT	Rate
Speer Construction, LLC	Principal/General Contractor	Hour	\$100.00
W.D. Richardi, Inc.	Principal/General Contractor	Hour	\$113.00
	Principle Associate/General Contractor	Hour	\$55.00
	Associate/General Contractor	Hour	\$55.00
Cornerstone Land Surveying, Inc.	Principle P.S.M.	Hour	\$85.00
	Associate Drafting	Hour	\$60.00
	Field Crew	Hour	\$95.00
The Spivey Group, Inc.	Principle Appraiser	Hour	\$150.00
	Associate Appraiser	Hour	\$100.00
	Staff Researcher	Hour	\$60.00
Computer Graphics Studio, Inc.	Principle	Hour	\$85.00
	Associate	Hour	\$65.00
Gulf Atlantic Consultants, Inc.	Primary Appraiser	Hour	\$125.00
	Associate/Assistant Appraiser	Hour	\$55.00
Fred B. La Due & Associates, Inc.	Principle Appraiser	Hour	\$140.00
	Associate Appraiser	Hour	\$85.00

Table 6
LOADED BILLING RATES

No multipliers will be added to the following rates.

CONSULTANT	ITEM	UNIT	Rate
Carr, Riggs & Ingram, LLC	Managing Director	Hour	\$150.00
	Managing Consultant	Hour	\$150.00
RC Development Group, Inc.	Petroleum/Construction Expert	Hour	\$150.00
Timothy Gaus, AIA, Inc.	Principle Architect	Hour	\$150.00
David Lee Constantine LLC	Principle Planning/Consulting	Hour	\$150.00
Land Resource Design Group, Inc.	Principle Landscape Architecture	Hour	\$145.00