


# CENTRAL FLORIDA EXPRESSWAY AUTHORITY

## MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams   
Director of Procurement

DATE: June 13, 2017

SUBJECT: Approval of Supplemental Agreement No. 5 to Florida Turnpike Services, LLC  
For Road Ranger Safety Service Patrol  
Contract No. 000964

Board approval is requested for Supplemental Agreement No. 5 with Florida Turnpike Services, LLC, in the amount of \$259,168.00 to extend the service area covered by the Contractor to include CFX's section of S.R. 429 (Wekiva Parkway), through the end of the initial contract term which is September 13, 2018. The terms of the contract is five years with five (5) one-year renewal options.

Original Contract Amount	\$7,572,000.00
Supplemental Agreement No. 1	\$ 0.00
Supplemental Agreement No. 2	\$ 0.00
Supplemental Agreement No. 3	\$ (154,915.00)
Supplemental Agreement No. 4	\$ 0.00
Supplemental Agreement No. 5	<u>\$ 259,168.00</u>
Total Revised Contract Amount	<u>\$7,676,253.00</u>

This contract is budgeted for in the OM&A Budget.

Reviewed by:

  
Joseph A. Berenis, P.E.  
Chief of Infrastructure

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 5

Contract Name: Road Ranger Safety Service Patrol

Contract No: 000964 Project No.: N/A

This Supplemental Agreement No. 5 entered into this 13<sup>th</sup> day of July 2017, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and FLORIDA TURNPIKE SERVICES, LLC., (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated July 24, 2013, for services pertaining to Road Ranger Safety Service Patrol, (the "Contract").

1. CFX wishes to extend the service area covered by the Contractor to include the new section of S.R. 429 (Wekiva Parkway) from US 441 to S.R. 46 from July 25, 2017, to the end of the Contract term. Compensation to the Contractor for an additional service vehicle will be paid at the current rate of \$44.50 per service hour for 5,824 hours (14 hours per day x 416 days) for the total amount of \$259,168.00.
2. The Contractor hereby agrees to provide the additional service as specified herein with an increase in compensation of \$259,168.00 and no increase in the Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 5 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, if any, except insofar as the same is altered and amended by this Supplemental Agreement No. 5; that acceptance of this Supplemental Agreement No. 5 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.
4. This Supplemental Agreement No. 5 is necessary to extend the Road Ranger Service Patrol area to cover the new section of S.R. 429 (Wekiva Parkway) scheduled to open on July 27, 2017.

**SUPPLEMENTAL AGREEMENT NO. 5**

Contract Name: Road Ranger Safety Service Patrol

Contract No.: 000964 Project No.: N/A

Amount of Changes to this document: \$259,168.00

This Supplemental Agreement No. 5 entered into as of the day and year first written above.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: \_\_\_\_\_  
Director of Procurement

Date: \_\_\_\_\_

**FLORIDA TURNPIKE SERVICES, LLC**

By: \_\_\_\_\_  
Authorized Signature

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_  
Notary

Date: \_\_\_\_\_

CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 4

Contract Name: Road Ranger Safety Service Patrol

Contract No: 000964 Project No.: N/A

This Supplemental Agreement No. 4 entered into this 30<sup>th</sup> day of September 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and FLORIDA TURNPIKE SERVICES, LLC., (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated July 24, 2013, for services pertaining to Road Ranger Safety Service Patrol, (the "Contract").

1. CFX wishes to amend the language in the Method of Compensation, subarticle 2.6 (d), by deleting the current language in the second paragraph in its entirety and inserting the following new language in its place:  
  
"The net of each monthly adjustment will be calculated once per year on the Contract anniversary date and applied as a deduct or increase to the next monthly invoice."
2. The Contractor hereby agrees to the amendment to the Method of Compensation with no increase in the Contract amount or Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 4 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, if any, except insofar as the same is altered and amended by this Supplemental Agreement No. 4; that acceptance of this Supplemental Agreement No. 4 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.
4. This Supplemental Agreement No. 4 is necessary to amend language in the Method of Compensation with regard to fuel price adjustments.

SUPPLEMENTAL AGREEMENT NO. 4

Contract Name: Road Ranger Safety Service Patrol

Contract No.: 000964 Project No.: N/A

Amount of Changes to this document: \$0.00

This Supplemental Agreement No. 4 entered into as of the day and year first written above.

“CFX”:

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By: [Signature]  
Director of Procurement

Date: 10-10-16

OCT 16 PM 3:05

“Contractor”:

**FLORIDA TURNPIKE SERVICES, LLC**

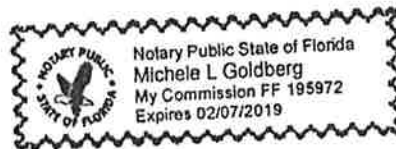
By: [Signature]  
Authorized Signature

Print Name: RICHARD WHEELER

Title: PRESIDENT

Attest: [Signature]  
Notary

Date: 10.4.16



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Road Ranger Safety Service Patrol

Contract No: 000964 Project No.: N/A

This Supplemental Agreement No. 3 entered into this 20<sup>th</sup> day of September 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and FLORIDA TURNPIKE SERVICES, LLC., (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated July 24, 2013, for services pertaining to Road Ranger Safety Service Patrol, (the "Contract").

1. CFX wishes to amend the language in the first sentence of subarticle 2.1 of the Method of Compensation by deleting the current language in its entirety and inserting the following new language in its place:

"For satisfactory completion of the services detailed in the Scope of Services, the Contractor shall be paid an hourly rate of \$47.00 per vehicle per hour through September 14, 2016, and an hourly rate of \$44.50 per vehicle per hour from September 15, 2016, through the end of the initial five year term of the Contract resulting in a total reduction in the Contract amount of \$154,915.00."

2. The Contractor hereby agrees to the amendment to the Scope of Services and a reduction in the Contract amount of \$154,915.00, both with an effective date of September 15, 2016. The reduction is based on difference between the hourly rates (\$2.50) times the remaining number of hours in the Contract (61,966).
3. CFX and Contractor agree that this Supplemental Agreement No. 3 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, if any, except insofar as the same is altered and amended by this Supplemental Agreement No. 3; that acceptance of this Supplemental Agreement No. 3 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.
4. This Supplemental Agreement No. 3 is necessary reduce the hourly rate per vehicle per hour from September 15, 2016, through the end of the initial five year term of the Contract.

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SUPPLEMENTAL AGREEMENT NO. 3

Contract Name: Road Ranger Safety Service Patrol

Contract No.: 000964 Project No.: N/A

Amount of Changes to this document: (\$154,915.00)

This Supplemental Agreement No. 3 entered into as of the day and year first written above.

“CFX”:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: [Signature]  
Director of Procurement

Date: 9-26-16

“Contractor”:

FLORIDA TURNPIKE SERVICES, LLC

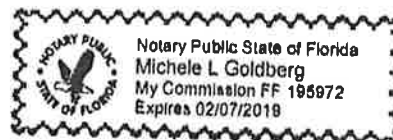
By: [Signature]  
Authorized Signature

Print Name: RICHARD WHEELER

Title: PRESIDENT

Attest: [Signature]  
Notary

Date: 9-22-2016



CENTRAL FLORIDA EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 2

Contract Name: Road Ranger Safety Service Patrol

Contract No: 000964 Project No.: N/A

This Supplemental Agreement No. 2 entered into this 27<sup>th</sup> day of May 2016, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY ("CFX"), and FLORIDA TURNPIKE SERVICES, LLC., (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated July 24, 2013, for services pertaining to Road Ranger Safety Service Patrol, (the "Contract").

1. CFX wishes to amend the language in the Scope of Services, subarticle 2.4.2, paragraph I, by deleting the current language in its entirety and inserting the following new language in its place:

"I. Transporting Motorists

The Safety Service Patrol Vehicle Operator shall make every reasonable effort to avoid leaving the motorist and any other passengers stranded on the roadway. If the motorist refuses vehicle assistance or towing services, the Safety Service Patrol Vehicle Operator shall follow the procedure in subarticle 2.4.2, paragraph E, above for disabled vehicles. The Safety Service Patrol Vehicle Operator shall not transport a motorist or passengers to a private residence."

2. The Contractor hereby agrees to the amendment to the Scope of Services with no increase in the Contract amount or Contract time.
3. CFX and Contractor agree that this Supplemental Agreement No. 2 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, if any, except insofar as the same is altered and amended by this Supplemental Agreement No. 2; that acceptance of this Supplemental Agreement No. 2 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.
4. This Supplemental Agreement No. 2 is necessary to amend language in the Scope of Services with regard to transporting motorists.



SUPPLEMENTAL AGREEMENT NO. 2

Contract Name: Road Ranger Safety Service Patrol

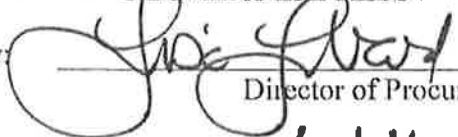
Contract No.: 000964 Project No.: N/A

Amount of Changes to this document: \$0.00

This Supplemental Agreement No. 2 entered into as of the day and year first written above.

**"CFX":**

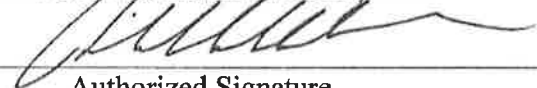
**CENTRAL FLORIDA EXPRESSWAY AUTHORITY**

By:   
Director of Procurement

Date: 6.1.16

**"Contractor":**

**FLORIDA TURNPIKE SERVICES, LLC**

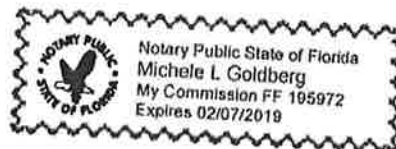
By:   
Authorized Signature

Print Name: Richard W. Weber

Title: PRESIDENT

Attest:   
Notary

Date: 5-27-16



ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY  
SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Road Ranger Safety Service Patrol

Contract No: 000964 Project No.: N/A

This Supplemental Agreement No. 1 entered into this 30<sup>th</sup> day of January, 2014, by and between the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (the "Authority"), and FLORIDA TURNPIKE SERVICES, LLC., (the "Contractor"), the same being supplementary to the Contract between the aforesaid, dated July 24, 2013, for services pertaining to Road Ranger Safety Service Patrol, (the "Contract").

1. The Authority wishes to revise the language in the Method of Compensation, Article 2.6, Fuel Price Adjustments, as detailed on the attached Exhibit A with no increase in the Contract amount or Contract time; and,
2. The Contractor hereby agrees to the revisions with no increase in the Contract amount or time; and,
3. The Authority and Contractor agree that this Supplemental Agreement No. 1 shall not alter or change in any manner the force and effect of the Contract including any previous amendments thereto, if any, except insofar as the same is altered and amended by this Supplemental Agreement No. 1; that acceptance of this Supplemental Agreement No. 1 signifies the Contractor's complete and total claim for the terms and conditions of the same and that the Contractor waives all future right for additional compensation which is not already defined herein.
4. This Supplemental Agreement No. 1 is necessary to revise the language in the Method of Compensation, Article 2.6, Fuel Price Adjustments.

SUPPLEMENTAL AGREEMENT NO. 1

Contract Name: Road Ranger Safety Service Patrol

Contract No.: 000964 Project No.: N/A

Amount of Changes to this document: \$0.00

This Supplemental Agreement No. 1 entered into as of the day and year first written above.

**"Authority":**

**ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY**

By: *Claudia Miller*  
Director of Procurement

Date: 2/10/14

**"Contractor":**

**FLORIDA TURNPIKE SERVICES, LLC**

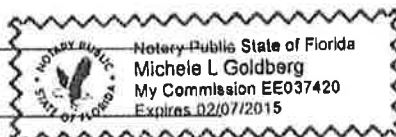
By: *[Signature]*  
Authorized Signature

Print Name: Richard L. Hunter

Title: PRESIDENT

Attest: *[Signature]*  
Notary

Date: 2.3.2014



RECEIVED  
CONTRACTS DEPT  
Ces 2/10/14  
SIGNATURE / DATE  
SIGNATURE / DATE

RECEIVED  
CONTRACTS DEPT

ORDER 14020 6 PM 1408

# **CONTRACT**

**ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY  
AND  
FLORIDA TURNPIKE SERVICES, LLC**

**ROAD RANGER SAFETY SERVICE PATROL**

**CONTRACT NO. 000964  
CONTRACT AMOUNT: \$7,572,000.00  
CONTRACT DATE: JULY 24, 2013**



**ORLANDO-ORANGE COUNTY  
EXPRESSWAY AUTHORITY**

**CONTRACT, SCOPE OF SERVICES, METHOD OF  
COMPENSATION, TECHNICAL PROPOSAL AND PRICE  
PROPOSAL**

**CONTRACT, SCOPE OF SERVICES, METHOD OF COMPENSATION,  
TECHNICAL PROPOSAL AND PRICE PROPOSAL**

**ROAD RANGER SAFETY SERVICE PATROL**

**CONTRACT NO. 000964**

**JULY 2013**

**Members of the Board**

**Walter A. Ketcham, Jr., Chairman  
R. Scott Batterson, P.E., Vice Chairman  
Teresa Jacobs, Secretary/Treasurer  
Noranne B. Downs, P.E., Ex-Officio Member**

**Executive Director**

**Max Crumit, P.E.**

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## **CONTRACT**

This Contract (the "Contract" as defined herein below), is made this 24<sup>th</sup> day of July, 2013, between the ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called the AUTHORITY and FLORIDA TURNPIKE SERVICES, LLC, Post Office Box 666810, Pompano Beach, Florida 33066 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 Orlando-Orange County 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 perform Road Ranger Safety Service Patrol and related tasks as may be assigned to the CONTRACTOR by the AUTHORITY and identified as Contract No. 000964; and,

**WHEREAS**, on or about May 4, 2013, the AUTHORITY issued a Request for Proposals seeking qualified contractors to perform such tasks; and,

**WHEREAS**, CONTRACTOR was the successful one of two qualified firms that responded to the Request for Proposals and was ultimately selected; and,

**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 the materials, equipment, supplies and labor necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents all of which are hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed and services provided to the satisfaction of the duly authorized representatives of the AUTHORITY, who shall have at all times full opportunity to evaluate the services provided under this Contract.

The services to be provided under this Contract include performing Road Ranger Safety Service Patrol as detailed in the Contract Documents and any amendments, supplements, or modifications thereto.

The AUTHORITY does not guarantee that all of the services described in the Scope of Services will be assigned during the term of the Contract. Further, the CONTRACTOR is providing these services on a non-exclusive basis. The AUTHORITY, at its option, may elect to have any of the services set forth herein performed by other contractors or AUTHORITY staff.

The Contract Documents, in order of precedence, consist of:

- 1.1 The Contract, including insurance policies,
- 1.2 The Scope of Services,
- 1.3 The Method of Compensation,
- 1.4 The Technical Proposal submitted by CONTRACTOR, and
- 1.5 The Price Proposal submitted by CONTRACTOR,

(collectively, the "Contract").

## **2. TERM AND NOTICE**

The initial term of the Contract will be five (5) years from the date of the Notice to Proceed from the AUTHORITY. There shall be five (5) renewal options of one (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 90 days prior to the expiration of the initial five-year Contract Term and any renewal.

The AUTHORITY shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 30 days notice for convenience or 45 days with cure notice for cause for CONTRACTOR's material failure to perform the provisions of the Contract. Under no circumstances shall a properly noticed termination by the AUTHORITY (with or without cause) constitute a default by the AUTHORITY. In the event of a termination for convenience or without cause, AUTHORITY shall notify CONTRACTOR (in writing) of such action with instructions as to the effective date of termination or suspension, in accordance with the time frames set forth hereinabove. CONTRACTOR will be paid for all work performed prior to termination and any reasonable, documented, direct, normal, and ordinary termination expenses. CONTRACTOR will not be paid for special, indirect, consequential, or undocumented termination expenses. Payment for work performed will be based on Contract prices, which prices are deemed to include profit and overhead. No profit or overhead will be allowed for work not performed, regardless of whether the termination is for cause.

If CONTRACTOR: (i) fails to perform the Contract terms and conditions; (ii) fails to begin the work under the Contract within the time specified in the "Notice to Proceed"; (iii) fails to perform the work with sufficient personnel or with sufficient materials to assure the prompt



performance of the work items covered by the Contract; (iv) fails to comply with the Contract, or (v) performs unsuitably or unsatisfactorily in the opinion of AUTHORITY reasonably exercised, or for any other cause whatsoever, fails to carry on the work in an acceptable manner, the AUTHORITY will give notice in writing to the CONTRACTOR of such delay, neglect or default. If the Contract is declared in default, the AUTHORITY may take over the work covered by the Contract.

If CONTRACTOR (within the curative period, if any, described in the notice of default) does not correct the default, AUTHORITY will have the right to remove the work from CONTRACTOR and to declare the Contract in default and terminated.

Upon declaration of default and termination of the Contract, AUTHORITY will have the right to appropriate or use any or all materials as the AUTHORITY determines, and may retain others for the completion of the work under the Contract, or may use other methods which in the opinion of AUTHORITY are required for Contract completion. All costs and charges incurred by AUTHORITY because of, or related to, the CONTRACTOR's default (including the costs of completing Contract performance) shall be charged against the CONTRACTOR. If the expense of Contract completion exceeds the sum which would have been payable under the Contract, the CONTRACTOR shall pay the AUTHORITY the amount of the excess. If, after the default notice curative period has expired, but prior to any action by AUTHORITY to complete the work under the Contract, CONTRACTOR demonstrates an intent and ability to cure the default in accordance with AUTHORITY's requirements, AUTHORITY may, but is not obligated to, permit CONTRACTOR to resume work under the Contract. In such circumstances, any costs of AUTHORITY incurred by the delay (or from any reason attributable to the delay) will be deducted from any monies due or which may become due CONTRACTOR under the Contract. Any such costs incurred by AUTHORITY which exceed the remaining amount due on the Contract shall be reimbursed to AUTHORITY by CONTRACTOR. The financial obligations of this paragraph, as well as any other provision of the Contract which by its nature and context survives the expiration of earlier termination of the Contract, shall survive the expiration or earlier termination of the Contract.

AUTHORITY shall have no liability to CONTRACTOR for expenses or profits related to unfinished work on a Contract terminated for default.

AUTHORITY reserves the right to terminate or cancel this Contract in the event the CONTRACTOR shall be placed in either voluntary or involuntary bankruptcy or an assignment is made for the benefit of creditors. Such termination shall be deemed a termination for default.

### **3. CONTRACT AMOUNT AND COMPENSATION FOR SERVICES**

3.1 The Contract Amount for the Contract term is \$7,572,000.00.

3.2 AUTHORITY agrees to pay CONTRACTOR for services performed in accordance with the Method of Compensation.

#### 4. AUDIT AND EXAMINATION OF RECORDS

##### 4.1 Definition of Records:

(i) "Contract Records" shall include, but not be limited to, all information, communications and data, whether in writing or stored on a computer, computer disks, microfilm, writings, working papers, drafts, computer printouts, field notes, charts or any other data compilations, books of account, photographs, videotapes and audiotapes supporting documents, any other papers or preserved data in whatever form, related to the Contract or the CONTRACTOR's performance of the Contract determined necessary or desirable by the AUTHORITY for any purpose. Proposal Records shall include, but not be limited to, all information and data, whether in writing or stored on a computer, writings, working papers, computer printouts, charts or other data compilations that contain or reflect information, data or calculations used by CONTRACTOR in determining labor, unit price, or any other component of a bid submitted to the AUTHORITY.

(ii) "Proposal Records" shall include, but not be limited to, any material relating to the determination or application of equipment rates, home and field overhead rates, related time schedules, labor rates, efficiency or productivity factors, arithmetic extensions, quotations from subcontractors, or material suppliers, profit contingencies and any manuals standard in the industry that may be used by CONTRACTOR in determining a price.

AUTHORITY reserves and is granted the right (at any time and from time to time, for any reason whatsoever) to review, audit, copy, examine and investigate in any manner, any Contract Records (as herein defined) or Proposal Records (as hereinafter defined) of the CONTRACTOR or any subcontractor. By submitting a response to the Request for Proposal, CONTRACTOR or any subcontractor submits to and agree to comply with the provisions of this section.

If the AUTHORITY requests access to or review of any Contract Documents or Proposal Records and CONTRACTOR refuses such access or review, CONTRACTOR shall be in default under its Contract with AUTHORITY, and such refusal shall, without any other or additional actions or omissions, constitute grounds for suspension or disqualification of CONTRACTOR. These provisions shall not be limited in any manner by the existence of any CONTRACTOR claims or pending litigation relating to the Contract. Disqualification or suspension of the CONTRACTOR for failure to comply with this section shall also preclude the CONTRACTOR from acting in the future as a subcontractor of another CONTRACTOR doing work for the AUTHORITY during the period of disqualification or suspension. Disqualification shall mean the CONTRACTOR is not eligible for and shall be precluded from doing future work for the AUTHORITY until reinstated by the AUTHORITY.

Final Audit for Project Closeout: The CONTRACTOR shall permit the AUTHORITY, at the AUTHORITY'S option, to perform or have performed, an audit of the records of the CONTRACTOR and any or all subcontractors to support the compensation paid the CONTRACTOR. The audit will be performed as soon as practical after completion and acceptance of the contracted services. In the event funds paid to the CONTRACTOR under the Contract are subsequently determined to have been inadvertently paid by the AUTHORITY because of accounting errors or charges not in conformity with the Contract, the

CONTRACTOR agrees that such amounts are due to the AUTHORITY upon demand. Final payment to the CONTRACTOR shall be adjusted for audit results.

CONTRACTOR shall preserve all Proposal Records and Contract Records for the entire term of the Contract and for a period of five (5) years after the later of: (i) final acceptance of the project by the AUTHORITY, (ii) until all claims (if any) regarding the Contract are resolved, or (iii) expiration of the Proposal Records and Contract Records' status as public records, as and if applicable, under Chapter 119, Florida Statutes.

## **5. MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

AUTHORITY has adopted a program to provide opportunities for small business, including Minority Business Enterprises ("MBEs") and Women's Business Enterprises ("WBEs"). Under the AUTHORITY's program, CONTRACTOR is encouraged to grant small businesses the maximum opportunity to participate in the provision of the Services.

## **6. CONTRACTOR INSURANCE**

CONTRACTOR shall carry and keep in force during the period of this Contract, the required amount of coverage as stated below. All insurance must be underwritten by insurers that are qualified to transact business in the State of Florida and that have been in business and have a record of successful and continuous operations for at least five (5) years. Each shall carry a rating of "A-" (excellent) and a financial rating of Class XII, as defined by A.M. Best and Company's Key Rating Guide and must be approved by the AUTHORITY. CONTRACTOR shall carry and keep in force the following insurance coverage, and provide the AUTHORITY with correct certificates of insurance (ACORD forms) upon Contract execution:

**6.1 Commercial General Liability** Insurance having a minimum coverage of One Million Dollars (\$1,000,000.00) per occurrence of bodily injury or property damage and a minimum of Two Million Dollars (\$2,000,000.00) annual aggregate for both General and Products and Completed Operations. Liability insurance shall be current ISO simplified form including products and completed operations coverage. The contractual liability insurance coverage shall include coverage for responsibilities and liabilities assumed by CONTRACTOR under this Agreement.

**6.2 Business Automobile Liability** (for bodily injury, death and property damage) having a minimum coverage of One Million Dollars (\$1,000,000.00) for each accident;

**6.3 Workers' Compensation Insurance** Coverage, including all coverage required under the laws of the state of Florida (as amended from time to time hereafter);

**6.4 Unemployment Insurance** Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter.

Such insurance policies shall be without co-insurance, and shall (a) include the AUTHORITY, and such other applicable parties the AUTHORITY shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary insurance, (c)

include contractual liability for commercial general liability, (d) provide that the policy may not be canceled or materially changed without at least thirty (30) days prior written notice to the AUTHORITY from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against AUTHORITY, to the extent allowed by law and to the extent the same would not void primary coverage for applicable insurance policies. CONTRACTOR shall be responsible for any deductible it may carry. At least fifteen (15) days prior to the expiration of any such policy of insurance required to be carried by CONTRACTOR hereunder, CONTRACTOR shall deliver insurance certificates to AUTHORITY evidencing a renewal or new policy to take the place of the one expiring. Procurement of insurance shall not be construed to limit CONTRACTOR's obligations or liabilities under the Contract. The requirement of insurance shall not be deemed a waiver of sovereign immunity by AUTHORITY.

Any insurance carried by the AUTHORITY in addition to CONTRACTOR's policies shall be excess insurance, not contributory.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide AUTHORITY with certificates of same, the AUTHORITY may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments.

## **7. CONTRACTOR RESPONSIBILITY**

CONTRACTOR shall comply with, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible to comply with, applicable laws, ordinances, rules, regulations, orders of public authorities, sound business practices, including without limitation:

- (i) those relating to the safety of persons and property and their protection from damage, injury or loss, and
- (ii) all workplace laws, regulations, and posting requirements, and
- (iii) implementation of a drug-free workplace policy at least of a standard comparable to, and in compliance with, AUTHORITY's Drug-Free Workplace Policy; And
- (iv) compliance with the public records laws of Chapter 119, Florida Statutes.

## **8. INDEMNITY**

The CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY and all of its respective officers, CONTRACTOR's or employees from actual 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), including without limitation any misappropriation or violation of third

party copyright, trademark, patent, trade secret, publicity, or other intellectual property rights or other third party rights of any kind by or arising out of any one or more of the following:

8.1 violation of same by CONTRACTOR, its subcontractors, officers, agents or employees,

8.2 AUTHORITY's use or possession of the CONTRACTOR Property,

8.3 AUTHORITY's full exercise of its rights under any license conveyed to it by CONTRACTOR,

8.4 CONTRACTOR's violation of the confidentiality and security requirements as may be associated with the AUTHORITY Property,

8.5 CONTRACTOR's failure to include terms in its subcontracts as required by this Contract,

8.6 CONTRACTOR's failure to ensure compliance with the requirements of the Contract by its employees, agents, officers, or subcontractors, or

8.7 CONTRACTOR's breach of any of the warranties or representations contained in this Contract.

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. The parties agree that 1% of the total compensation to the CONTRACTOR for performance of each task authorized under the Contract is the specific consideration from AUTHORITY to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

## **9. 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.

**10. 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, including without limitation AUTHORITY Property, without first notifying AUTHORITY and securing its consent in writing.

**11. 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.

**12. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT**

CONTRACTOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Contract, and that CONTRACTOR 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 Contract. It is understood and agreed that the term "fee" shall also include brokerage fee, however denoted.

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. CONTRACTOR acknowledges that it has read the Ethics Policy and, to the extent applicable, CONTRACTOR 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 be reference be made a part of this Contract as though set forth in full.

### **13. 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.

### **14. SUBLETTING AND ASSIGNMENT**

AUTHORITY has selected CONTRACTOR to perform the Services based upon characteristics and qualifications of CONTRACTOR and its employees. Therefore, 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.

If, during the term of the Contract, CONTRACTOR desires to subcontract any portion(s) of the work to a subcontractor that was not disclosed by the CONTRACTOR to the AUTHORITY at the time that the Contract was originally awarded, and such subcontract would, standing alone or aggregated with prior subcontracts awarded to the proposed subcontractor, equal or exceed twenty five thousand dollars (\$25,000.00), the CONTRACTOR shall first submit a request to the AUTHORITY's Director of Procurement for authorization to enter into such subcontract. Except in the case of an emergency, as determined by the Executive Director or his/her designee, no such subcontract shall be executed by the CONTRACTOR until it has been approved by the AUTHORITY Board. In the event of a designated emergency, the CONTRACTOR may enter into such a subcontract with the prior written approval of the Executive Director or his/her designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by the AUTHORITY Board at its next regularly scheduled meeting.

### **15. DISPUTES**

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of the AUTHORITY's Executive Director (or his delegate), who shall decide all questions, difficulties and disputes of any nature whatsoever that may arise under or by reason of this Contract, the prosecution and fulfillment of the services described and the character, quality, amount and value thereof. The Executive Director's decision upon all claims, questions and disputes shall be final agency action. Adjustments of compensation and Contract time, because of any major changes in the work that may become necessary or desirable as the work progresses shall be left to the absolute discretion of the Executive Director (and the AUTHORITY Board if amendments are required) and supplemental agreement(s) of such nature as required may be entered into by the parties in accordance herewith.

## **16. 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.

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.

## **17. OTHER SEVERABILITY**

If any section of this Contract, other than the immediately preceding Prevailing Party Attorneys' Fees section, 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.

## **18. 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.

In consideration of the foregoing premises, AUTHORITY agrees to pay CONTRACTOR for work performed and materials furnished at the prices submitted with the Proposal.

## **19. 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.



CONTRACTOR shall conduct no act or omission that would lead CONTRACTOR's employees or any legal tribunal or regulatory agency to believe or conclude that CONTRACTOR's employees would be employees of the AUTHORITY.

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.

## **20. INTERPRETATION**

For purposes of this Contract, the singular shall include the plural, and the plural shall include the singular, unless the context clearly requires otherwise. Except for reference to women's business enterprises and matters relating thereto, reference to one gender shall include all genders. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the stated statute or regulation. Words not otherwise defined and that have well-known technical, industry, or legal meanings, are used in accordance with such recognized meanings, in the order stated. References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. If CONTRACTOR discovers any material discrepancy, deficiency, or ambiguity in this Contract, or is otherwise in doubt as to the meaning of any provision of the Contract, CONTRACTOR may immediately notify AUTHORITY and request clarification of AUTHORITY's interpretation of the Contract. The Contract Documents, together with and including all exhibits, comprise the entire agreement of the parties and supersedes and nullifies all prior and contemporaneous negotiations, representations, understandings, and agreements, whether written or oral, with respect to the subject matter hereof.

## **21. WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE**

The CONTRACTOR hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached documentation supporting the compensation are accurate, complete and current as of the date of this Contract. It is further agreed that said price shall be adjusted to exclude any significant sums where the AUTHORITY shall determine the price was increased due to inaccurate, incomplete or non-current wage rates and other factual unit costs. All such adjustments shall be made within one year following the date of final billing or acceptance of the work by the AUTHORITY, whichever is later.

## **22. 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:

22.1 Trademarks, service marks, patents, trade secrets, copyrights, publicity, or other intellectual property rights, and terms relating to the ownership, security, protection, or confidentiality thereof; and

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

22.3 Prohibition on non-competition agreements of CONTRACTOR's employees with respect to any successor of CONTRACTOR; and

22.4 Obligations upon expiration or termination of the Contract; and

22.5 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.

### **23. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT**

23.1 Immediately upon expiration or termination of this Contract CONTRACTOR shall submit to AUTHORITY, upon request, a report containing the last known contact information for each subcontractor or employee of CONTRACTOR who performed work under the Contract; and

23.2 CONTRACTOR shall initiate settlement of all outstanding liabilities and claims, if any, 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 as of the day and year first above written. This Contract was awarded by the Authority's Board of Directors at its meeting on July 24, 2013.

ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY

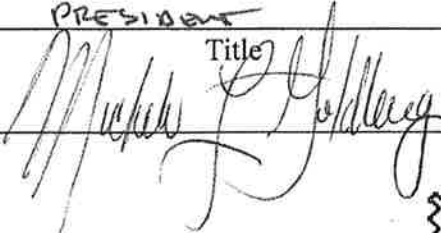
By:   
Director of Procurement

Print Name: Claude Miller

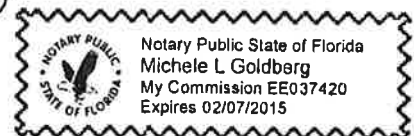
FLORIDA TURNPIKE SERVICES, LLC

By: 


Print Name: Richard L. Wetherston

PRESIDENT  
Title  
ATTEST: 

(Seal or Notary)



Approved as to form and execution, only.

  
General Counsel for the AUTHORITY