

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: March 27, 2017

SUBJECT: Sprint Fiber Optic Reimbursement Agreement – Amendment No. 1
Project No. 528-131 SR 528 Bridges Over Econlockhatchee River

CFX and Sprint Communication Company L.P. has a Fiber Optic Conduit License Agreement for the lease of CFX's Fiber Optic Conduit System along the north side of SR 528. Currently CFX has two projects, SR 528 Innovation Way Interchange Project and SR 528 Bridge Replacement over the Econ River, that require the relocation of the fiber optic conduit system. The license agreement allows CFX to address relocation at the sole cost to CFX.

In August 2016, CFX and Sprint entered into a Reimbursement Agreement for a not-to-exceed amount of \$244,215.23 to compensate Sprint for the necessary FON relocation related to CFX's construction of the new SR 528 Innovation Way Interchange.

With the SR 528 Econlockhatchee River Bridge Replacement recently commencing, it is necessary to relocate CFX's fiber optic conduit system to avoid the new bridge foundations and this in turn will require Sprint's relocation. In lieu of a new agreement, Sprint has requested amending the above referenced reimbursement agreement to include this additional SR 528 fiber optic relocation by Sprint. This amendment will increase the reimbursement by a not-to-exceed amount of \$350,118.94.

Board approval is requested to amend the Reimbursement Agreement with Sprint for a not-to-exceed amount of \$594,334.17 to reimburse Sprint for the cost of performing the Sprint fiber relocation. Sprint will only be paid for the actual costs incurred as confirmed by CFX's representatives on these construction projects.

This project is in the current Five-Year Work Plan.

Reviewed by:


Ben Dreiling, PE
Director of Construction

4974 ORL TOWER RD. ORLANDO, FL 32807 | PHONE: (407) 690-5000 | FAX: (407) 690-5011

AMENDMENT NO. 1 TO REIMBURSEMENT AGREEMENT

This Amendment No. 1 ("Amendment No. 1") to the Reimbursement Agreement ("Agreement") effective March ____, 2017 ("Amendment No. 1 Effective Date") is between Sprint Communications Company L.P., a Delaware limited partnership, and its successors and assigns ("Sprint"), and Central Florida Expressway Authority ("CFX"). Except as otherwise indicated, defined terms in this Amendment have the same meaning as in the Agreement.

I. Background

- A. The parties entered into the Agreement on August 23, 2016.
- B. Previous amendments to the Agreement are as follows: N/A.
- C. The parties agree to modify the Agreement as set forth in this Amendment No. 1.

The parties agree as follows:

II. Amendment

- A. The Agreement is amended by deleting Section B on page 1 in its entirety and replacing it as follows: "CFX desires to construct new on/off ramps at Innovation Way and widen the Econlockhatchee River Bridge along SR 528 (Beachline) on the route of the CFX right of way ("Project"). Sprint owns fiber optic cable and other equipment within the aforementioned right of way as a result of a License Agreement with CFX; and"
- B. The Agreement is amended by deleting Section C on page 1 in its entirety and replacing it as follows: "As a result of the construction for the Project, it is necessary for Sprint to temporarily relocate approximately 17,488 linear feet of fiber optic cable and permanently relocate approximately 36,933 linear feet of fiber optic cable, in accordance with and as more particularly described in the attached **Exhibit A-1** and **Exhibit A-2** ("Scope of Work") incorporated herein; and,"
- C. The Agreement is amended by deleting Section 2 on page 2 in its entirety and replacing it as follows: "Sprint will perform the necessary installation work in accordance with the attached **Exhibit A-1** and **Exhibit A-2** ("Relocation Work") subject to the terms and provisions of this Agreement. CFX agrees that **Exhibit A-1** and **Exhibit A-2** accurately represent the Scope of Work requested of Sprint."
- D. The Agreement is amended by deleting the first sentence of Section 5 on page 2 and replacing it as follows: "The total cost of the Relocation Work is estimate to be **Five Hundred Sixteen Thousand Eight Hundred Twelve and 32/100ths Dollars (\$516,812.32)**, as set forth in **Exhibit A-1** and **Exhibit A-2**."
- E. The Agreement is amended by deleting **Exhibit A** in its entirety and replacing it with **Exhibit A-1** and **Exhibit A-2**, which are attached hereto and incorporated by this reference.

III. General

- A. Other than as set forth above, the Agreement remains unchanged and in full force and effect.
- B. If there is a conflict between the terms of the Agreement, any previous Amendment(s) and this Amendment No. 1, this Amendment No. 1 will control unless otherwise stated in this Amendment No. 1.

The parties have caused this Amendment No. 1 to be executed by their proper duly authorized officials as of the dates indicated below. This Amendment was approved by the CFX's Board of Directors at its meeting on _____.

SPRINT COMMUNICATIONS COMPANY L.P.

BY: _____

NAME: _____

TITLE: _____

DATE: _____

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY,
a body politic and corporate, and an agency of the state,
under the laws of the State of Florida**

ATTEST:

Name: _____

Title: _____

BY: _____

NAME: _____

TITLE: _____

DATE: _____

APPROVED AS TO FORM AND LEGALITY for the use
and reliance by the Central Florida Expressway Authority
only.

BY: _____

DATE: _____

EXHIBIT A-1
SCOPE OF WORK AND COST ESTIMATE

PID: 92766E88
FL Orlando SR 528 & Innovation Way

06/02/2016

Original Scope and Estimate (Phase 1)

The Scope of Work for this project is the relocation of approximately 19,706 feet of 108 FOC, due to construction of New On/Off Ramps at Innovation way on SR 528 (Beeline) to a new permanent location to avoid conflict. 19,705 feet will be place in a new & existing duct leased from CFX (Central Florida Expressway) and approx. 7,927 LF of new 1" HDPE – SOR 11 conduit leased from CFX (Central Florida Expressway). CFX will build the 7,927 Lf new conduit run. This project is 100% reimbursable from CFX (Central Florida Expressway). The project is located on as-built numbers: 246-00-000-885-00018-1 of 1 to 0004 1-1 of 1.

Attached drawings and plans are hereby incorporated herein.

Sprint Material	\$35, 587.49
Sprint Labor	\$11,383.50
Contract Material	\$5,689.84
Contract Labor	\$81,254.98
Contract Splicing Labor	\$7,500.00
Engineering & Inspection Labor	\$67,900.00
PROJECT TOTAL	\$209,215.81
G & A Rate of 27.63%	\$3,145.26
GRAND TOTAL	\$212,361.07

Plus 15% as per Agreement



Exhibit A-2
SPRINT PROJECT COST ESTIMATE
PID: 92766EXX
FL Orlando SR 528 Econlockhatchee River Bridge

01/27/2017

Amendment Scope and Estimate (Phase 2)

This project is located in the City of Florida in Orange County, FL area on SR 528 in the North ROW from the West Bound on ramp at Dallas Blvd to 6,091 Feet West of ICP Blvd in the North ROW. The Scope of Work for this project will have a Temporary & Permanent relocation. Temporary relocation will be approximately 17,488 LF of 108 FOC, permanent relocation will be approximately 17,288 LF. This work is required to remove the 108 FOC in a leased conduit from CFX (Central Florida Expressway) that is attached to the Econlockhatchee River Bridge in the North ROW. This is due to the widening of the Econlockhatchee River Bridge on SR528.

The construction of the temporary & permanent conduit will be work by the road contractor that is award the project from CFX (Central Florida Expressway). The construction of the conduits will place 1ea. 2-inch HDPE SDR 11 Conduit for Sprint along with 8ea. 1-inch conduits for Central Florida Expressway.

This project is 100% reimbursable from CFX (Central Florida Expressway). The project is located on as-built numbers: NTWRK246-00-000-885-00018 – 1 of 1 to NTWRK246-00-000-885-00041 – 1 of 1

Sprint Material	\$117,209.80
Sprint Labor	\$19,731.40
Contract Material	\$0.00
Contract Labor	\$153,658.26
Contract Splicing Labor	\$0.00
Engineering & Inspector Labor	\$8,400.00
Phase 2 Project Costs	\$298,999.46
G & A Rate of 27.63%	\$5,451.79
Phase 2 Estimate Total	\$304,451.25
Combined Phase 1 and Phase 2 Total:	\$516,812.32

**REIMBURSEMENT AGREEMENT
BETWEEN
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
SPRINT COMMUNICATIONS COMPANY L.P.**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into effective the last day of execution below, by and between Sprint Communications Company L.P., a Delaware limited partnership, and its successors and assigns (hereinafter referred to as "Sprint"), whose mailing address is 6391 Sprint Parkway, Overland Park, Kansas 66251, Mail Stop: KSOPHT0101-Z2040, and who is registered and authorized to conduct business in the State of Florida, and Central Florida Expressway Authority (hereinafter referred to as "CFX") as successor to OOCEA whose mailing address is 4974 ORL Tower Rd. Orlando, FL 32807.

BACKGROUND:

A. On or about May 31, 2001, Sprint and CFX entered into that certain Fiber Optic Conduit License Agreement (the "License Agreement"), as amended, by which Sprint was granted a license to install fiber optic cable owned and maintained by Sprint in CFX's conduit located within a defined license area along the north side of State Road (SR) 408 near the Delaney Avenue exit, going easterly to SR 417, continuing southerly on the east side of SR 417 to SR 528, then continuing easterly on the north side of SR 528 to Dallas Boulevard; and,

B. CFX desires to construct new on/off ramps at Innovation Way along SR 528 (Beachline) on the route of the CFX right of way ("Project"). Sprint owns fiber optic cable and other equipment within the aforementioned right of way as a result of a License Agreement with CFX; and,

C. As a result of the construction for the Project, it is necessary for Sprint to relocate approximately 19,705 linear feet of fiber optic cable, in accordance with and as more particularly described in the attached **Exhibit A** ("Scope of Work") incorporated herein; and,

D. In accordance with section 14.04 of the License Agreement, CFX has the right to relocate Sprint's fiber optic cable upon 120-days written notice to Sprint; and,

E. The parties hereto agree that it is in their mutual best interest to have Sprint protect and relocate its fiber optic cable; and,

F. Sprint, under the terms hereinafter stated, is willing to relocate its fiber optic cable and equipment within the CFX right of way, and to accommodate CFX's work if CFX reimburses Sprint for all of its actual costs, both direct and indirect, in making the modifications.

AGREEMENT

In consideration of the promises and mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which is acknowledged, Sprint and CFX agree as follows:

1. The recitals under the Background heading above are true and correct and incorporated herein by reference.
2. Sprint will perform the necessary installation work in accordance with the attached **Exhibit A** ("Relocation Work") subject to the terms and provisions of this Agreement. CFX agrees that **Exhibit A** accurately represents the Scope of Work requested of Sprint.
3. Sprint agrees to coordinate all work hereunder with CFX and CFX agrees that it shall, at its own expense, inspect any construction by Sprint hereunder, to assure itself that Sprint work is being performed in accordance with the Scope of Work and in compliance with the needs of CFX. Sprint further agrees that, excluding delays that are not reasonably within Sprint's control, Sprint shall substantially complete the permanent relocation of the fiber optic cable as quickly as reasonably possible and in no event later than 81 days after receipt of the CFX's notice requiring Sprint to perform the permanent relocation.
4. CFX will bear and be responsible for and pay in accordance herewith all direct and indirect costs incurred by Sprint relating to the Relocation Work, including, but not limited to, labor, materials, construction, damages, administrative overhead, engineering review work, taxes and legal fees.
5. The total cost of the Work is estimated to be **Two Hundred Twelve Thousand Three Hundred Sixty-One and 07/100s (\$212,361.07)**, as set forth in **Exhibit A**. Final actual costs may be more or less than the estimate, which will not be construed as a limitation of costs for the Relocation Work. Sprint will promptly provide notice to CFX if it becomes obvious to Sprint that the final actual costs will exceed the estimate by more than fifteen percent (15%).
6. Within a reasonable period of time after Sprint pays all of the invoices associated with the Relocation Work and the as-built drawings are complete, Sprint will furnish an accounting of final actual costs and provide CFX an invoice of the same. CFX must pay the full amount of such invoice within thirty (30) days after receipt. Payments shall be sent to:

UMB Bank
Sprint
P.O. Box 871197
Kansas City, MO 64187
7. All operations and work performed by CFX above or adjacent to the fiber optic cable location must be performed in a workmanlike and safe manner and in conformance with

all applicable industry standards and government regulations, and in accordance with any restrictions and conditions that may be imposed by Sprint from time to time. Inasmuch as work on the Project is located in areas of the right-of-way that do not conflict with the location of Sprint's fiber optic cable, CFX shall be permitted to proceed with its work on the Project during the relocation process. However, CFX shall coordinate its work schedule on the Project with Sprint's schedule.

8. Exclusive of Saturday, Sunday and legal holidays, notice must be given to Sprint by CFX, at least 48 hours in advance of commencement of any work on or adjacent to the fiber optic cable. The notice shall be given to Sprint at telephone number 1-800-521-0579.

9. Insofar as it legally may, each party agrees to indemnify, defend, and hold the other party, its officers directors, agents and employees harmless from all loss, claims, liability and costs incurred by the indemnified party, including, without limitation, losses resulting from claims for damages to property or injuries to or death of persons, judgments, court costs and attorneys' fees, which arise out of or are claimed to have arisen out of the acts or omissions of the indemnifying party, its contractors, subcontractors, representatives, agents, or employees with respect to the Project, including, but not limited to, the construction, maintenance, presence on the right of way, or other operations or activities of indemnifying party. Nothing herein shall be construed to extend the limits of liability of CFX beyond that provided in Section 768.28, Florida Statutes. Nothing herein is intended as a waiver of CFX's sovereign immunity under Section 768.28, Florida Statutes. All of CFX's obligations under this indemnity clause are limited to the payment of no more than the amount limitation per person and in the aggregate contained in Section 768.28, Florida Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

12. It is expressly understood by the parties that this Agreement does not modify the respective rights of the parties hereto pursuant to the License Agreement as amended by paragraph 2 above.

13. It is expressly understood by the parties that there is a shortage in the availability of fiber optic cable due a reduction in supply. Sprint shall not be held responsible for Project delays due to delays in the availability of fiber optic cable or other components.

14. Except as otherwise specifically provided in this Agreement, neither party shall be in default under this Agreement if and to the extent that any failure or delay in a party's performance of one or more of its obligations hereunder, excepting CFX's obligation to make payments required hereunder, is caused by any of the following conditions, and such party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delays: unforeseen act of God; fire; flood; fiber, cable, conduit or other material shortages or unavailability or other delay in delivery not resulting from the responsible party's failure to timely place orders therefore; lack of or delay in transportation not resulting from the responsible party's act or omission to act; government codes, ordinances, laws, rules, regulations or restrictions; war or civil disorder; any other cause beyond the reasonable control of such party (each a "Force Majeure Event"). The

party claiming relief of a Force Majeure Event must promptly notify the other in writing of the existence of the event relied on and the cessation or termination of the event.

15. With the exception of the License Agreement, this Agreement supersedes every antecedent or concurrent oral and/or written declaration and/or understanding pertaining to the fiber optic cable modification work by and between Sprint and CFX.

16. The terms of this Agreement shall be binding and inure to the benefits of the parties hereto and their successors and assigns.

17. Notwithstanding anything to the contrary contained herein, Sprint will not be required to perform any cable modification work contemplated by this Agreement during the period of November 15th of any year through January 2nd of the following year.

The parties have caused this Agreement to be executed by their proper duly authorized officials as of the dates indicated below. This Agreement was approved by the CFX's Board of Directors at its meeting on July 14, 2016.

[SIGNATURES TO FOLLOW]

**SPRINT COMMUNICATIONS
COMPANY L.P.**

BY: 

TITLE: Manager, Real Estate

DATE: 8/7/2016

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY, a body politic and
corporate, and an agency of the state,
under the laws of the State of Florida**

ATTEST:


Darleen Mazzillo, Executive Secretary

By: 

Welton Cadwell, Chairman

Date: 8/23/16, 2016

**APPROVED AS TO FORM AND
LEGALITY for the use and reliance by
the Central Florida Expressway Authority
only.**

By:  8/19/16

EXHIBIT A

SCOPE OF WORK AND COST ESTIMATE

PID: 92766E88

FL Orlando SR 528 & Innovation Way

06/02/2016

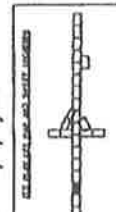
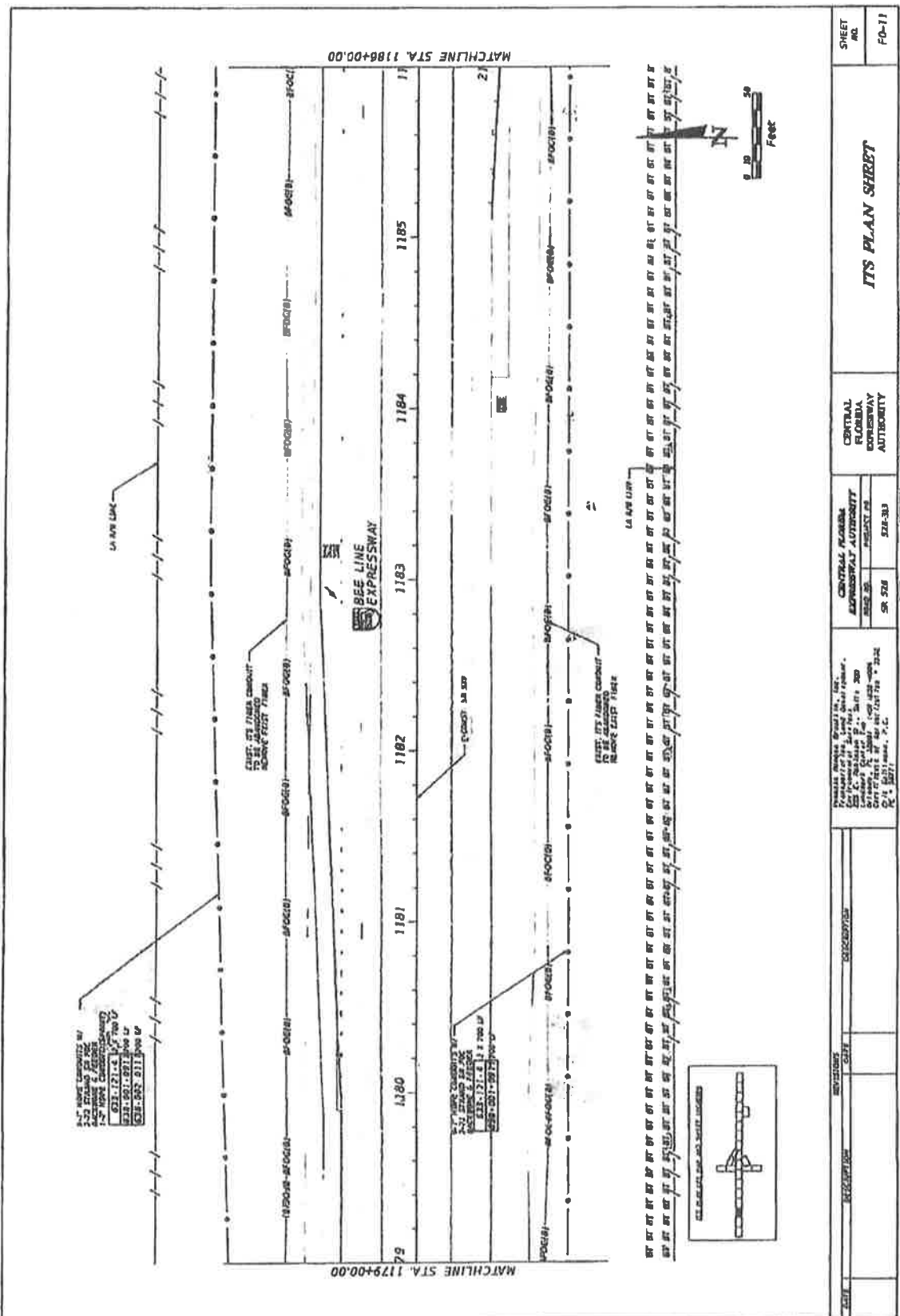
The Scope of Work for this project is the relocation of approximately 19,705 Feet of 108 FOC due to construction of New On/Off Ramps at Innovation Way on SR 528 (Boelene) to a new permanent location to avoid conflict. 19,705 Feet will be placed in new & existing duct leased from CFX (Central Florida Expressway) and approx 7,927 LF of new 1" HDPE - SDR 11 conduit will be placed to accommodate 108F from existing Splice Points. 9,713 LF will be placed in existing 1-inch conduit leased from CFX (Central Florida Expressway). CFX will build the 7,927 LF new conduit run. This project is 100% reimbursable from CFX (Central Florida Expressway). The project is located on as-built numbers: 246-00-000-885-00018-1 of 1 to 00041-1 of 1.

Sprint Material	\$35,587.49
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G & A Rate of 27.63%	\$3,145.26
Grand Total	\$212,361.07

Plus 15% as per Agreement

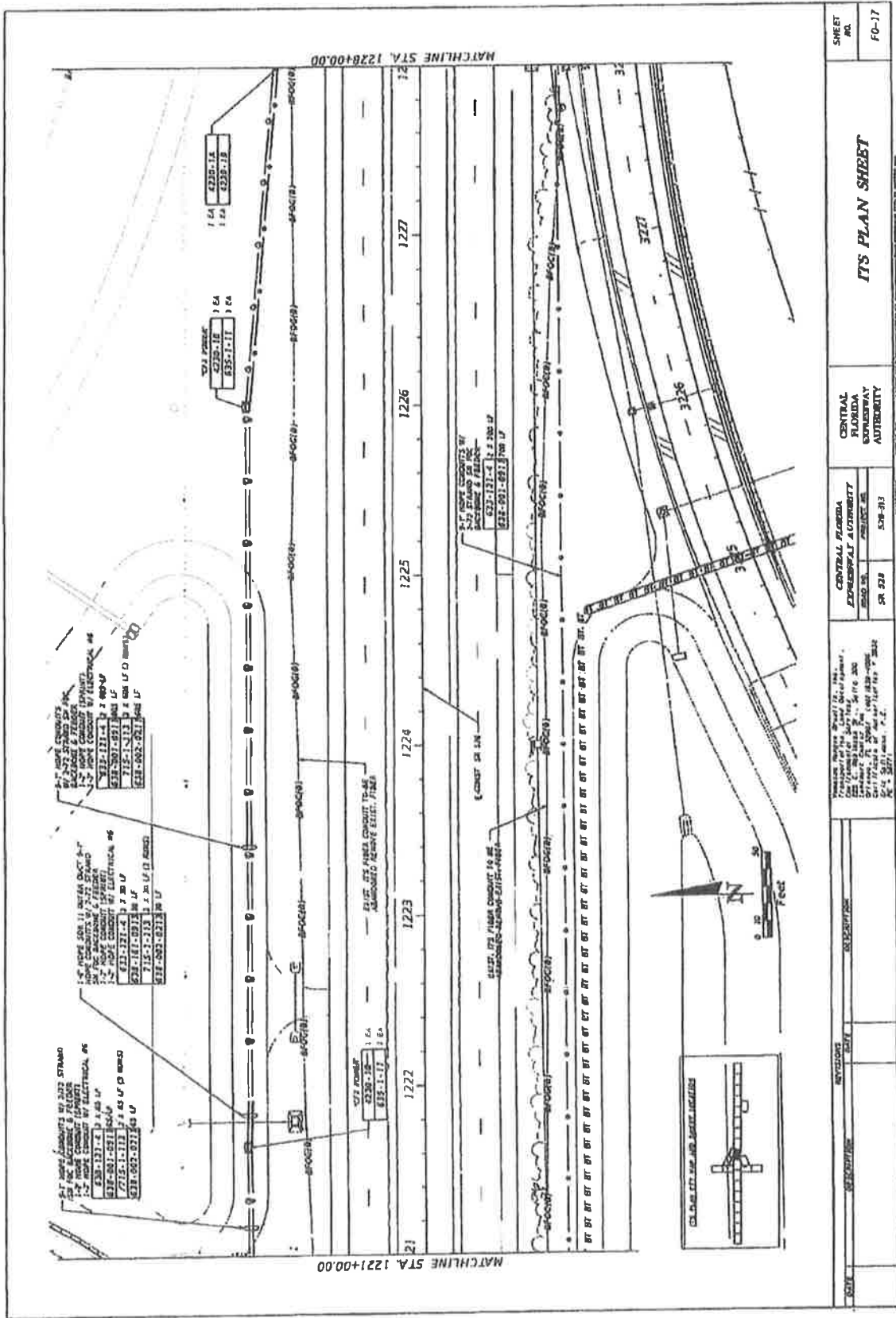
PLANS TO FOLLOW





REVISIONS		DESCRIPTION	
DATE	BY	DATE	BY
CENTRAL FLORIDA EXPRESSWAY AUTHORITY		CENTRAL FLORIDA EXPRESSWAY AUTHORITY	
SHEET NO.		SHEET NO.	
FO-11		FO-11	

[illegible]



SHEET NO.	FO-17
ITS PLAN SHEET	
CENTRAL FLORIDA EXPRESSWAY AUTHORITY	CENTRAL FLORIDA EXPRESSWAY AUTHORITY
<div> <div>PROJECT NO.</div> <div>SR 228</div> </div> <div> <div>PROJECT MILE</div> <div>5.28-5.33</div> </div>	<div> <div>DATE</div> <div>03/24/2021</div> </div> <div> <div>REVISION</div> <div>01</div> </div>

