

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

AGENDA
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
BOARD MEETING
December 12, 2019
9:00 a.m.

Meeting location: Central Florida Expressway Authority
Board Room
4974 ORL Tower Road
Orlando, FL 32807

A. CALL TO ORDER / PLEDGE OF ALLEGIANCE

B. PUBLIC COMMENT

Pursuant to Florida Statute 286.0114 and Rule 1-1.011, the governing Board for CFX has set aside at least 15 minutes at the beginning of each regular meeting for citizens to speak to the Board on any matter of public interest under the Board's authority and jurisdiction, regardless of whether the public interest is on the Board's agenda but excluding pending procurement issues. Each speaker shall be limited to 3 minutes.

C. APPROVAL OF NOVEMBER 14, 2019 BOARD MEETING MINUTES (action Item)

D. APPROVAL OF CONSENT AGENDA (action Item)

E. REPORTS

1. Chairman's Report
2. Treasurer's Report
3. Executive Director's Report

F. REGULAR AGENDA ITEMS

1. **OSCEOLA PARKWAY EXTENSION PROJECT DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY RE-EVALUATION** – *Glenn Pressimone, Chief of Infrastructure and Dan Kristoff, RS&H, Inc.* (action item)
2. **RIGHT OF WAY & CONSERVATION LAND AGREEMENTS** – *Glenn Pressimone, Chief of Infrastructure* (action item)
3. **CFX METROPLAN REPRESENTATIVE APPOINTMENT** – *Jay Madara, Chairman* (action item)

(CONTINUED ON PAGE 2)

4. BOARD OFFICER ELECTIONS – *Diego “Woody” Rodriguez, General Counsel* (action item)

G. BOARD MEMBER COMMENT

H. ADJOURNMENT

This meeting is open to the public.

Section 286.0105, Florida Statutes states that if a person decides to appeal any decision made by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability as defined by the ADA needs special accommodation to participate in this proceeding, then not later than two (2) business days prior to the proceeding, he or she should contact the Central Florida Expressway Authority at 407-690-5000.

Persons who require translation services, which are provided at no cost, should contact CFX at (407) 690-5000 x5316 or by email at Iranetta.dennis@CFXway.com at least three business days prior to the event.

C.

APPROVAL OF
BOARD MEETING MINUTES

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MINUTES
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
BOARD MEETING
November 14, 2019

Location: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807
Board Room

Board Members Present:

Jay Madara, Gubernatorial Appointment (Chairman)
Commissioner Brenda Carey, Seminole County (Vice Chairman)
Mayor Buddy Dyer, City of Orlando (Treasurer)
Commissioner Leslie Campione, Lake County
Mayor Jerry Demings, Orange County
Andria Herr, Gubernatorial Appointment
Commissioner Betsy VanderLey, Orange County
S. Michael Scheeringa, Gubernatorial Appointment
Commissioner Curt Smith, Brevard County

Board Member Not Present:

Commissioner Brandon Arrington, Osceola County

Staff Present at Dais:

Laura Kelley, Executive Director
Diego "Woody" Rodriguez, General Counsel
Mimi Lamaute, Recording Secretary

Non-Voting Advisor Present:

Nicola Liquori, Executive Director, Florida's Turnpike Enterprise

A. CALL TO ORDER

The meeting was called to order at 9:00 a.m. by Chairman Madara.

B. PUBLIC COMMENT

- Chairman Madara read State Representative Mike La Rosa's October 9, 2019 letter into the record, attached as "Exhibit A."
- Bianca Green commented on a notification of a toll violation.

C. APPROVAL OF OCTOBER 10, 2019 BOARD MEETING MINUTES

A motion was made by Commissioner Carey and seconded by Commissioner Campione to approve the October 10, 2019 Board Meeting Minutes as presented. The motion carried unanimously with nine (9) members present voting AYE by voice vote. One (1) member, Commissioner Arrington was not present.

D. APPROVAL OF CONSENT AGENDA

The Consent Agenda was presented for approval.

ADMINISTRATIVE SERVICES

1. Approval of Amendment to Rules of Procedure for Board Meetings

CONSTRUCTION

2. Approval of Construction Contract Modifications on the following projects:

a. Project 408-746 Masci General Contractor, Inc.	(\$ 302,317.96)
b. Project 408-128 The Lane Construction Corp.	\$ 33,054.15
c. Project 417-134 Hubbard Construction Co.	\$ 71,834.36
d. Project 528-749 Preferred Materials, Inc.	\$ 0
e. Project 528-750 Preferred Materials, Inc.	\$ 0
f. Project 599-547 United Signs & Signals, Inc.	(\$ 112,384.80)
g. Project 253G SEMA Construction Inc.	\$ 33,996.79
3. Approval of Second Contract Renewal with Greenman-Pedersen, Inc. for Surface Preparation and Painting Consultant Services, Contract No. 001172 (Agreement Value: \$150,000.00)
4. Approval of Second Contract Renewal with John Brown & Sons, Inc. for Miscellaneous Clearing and Grubbing, Contract No. 001392 (Agreement Value: \$0.00)
5. Agreement with Florida's Turnpike Enterprise for Advanced Construction of SR 417 Widening within Turnpike Right of Way (Agreement Value: not-to-exceed \$5,000,000.00)

ENGINEERING

6. Approval of First Contract Renewal with CH2M Hill, Inc. for I-4/SR 408 Interchange Corridor Consultant Services, Contract No. 001055 (Agreement Value: \$0.00)
7. Approval of Supplemental Agreement No. 2 with Dewberry Engineers, Inc. for General Engineering Consultant Services, Contract No. 001145 (Agreement Value: \$6,750,000.00)
8. Approval of First Contract Renewal with WBQ Design & Engineering, Inc. for Miscellaneous Design Consultant Services, Contract No. 0001207 (Agreement Value: \$830,000.00)
9. Approval of Supplemental Agreement No. 1 with Protean Design Group, Inc. for Miscellaneous Design Consultant Services, Contract No. 001208 (Agreement Value: \$200,000.00)
10. Approval of RS&H, Inc. as a Subconsultant for the Design Consultant Services for SR 429 Widening from Florida's Turnpike to West Road Contract with Parsons Transportation Group, Inc., Project 429-152, Contract No. 001395
11. Approval of Final Ranking and Authorization for Fee Negotiations for Design Consultant Services for SR 528 Widening from Narcoossee Road to SR 417, Project 528-160, Contract No. 001589
12. Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for the Project Development and Environmental Study of the SR 414 Direct Connect Project, Project 414-227, Contract No. 001590
13. Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for a Concept, Feasibility and Mobility Study for the Proposed Osceola / Brevard County Connector Project, Project 599-229, Contract No. 001595

FINANCE

14. Approval of First Contract Renewal with Moore Stephens Lovelace, P.A. for External Auditing Services, Contract No. 001241 (Agreement Value: \$80,700.00)

LEGAL

15. Approval of the Second Amendment to the Memorandum of Understanding and Space/Use Agreement with the Greater Orlando Aviation Authority for the Rental Car Visitor Toll Pass Program, Contract No. 001475
16. Approval of a Right of Way Transfer and Continuing Maintenance Agreement with the City of Apopka, Projects 429-201 and 429-202, Contract No. 001619

17. Approval of Resolution Declaring CFX's Interest in Parcel 106 Part B as Surplus Property and Resolution Authorizing the Sale of Parcel 106 Part B to the City of Apopka, Projects 429-201 and 429-202, Parcel 106 Part B, Contract No. 001622 (Agreement Value: \$299,000.00)
18. Approval of Resolution Declaring CFX's Interest in the Southfork Drive Parcel as Surplus Property and Resolution Authorizing the Sale of CFX's Interest in Southfork Drive to the City of Apopka, Projects 429-201 and 429-202, Contract No. 001621 (Agreement Value: \$41,600.00)
19. Approval of Resolution Declaring Parcel 291 (Partial) as Surplus Property and Resolution Authorizing a Ground License on Surplus Property with the City of Apopka for a Public Safety Communications Tower, Project 429-205, Parcel 291 (Partial), Contract No. 001620

MAINTENANCE

20. Approval of Contract Award to Groundtek of Central Florida, Inc. for SR 429 Northbound on Ramp at CR 535 Landscape Improvements, Project 429-654E, Contract No. 001601 (Agreement Value: \$189,963.00)

TECHNOLOGY/TOLL OPERATIONS

21. Approval of RoadSafe Traffic Systems, Inc. as a Subcontractor for the Toll System Upgrade Project Contract with TransCore, LP, Contract No. 001021
22. Approval of Global Agility Solutions as a Subcontractor for the Image Processing Solution Contract with Kyra Solutions, Inc., Contract No. 001609
23. Authorization to Execute an Agreement with Cygiant, Inc. for Security Monitoring Services, Contract No. 001626 (Agreement Value: \$76,668.00)
24. Authorization to Execute Cooperative Purchase Agreement with ISF, Inc. for Management Consulting Services, Contract No. 001627 (Agreement Value: \$390,000.00)
25. Approval of Purchase Order to Amtech for Encompass 6 AVI Readers (E6 Readers) (Agreement Value: \$80,400.00)
26. Approval of Amendments to CFX Security Policy

A motion was made by Mayor Demings and seconded by Mayor Dyer to approve the Consent Agenda as presented. The motion carried unanimously with nine (9) members present voting AYE by voice vote. One (1) member, Commissioner Arrington was not present.

E. REPORTS

1. CHAIRMAN'S REPORT

- Chairman Madara welcomed Osceola County Commissioner Brandon Arrington to the CFX Governing Board. Due to a scheduling conflict he was not present for today's meeting. Commissioner Arrington was appointed to serve out the remainder of Commissioner Hawkins' term following the announcement of his retirement from the Board.
- Chairman Madara summarized the November 7th New York Bond meetings.
- He announced that on November 20-22 in Miami, Florida, CFX will be one of the presenting agencies of the 2019 Florida Automated Vehicle Summit.
- Chairman Madara invited the public to attend the Osceola Parkway Extension Re-Evaluation Public Meeting being held on Tuesday, November 19 at Lake Nona Middle School from 5:30 p.m. until 7:30 p.m.

2. TREASURER'S REPORT

Mayor Dyer reported that as of September toll revenue year to date were \$118,672,864, which is 0.6% over projection and 3.8% over prior year. September is when tolls were suspended due to Hurricane Dorian and the Revenue impact is estimated to be approximately \$5.9 million.

Total Operations, Maintenance and Administration expenses were \$14.6 million year-to-date, which is 8.6% under budget.

3. EXECUTIVE DIRECTOR'S REPORT

Ms. Kelley provided the Executive Director's Report in written form.

In addition, Ms. Kelley expanded on the following:

- Upcoming Osceola Parkway Extension Public Meetings;
- Virgin Train Update;
- Partnership between CFX and Turnpike for the widening of the SR 417;
- Partnership with the City of Apopka for the improvement of First Responder Cell service in North Lake and Orange County; and
- CFX Chili Cook-off results and winners.

F. REGULAR AGENDA ITEMS

1. SR 414 DIRECT CONNECT - PROJECT DEVELOPMENT AND ENVIRONMENT (PD&E) STUDY

Director of Engineering Will Hawthorne provided an overview of the SR 414 Direct Connect Project and the PD&E Study for the project.

(This item was presented for information only. No action was taken by the Board.)

2. OSCEOLA / BREVARD COUNTY CONNECTOR – CONCEPT, FEASIBILITY AND MOBILITY STUDY

Director of Engineering Will Hawthorne provided an overview of the Osceola / Brevard County Connector Project and the Concept, Feasibility and Mobility Study for the project.

(This item was presented for information only. No action was taken by the Board.)

3. FY 2019 FINANCIAL STATEMENTS

Director of Accounting Michael Carlisle introduced Daniel J. O’Keefe with Moore Stephens Lovelace, CPAs. Mr. O’Keefe provided details of the FY 2019 Financial Statements.

Board members asked questions which were answered by Mr. O’Keefe.

(This item was presented for information only. No action was taken by the Board.)

Chairman Madara stated that new board procedures were approved today allowing the Board to move officer elections from the January or February board meeting to December, as needed. Since there will not be a January board meeting the elections will take place at the December board meeting.

G. BOARD MEMBER COMMENT

The following board member commented:

- Mr. Scheeringa

H. ADJOURNMENT

Chairman Madara adjourned the meeting at 9:51 a.m.

Jay Madara
Chairman
Central Florida Expressway Authority

Mimi Lamaute
Recording Secretary
Central Florida Expressway Authority

Minutes approved on _____, 2019.

Pursuant to the Florida Public Records Law and the CFX Records & Information Management Program Policy, audiotapes of all Board and applicable Committee meetings are maintained and available upon request to the Custodian of Public Records at (407) 690-5326, PublicRecords@CFXway.com, or 4974 ORL Tower Road, Orlando, FL 32807. Additionally, videotapes of Board meetings are available at the CFX website, www.CFXway.com.



Florida House of Representatives

Representative Mike La Rosa

District Office:

1224 10th Street
St. Cloud, FL 34769
(407) 891-2555
(407) 891-2557 (fax)

District 42

Lake Wales Office:
244 East Park Ave
Suite #5
Lake Wales, FL 33853
(863) 678-4019

Tallahassee Office:

418 The Capitol
402 South Monroe Street
Tallahassee, FL 32399
(850) 717-5042

October 9, 2019

Jay Madara
Chairman of the Board
CFX Headquarters
4974 ORL Tower Road
Orlando, Florida 32807

19 OCT 15 PM 1:25

Dear Chairman Madara:

It is with a spirit of gratitude that I am writing you today and thanking you, the CFX Board and team for your work on the first phase of the Poinciana Parkway Extension. This much needed expansion will bring greater mobility for Poinciana area residents and advances our shared long-term goal of full completion of the Parkway.

I can tell you that your hard work is going to greatly assist my constituents and our entire region in leading better lives as their commute times will be drastically reduced because of CFX's leadership. Simply put, workers will spend less time in their cars and more time positively impacting our economy, families will have more time together, and response times for law enforcement and fire rescue will be enhanced. I appreciate you and team for recognizing the dire need for this transportation project.

While this first phase has brought some much needed relief, I am greatly anticipating the launch and eventual construction of the remainder of this important project, to take the Poinciana Parkway to 429 and Interstate 4. I expect this portion of road construction to be a true game changer for the Poinciana region. With that critical interstate access, I know it will act as a positive economic catalyst for Poinciana and its residents. I sincerely appreciate your productive work with the Florida Turnpike Authority to speed up the timeline of full completion of this important project as my constituents continue to struggle with traffic deadlock. If there is anything that I can do to assist CFX with their positive endeavors, please don't hesitate to contact me!

Warm Regards,

A blue ink signature of Mike La Rosa.

Mike La Rosa
State Representative
House District 42

Commerce Committee, Chair • Appropriations Committee • Gaming Control Subcommittee • Rules Committee

EXHIBIT A

D.

Consent Agenda

CONSENT AGENDA
December 12, 2019

CONSTRUCTION

1. Approval of Construction Contract Modifications on the following projects:
 - a. Project 253G SEMA Construction, Inc. \$ 1,185,427.92
 - b. Project 599-736A McShea Contracting, LLC (\$ 10,345.00)
2. Approval of Second Contract Renewal with Metric Engineering, Inc. for Construction Engineering and Inspection Services, Contract No. 001158 (Agreement Value: \$2,500,000.00)
3. Approval of Contract Award to Rummel, Klepper & Kahl (RK&K), LLP for Construction Engineering and Inspection Services for SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road, Project 528-143, Contract No. 001530 (Agreement Value: \$9,600,000.00)
4. Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for Construction Engineering and Inspection Services for SR 417 Widening from Landstar Boulevard to Boggy Creek Road, Project 417-149, Contract No. 001605

ENGINEERING

5. Approval of Environmental Transportation Planning, LLC as a Subconsultant for the General Engineering Consultant Services Contract with Dewberry Engineers, Inc., Contract No. 001145
6. Approval of GPI Geospatial, Inc. as a Subconsultant for the General Engineering Consultant Services Contract with Dewberry Engineers, Inc., Contract No. 001145

INTERNAL AUDIT

7. Acceptance of Internal Audit Reports:
 - a. IT Project Management Review
 - b. Tolling System Replacement – LENS Access Control Review
 - c. Prior Audit Recommendations: Semi-Annual Follow-Up

LEGAL

8. Approval of Subordination of Easement Agreement with Orange County, Project 429-205, Parcel 289
9. Approval of Agreement for the Donation of Limited Access Rights Along SR 438 a/k/a Franklin Street with 501 Franklin Land Trust, Project 429-152, Parcel 62-115 (Portion)
10. Approval of Consortium Appraisal, Inc. as a Subconsultant for the Right of Way Counsel Services Contract with Nelson Mullins Riley & Scarborough, LLP, Contract No. 001477

MAINTENANCE

11. Approval of Contract Award to LaFleur Nurseries & Garden Center, LLC for SR 429/SR 453 Wekiva Parkway Interchange Landscape Improvements, Project 429-827, Contract No. 001602 (Agreement Value: \$1,417,331.50)
12. Authorization to Execute Cooperative Purchase Agreement with Converjint Technologies, LLC for Systemwide Electronic Security System Services, Contract No. 001611 (Agreement Value: not-to-exceed \$600,000.00)

TECHNOLOGY/TOLL OPERATIONS

13. Approval of Assignment and Assumption of Contractual Obligations Between AECOM Energy & Construction, Inc. and Shimmick Construction Company, Inc., Contract No. 001071
14. Approval of KECH, Inc. as a Subcontulant for the General Systems Consultant Services Contract with AECOM Technical Services, Inc., Contract No. 001215
15. Approval of Contract Award for Toll Operations Printing and Mailing Services to Cathedral Corporation, Contract No. 001604 (Agreement Value: \$15,247,161.13)

The following items are for information only:

- A. The following is a list of advertisement(s) from November 2, 2019 through December 1, 2019:
 1. SR 408 Landscape Improvements from Good Homes Road to Hiawasse Road
 2. SR 417 Widening from Narcoossee Road to SR 528 – CEI
 3. SR 528/SR 436 OUC East Jack & Bore JPA
 4. Project Development and Environmental (PD&E) Study of the Southport Connector Project
 5. SR 429 Stoneybrook West Interchange
- B. The following items are for information only and are subject to change:

The following is a list of anticipated advertisements (3-4 month look ahead):

1. 408-159: SR 408 Exit Ramp to Mills Ave. Improvements – Construction
2. Poinciana Parkway Segments 1 & 2 (of 2) – Design
3. Lake-Orange Connector Segments 1 & 2 (of 3) – Design
4. 417-162: SR 417 Pond Modifications North of Barry Dease Road - Construction
5. 599-756: SR 408 Aesthetic Coatings - Construction
6. 599-421: E-Pass Magnolia Center – Construction Design-Build
7. 414-754: SR 414 Resurfacing E of SR 451 to Keene Road Bridge – Construction
8. 414-755: SR 414 Resurfacing Keene Road Bridge to E of US 441 – Construction
9. 599-526C – Wrong Way Driving Deployment – Construction
10. 599-545 – Dynamic Message Sign Replacement – Construction
11. Disclosure Counsel
12. Advocacy Services

**CONSENT AGENDA ITEM
#1**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Ben Dreiling, P.E.
Director of Construction

DATE: November 21, 2019

SUBJECT: Construction Contract Modifications

Authorization is requested to execute the following Construction Contract Modifications. Supporting detailed information is attached.

Project No.	Contractor	Contract Description	Original Contract Amount (\$)	Previous Authorized Adjustments (\$)	Requested (\$) December 2019	Total Amount (\$) to Date*	Time Increase or Decrease
253G	SEMA Construction, Inc.	SR 408/SR 417 Interchange Improvements Phase II	\$ 63,700,000.00	\$ 3,085,298.13	\$ 1,185,427.92	\$ 67,970,726.05	78
599-736A	McShea Contracting, LLC	Systemwide RPM Replacement	\$ 102,760.00	\$ -	\$ (10,345.00)	\$ 92,415.00	0
TOTAL					\$ 1,175,082.92		

* Includes Requested Amount for this current month.

Reviewed By: 
Glenn M. Pressimone, P.E., Chief of Infrastructure

Project 253G: SR 408/SR 417 Interchange Improvements Phase II
SEMA Construction, Inc.
SA 253G-1219-06

Add Protection Barrier Around Existing Bridge Columns on SR 408

Rigid barrier wall was added to this project to protect the bridge columns located in the median of SR 408. This is required to comply with updated safety standards. This addition of the protection barrier also necessitated provisions for accommodating shoulder drainage at the base of the barrier wall.

ADD THE FOLLOWING ITEM:

54" Pier Protection Barrier	\$ 412,226.37
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ADD THE FOLLOWING ITEM:

Drainage Related to Pier Protection	\$ 269,387.89
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ADD THE FOLLOWING ITEMS:

MOT and Asphalt Shoulder Restoration	\$ 148,256.45
Temporary Concrete Barrier Wall	\$ 73,033.97
	<u>\$ 221,290.42</u>

Subtotal: Protection Barrier	\$902,904.68
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Milling, Final Paving and Final Striping - Moved From Adjacent Project

The timing and coordination with the adjacent SR 408 widening project requires the milling, paving and final striping of the interface of the two projects to be deleted from the adjacent project and added to this project. The deletions from the adjacent project were accounted for in previous supplemental agreements for project 408-128.

ADD THE FOLLOWING ITEMS:

Mill Exist Asph Pavt (0.75")	\$ 64,817.55
Asph FC Incl Bit/Rubber FC-5	\$ 158,815.13
Perf Tape 8" W Solid	\$ 4,061.00
Perf Tape 12" W Skip	\$ 4,242.00
Perf Tape 18" W Solid	\$ 1,340.88
Perf Tape 6" Y Solid	\$ 16,598.40
Const Perf Tape 9" Solid HP	\$ 19,719.00
Const Perf Tape 9" Skip HP	\$ 12,929.28
	<u>\$ 282,523.24</u>

Subtotal: Adjust Limits of Friction Course	\$ 282,523.24
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Increase Contract Time 78 Non-Compensable Calendar Days

<u>TOTAL AMOUNT FOR PROJECT 253G</u>	<u>\$ 1,185,427.92</u>
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Project 599-736A: Systemwide RPM Replacement
McShea Contracting, LLC
SA 599-736A-1219-01

Adjustments to Final Quantities for Completed Contract Items

Adjust quantities for completed pay items in the contract to reflect the actual field measured quantities installed throughout the contract.

DECREASE THE FOLLOWING ITEMS:

Retro-Reflective Pavement Markers	\$ (345.00)
Work Order Allowance	\$ <u>(10,000.00)</u>
	\$ (10,345.00)


TOTAL AMOUNT FOR PROJECT 599-736A **\$ (10,345.00)**

**CONSENT AGENDA ITEM
#2**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 21, 2019

SUBJECT: Approval of Second Contract Renewal with Metric Engineering, Inc.
for Construction Engineering and Inspection Services (CEI)
Contract No. 001158

Board approval is requested for the second renewal of the referenced contract with Metric Engineering, Inc. in the amount of \$2,500,000.00 for a one-year period beginning January 12, 2020 and ending January 11, 2021. The original contract was three years with two one-year renewals.

The services to be provided under this renewal are CEI services for ITS, electrical and limited elements of lighting related projects. These projects require specialized, detailed knowledge of CFX technical specifications and construction standards, as well as the National Electrical Code. There are several ongoing initiatives encompassing multiple projects which require consistent oversight during this extension period in order to maintain current levels of safety, toll collection and ITS system up-time. Upcoming initiatives include the continuation of the Wrong Way Driving System deployment program and Systemwide Dynamic Message Sign Upgrades.

Original Contract	\$2,600,000.00
First Renewal	\$1,700,000.00
Second Renewal	<u>\$2,500,000.00</u>
Total	\$6,800,000.00

This contract is a component of projects included in the Five-Year Work Plan.

Reviewed by: 
Ben Dreiling, PE
Director of Construction



**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CONTRACT RENEWAL AGREEMENT NO. 2
CONTRACT NO. 001158**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 12th day of December, 2019, by and between Central Florida Expressway Authority, hereinafter called "CFX" and Metric Engineering, Inc., herein after called the "Consultant."

WITNESSETH

WHEREAS, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement") dated December 15, 2015, with a Notice to Proceed date of January 12, 2016, whereby CFX retained the Consultant to furnish miscellaneous construction engineering and inspection (CEI) services required by CFX.

WHEREAS, pursuant to Article 3.0 of the Original Agreement, CFX and Consultant wish to renew the Original Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and Consultant agree to a first renewal of said Original Agreement beginning the 12th day of January, 2020 and ending the 11th day of January, 2021 at the cost of \$2,500,000.00.

All terms and conditions of said Original Agreement and any supplements and amendments thereto shall remain in full force and effect during the full term of this Renewal Agreement.

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

METRIC ENGINEERING, INC.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: _____
Authorized Signature

BY: _____
Director of Procurement

Title: _____

ATTEST: _____ (SEAL)
Secretary or Notary

If Individual, furnish two witness:

Witness (1) _____

Witness (2) _____

Legal Approval as to Form

General Counsel for CFX

12-15-2018

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CONTRACT RENEWAL AGREEMENT NO. 1
CONTRACT NO. 001158**

THIS CONTRACT RENEWAL AGREEMENT (the "Renewal Agreement"), made and entered into this 8th day of November, 2018, by and between the Central Florida Expressway Authority, hereinafter called "CFX" and Metric Engineering, Inc., herein after called the "Consultant."

WITNESSETH

WHEREAS, CFX and the Consultant entered into a Contract Agreement (the "Original Agreement") dated December 15, 2015, with a Notice to Proceed date of January 12, 2016, whereby CFX retained the Consultant to furnish miscellaneous construction engineering and inspection (CEI) services required by CFX.

WHEREAS, pursuant to Article 3.0 of the Original Agreement, CFX and Consultant wish to renew the Original Agreement for a period of one (1) year;

NOW, THEREFORE, for and in consideration of the mutual benefits to flow each to the other, CFX and Consultant agree to a first renewal of said Original Agreement beginning the 12th day of January, 2019 and ending the 11th day of January, 2020 at the cost of \$1,700,000.00, which amount restates the amount of the Original Agreement.

Consultant states that, upon its receipt and acceptance of Final Payment for Services renders under the first Contract renewal ending January 11, 2019, the Consultant shall execute a "Certificate of Completion of the Original Contract and Acceptance of Final Payment" that waives all future right of claim for additional compensation for services rendered under the Original Contract ending January 11, 2019.

All terms and conditions of said Original Agreement and any supplements and amendments thereto shall remain in full force and effect during the full term of this Renewal Agreement.

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

METRIC ENGINEERING, INC.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY: [Signature]
Authorized Signature

BY: [Signature]
Director of Procurement

Title: SVP

ATTEST: [Signature] SECRETARY
Secretary or Notary



If Individual, furnish two witness:

Witness (1) _____
Witness (2) _____

Legal Approval as to Form

[Signature]
General Counsel for CFX

AGREEMENT

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
METRIC ENGINEERING, INC.**

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

CONTRACT NO. 001158

**CONTRACT DATE: DECEMBER 10, 2015
CONTRACT AMOUNT: \$2,600,000.00**

**AGREEMENT, SCOPE OF SERVICES, METHOD
OF COMPENSATION, DETAILS OF COSTS AND
FEES, AND PROJECT ORGANIZATIONAL CHART**

**AGREEMENT, SCOPE OF SERVICES, METHOD OF COMPENSATION, DETAILS
OF COSTS AND FEES AND PROJECT ORGANIZATIONAL CHART**

FOR

CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

CONTRACT NO. 001158

DECEMBER 2015

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Members of the Board

Welton Cadwell, Chairman
Scott Boyd, Vice-Chairman
Brenda Carey, Secretary/Treasurer
Buddy Dyer, Member
Fred Hawkins, Jr., Member
Teresa Jacobs, Member
Andria Herr, Member
Jay Madara, Member
S. Michael Scheeringa, Member
Diane Guitierrez- Scaccetti, Non-Voting Advisor

Executive Director

Laura Kelley

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	Exhibit "B", Method of Compensation
	Exhibit "C", Details of Cost and Fees
	Exhibit "D", Project Organization Chart
	Vehicle Registration Form

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AGREEMENT FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
CONTRACT NO. 001158**

THIS AGREEMENT, made and entered into this 10th day of December, 2015, by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 63-573 Laws of Florida, 1963, (Chapter 348, Part V, Florida Statutes) hereinafter called "CFX" and METRIC ENGINEERING, INC., hereinafter called "CONSULTANT", carrying on professional practice in engineering with offices located at 615 Crescent Executive Court, Suite 524, Lake Mary, Florida 32746.

That CFX did determine that the CONSULTANT is fully qualified to render the services contracted.

WITNESSETH:

1.0 CFX does hereby retain the CONSULTANT to furnish Miscellaneous Construction Engineering and Inspection (CEI) services required by CFX. CFX has a core staff of CEI management personnel and is engaging the CONSULTANT to provide support personnel on an as-needed, per project basis. Support personnel required by CFX may include, but are not limited to, Project Administrator, Contract Support Specialist, Senior ITS Inspector, ITS Inspector, Inspector's Aide.

2.0 The CONSULTANT and CFX mutually agree to furnish, each to the other, the respective services, information and items as described in Exhibit "A", Scope of Services, attached hereto and made a part hereof.

Before any additions or deletions to the work described in Exhibit "A", and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost

changes and shall enter into a Supplemental Amendment covering such modifications and the compensation to be paid therefore.

Reference herein to this Agreement shall be considered to include any Supplemental Agreement thereto.

The CFX Director of Construction or his authorized designee shall provide the management and technical direction for this Agreement on behalf of CFX. All technical and administrative provisions of this Agreement shall be managed by the Director of Construction and the CONSULTANT shall comply with all of the directives of the Director of Construction that are within the purview of this Agreement. Decisions concerning Agreement amendments and adjustments, such as time extensions and supplemental agreements shall be made by the Director of Construction.

This Agreement is considered a non-exclusive Agreement between the parties.

3.0 TERM OF AGREEMENT AND RENEWALS

Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a three (3) year term from the date of the Notice to Proceed for the first task assignment. Renewal of this Agreement for up to two one-year renewals periods may be exercised by CFX at its sole discretion. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONSULTANT are satisfactory and adequate for CFX's needs.

The CONSULTANT agrees to commence the scheduled services for each assigned project within ten (10) calendar days from the date specified in the written Notice to Proceed from the Director of Construction, which notice to proceed will become part of this Agreement. The

CONSULTANT shall complete scheduled project services within the timeframe(s) agreed to by the parties or as may be modified by subsequent Supplemental Agreement.

4.0 PROJECT SCHEDULE

It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient time remains within the project schedule within which to complete the services on the project. In the event there have been delays which would affect the scheduled project completion date, the CONSULTANT shall submit a written request to CFX 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. CFX will review the request and make a determination as to granting all or part of the requested extension.

In the event the scheduled project completion date is reached and the CONSULTANT has not requested, or if CFX has denied, an extension of the completion date, partial progress payments will be stopped when the scheduled project completion date is met. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by CFX.

5.0 PROFESSIONAL STAFF

The CONSULTANT shall maintain an adequate and competent professional staff to enable the CONSULTANT to timely perform under this Agreement. The CONSULTANT shall continue to be authorized to do business within the State of Florida. In the performance of these professional services, the CONSULTANT shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The CONSULTANT shall use due care in performing the required services and shall have due regard for acceptable standards of construction engineering and inspection principles. The CONSULTANT

may associate with it such specialists, for the purpose of its services hereunder, without additional cost to CFX, other than those costs negotiated within the limits and terms of this Agreement. Should the CONSULTANT desire to utilize specialists, the CONSULTANT shall be fully responsible for satisfactory completion of all subcontracted work. The CONSULTANT, however, shall not sublet, assign or transfer any work under this Agreement to other than the associate consultants listed below without the written consent of CFX. It is understood and agreed that CFX will not, except for such services so designated herein, permit or authorize the CONSULTANT to perform less than the total contract work with other than its own organization.

PI Consulting Services, LLC
Tierra, Inc.
Target Engineering Group, Inc.

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

6.0 SERVICES TO BE PROVIDED

The work covered by this Agreement includes providing CEI services for a variety of projects including, but not necessarily limited to, intelligent transportation systems, roadway and bridge construction, roadway lighting construction, and toll facility renovations/modifications/construction.

7.0 COMPENSATION

CFX agrees to pay the CONSULTANT compensation as detailed in Exhibit "B", Method of Compensation, attached hereto and made a part hereof in the not-to-exceed amount of \$2,600,000.00. Bills for fees or other compensation for services or expenses shall be submitted to CFX in detail sufficient for a proper pre-audit and post audit thereof.

The CONSULTANT may be liable for CFX costs resulting from negligent, reckless or intentionally wrongful errors or deficiencies in designs furnished under this Agreement. CFX may enforce such liability and collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in CFX's best interest.

Records of costs incurred by the CONSULTANT under terms of this Agreement shall be maintained and made available upon request to CFX at all times during the period of this Agreement and for three years after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

Records of costs incurred includes 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 CFX for a proper audit of project costs.

The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement shall be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State and Federal regulations in that the more restrictive of the applicable regulations will govern. Whenever travel costs are included in Exhibit "B", the provisions of Section 112.061, Florida Statutes, shall govern as to reimbursable costs.

8.0 COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this contract.

The CONSULTANT shall keep fully informed regarding and shall fully and timely comply with all current laws and future laws that may affect those engaged or employed in the performance of this Agreement.

9.0 WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE

The CONSULTANT hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached Exhibit "C", Details of Costs and Fees, supporting the compensation provided in Paragraph 7.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Paragraph 7.0 hereof shall be adjusted to exclude any significant sums where CFX 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 CFX, whichever is later.

10.0 TERMINATION

CFX may terminate this Agreement in whole or in part at any time the interest of CFX requires such termination.

If CFX determines that the performance of the CONSULTANT is not satisfactory, CFX shall have the option of (a) immediately terminating the Agreement or (b) notifying the CONSULTANT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.

If CFX requires termination of the Agreement for reasons other than unsatisfactory performance of the CONSULTANT, CFX shall notify the CONSULTANT in writing of such termination, not less than seven (7) calendar days as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

If CFX abandons the work or subtracts from the work, suspends, or terminates the Agreement as presently outlined, the CONSULTANT shall be compensated for actual costs, as determined in Exhibit "B", for work performed by the CONSULTANT prior to abandonment or termination of the Agreement. The ownership of all engineering documents completed or partially completed at the time of such termination or abandonment, shall be retained by CFX.

The ownership of all engineering documents completed or partially completed at the time of such termination or abandonment, shall be retained by CFX.

CFX reserves the right to cancel and terminate this Agreement in the event the CONSULTANT or any employee, servant, or agent of the CONSULTANT is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being

performed by the CONSULTANT for or on behalf of CFX, without penalty. It is understood and agreed that in the event of such termination, all tracings, plans, specifications, maps, and data prepared or obtained under this Agreement shall immediately be turned over to CFX. The CONSULTANT shall be compensated for its services rendered up to the time of any such termination in accordance with Paragraph 7.0 hereof. CFX also reserves the right to terminate or cancel this Agreement in the event the CONSULTANT shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. CFX further reserves the right to suspend the qualifications of the CONSULTANT to do business with CFX upon any such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have such indictment or direct information dismissed or be found not guilty, such suspension on account thereof may be lifted by the CFX Director of Construction.

11.0 ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Director of Construction who shall decide all questions, difficulties and dispute of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final. Adjustments of compensation and term of the Agreement, 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 Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Director of Construction and the CONSULTANT that cannot be resolved shall be referred to the CFX Executive Director whose decision shall be final.

In the event that the CONSULTANT and CFX are not able to reach an agreement as to the amount of compensation to be paid to the CONSULTANT for supplemental work desired by CFX, the CONSULTANT shall be obligated to proceed with the supplemental work in a timely manner for the amount determined by CFX to be reasonable. In such event, the CONSULTANT will have the right to file a claim with CFX 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.

12.0 CONTRACT LANGUAGE AND INTERPRETATION

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective functions and capacities.

If the CONSULTANT discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the CONSULTANT shall immediately notify CFX and request clarification of CFX's interpretation of this Agreement.

The Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

13.0 HOLD HARMLESS AND INDEMNIFICATION

The CONSULTANT shall indemnify and hold harmless CFX and all of its officers, agents and employees from any claim, loss, damage, cost, charge or expense arising out of any negligent act, error or omission by the CONSULTANT, its agents, employees, or subcontractors during the performance of the Agreement, except that neither the CONSULTANT, its agents, employees nor any of its subconsultants will be liable under this paragraph for any claim, loss, damage, cost, charge or expense arising out of any act, error, omission or negligent act by CFX or any of its officers, agents or employees during the performance of the Agreement.

When CFX receives a notice of claim for damages that may have been caused by the CONSULTANT in the performance of services required by the CONSULTANT under this Agreement, CFX will immediately forward the claim to the CONSULTANT. The CONSULTANT and CFX will evaluate the claim and report their findings to each other within seven working days. CFX and the CONSULTANT will jointly discuss options in defending the claim. After reviewing the claim, CFX will determine whether to require the participation of the CONSULTANT in the defense of the claim or to require that the CONSULTANT defend CFX in such claim as described in this section. CFX's failure to notify the CONSULTANT of a claim within seven days will not release the CONSULTANT from any of the requirements of this section upon subsequent notification by CFX to the CONSULTANT of the claim. CFX and the CONSULTANT will pay their own cost for the evaluation, settlement negotiations and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all costs, but if the verdict determines that there is joint responsibility the costs and liability for damages will be shared in the same percentage as that judicially established.

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

The CONSULTANT shall pay all royalties and assume all costs arising from the use of any invention, design, process materials, equipment, product or device which is the subject of patent rights or copyrights. The CONSULTANT shall, at its expense, hold harmless CFX against any claim, suit or proceeding brought against CFX which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Agreement, constitute an infringement of any patent or copyright of the United States. The CONSULTANT shall pay all damages and costs awarded against CFX.

14.0 THIRD PARTY BENEFICIARY

The CONSULTANT warrants that it 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 the CONSULTANT 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, CFX 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.

15.0 INSURANCE

The CONSULTANT, at its own expense, shall keep in force and at all times maintain during the term of this Agreement all insurance of the types and to the limits specified herein.

The CONSULTANT shall require and ensure that each of its subconsultants providing services hereunder procures and maintains, until the completion of the services, insurance of the requirements, types and to the limits specified herein. Upon request from CFX, the CONSULTANT shall furnish copies of certificates of insurance evidencing coverage of each subconsultant.

The CONSULTANT shall require all insurance policies in any way related to the work and secured and maintained by the CONSULTANT to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The CONSULTANT shall require of subconsultants, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, the CONSULTANT agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement or voids coverage should the CONSULTANT enter into such an agreement on a pre-loss basis. At the CONSULTANT's expense, all limits must be maintained.

15.1 Commercial General Liability coverage shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. The general aggregate limit shall apply separately to this Agreement (with the ISO CG 25 01 or insurer's equivalent endorsement provided to CFX) or the general aggregate limit shall be twice the required occurrence limit. CFX shall be listed as an additional insured. The CONSULTANT further agrees coverage shall not contain any

endorsement(s) excluding or limiting Product/Completed Operations, Independent Consultants, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Severability of Interests. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

15.2 Business Automobile Liability coverage shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event the CONSULTANT does not own automobiles the CONSULTANT shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Each of the above insurance policies shall include the following provisions: (1) The standard severability of interest clause in the policy and when applicable the cross liability insurance coverage provision which specifies that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured; (2) The stated limits of liability coverage for Commercial/Comprehensive General Liability, and Business Automobile Liability, assumes that the standard "supplementary payments" clause will pay in addition to the applicable limits of liability and that these supplementary payments are not included as part of the insurance policies limits of liability.

15.3 Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the CONSULTANT, its employees, agents and subconsultants.

15.4 Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) Combined Single Limit (CSL) or its equivalent, protecting the selected firm or individual against claims of CFX for negligence, errors, mistakes or omissions in the performance of services to be performed and furnished by the CONSULTANT.

The CONSULTANT shall provide CFX with Certificate(s) of Insurance with required endorsements on all the policies of insurance and renewals thereof in a form(s) acceptable to CFX. CFX shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.

All insurance policies shall be issued by responsible companies who are acceptable to CFX and licensed to do business under the laws of the State of Florida. Each Insurance company shall minimally have an A.M. Best rating of A-:VII. If requested by CFX, CFX shall have the right to examine copies and relevant provisions of the insurance policies required by this Agreement, subject to the appropriate confidentiality provisions to safeguard the proprietary nature of CONSULTANT manuscript policies.

Any deductible or self-insured retention must be declared to and approved by CFX. At the option of CFX, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as requests CFX, or the CONSULTANT shall procure a bond guaranteeing payment of

losses and related investigations, claim administration and defense expenses.

All such insurance required by the CONSULTANT shall be primary to, and not contribute with, any insurance or self-insurance maintained by CFX.

Compliance with these insurance requirements shall not relieve or limit the CONSULTANT's liabilities and obligations under this Agreement. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONSULTANT's obligation to maintain such insurance.

The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

16.0 COMMUNICATIONS

The CONSULTANT agrees that it shall 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 CFX and securing its consent in writing. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data furnished in compliance with this Agreement, it being understood that, under Paragraph 8.00 hereof, such data or information is the property of CFX.

17.0 STANDARD OF CONDUCT

The CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct provided in Florida Statutes 112.313 as it relates to work performed under

this Agreement, which standards will by reference be made a part of this Agreement as though set forth in full. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed.

The CONSULTANT acknowledges that it has read the CFX Code of Ethics and to the extent applicable to the CONSULTANT agrees to abide with such policy.

18.0 DOCUMENTED ALIENS

The CONSULTANT warrants that all persons performing work for CFX under this Agreement, regardless of the nature or duration of such work, shall be United States citizens or properly authorized and documented aliens. CFX shall comply with all federal, state and local laws and regulations pertaining to the employment of unauthorized or undocumented aliens at all times during the performance of this Agreement and shall indemnify and hold CFX harmless for any violations of the same. Furthermore, if CFX determines that CONSULTANT has knowingly employed any unauthorized alien in the performance of this Agreement, CFX may immediately and unilaterally terminate this Agreement for cause.

19.0 CONFLICT OF INTEREST

The CONSULTANT shall not knowingly enter into any other contract with CFX during the term of this Agreement which would create or involve a conflict of interest with the services provided herein. Likewise, subconsultants shall not knowingly enter into any other contract with CFX during the term of this Agreement which would create or involve a conflict of interest with the service provided herein and as described below. Questions regarding potential conflicts of interest shall be addressed to the Executive Director for resolution. During the term of this Agreement the CONSULTANT is not eligible to pursue any advertised construction engineering and inspection projects of CFX as either a prime or subconsultant where the CONSULTANT participated

in the design of the projects. Subconsultants are also ineligible to pursue construction engineering and inspection projects where they participated in the design of the projects.

20.0 SEVERABILITY

The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

21.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida. Venue of any judicial proceedings arising out of the Agreement shall be in Orange County, Florida.

22.00 ATTACHMENTS

Exhibit "A", Scope of Services

Exhibit "B", Method of Compensation

Exhibit "C", Details of Cost and Fees

Exhibit "D", Project Organization Chart

IN WITNESS WHEREOF, the CONSULTANT and CFX have caused this instrument to be signed and witnessed by their respective duly authorized officials, all as of the day and year first above written. This Contract was awarded by the CFX Board of Directors at its meeting on December 10, 2015.

METRIC ENGINEERING, INC.

BY: C. Brian Fuller
Authorized Signature

C. Brian Fuller
Print Name

Title: Vice President

ATTEST: Heidi Bouthillier (Seal)
Secretary or Notary



Approved as to form and execution, only.

General Counsel for CFX

Joseph Lassinton

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

BY: Carole Miller
Director of Procurement

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES

CONSTRUCTION ENGINEERING AND INSPECTION CONSULTANT

I. PURPOSE

CFX requires the services of a consultant in connection with Construction Engineering and Inspection (CEI) services. CFX has a core staff of CEI management personnel and is seeking assistance from a Consultant who will provide support personnel on an as-needed, per project basis. Support personnel required by CFX may include, but is not necessarily limited to, Project Administrator, Senior Inspector, Inspector, Asphalt Plant Inspector, Inspector's Aide, Survey Party Chief Instrument Man, Rod Man/Chain Man, Environmental Specialist, Casting Yard Engineer, Senior ITS Inspector, ITS Inspector and others deemed necessary and authorized by CFX on a variety of contracts scheduled to be awarded for construction.

The Consultant shall minimize, to the extent possible, CFX's need to apply its own resources to assignments authorized by CFX. CFX, at its option, may elect to expand, reduce or delete the extent of each work element described in this Scope of Services.

CFX will request Consultant services on an as-needed, per project basis as described below. There is no guarantee that any or all of the services described in this Scope of Services will be assigned during the term of the Agreement. Further, the Consultant, as indicated below, will provide these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services performed by other consultants or CFX staff.

The Consultant is one of several consultants who are under contract to CFX to provide support personnel for various construction projects. At least 30 days before the notice to proceed is issued to the construction contractor for a project, CFX will identify the CEI support personnel it will require by job classification and request from the consultants a list of resumes for available individuals. From these resumes, CFX will select the most qualified team and negotiate fees and expenses with that consultant. The intent of this process is to ensure that CFX has a resource pool of consultants who can provide qualified professional, technical and administrative personnel, in the required numbers and at the required times, to assure that services and responsibilities assigned under this Scope of Services are effectively and efficiently carried out.

II. GENERAL REQUIREMENTS

The Consultant shall exercise its independent professional judgment in performing its obligations and responsibilities under the Contract.

The Consultant shall be prequalified by the Florida Department of Transportation (FDOT) to perform the appropriate work categories established by the FDOT.

III. BEGINNING AND LENGTH OF SERVICES

Work shall commence upon issuance of the written Notice to Proceed from the Director of Construction. (References to CFX's Director of Construction shall be taken to mean his designated representative as well.) The Contract term will be three (3) years with two 1-year renewal options.

Services to be provided by the Consultant will be initiated and completed as directed by CFX's Director of Construction for each Task Work Order Assignment authorized under the Contract.

The Director of Construction shall furnish the Consultant a Letter of Authorization for each Task Work Order outlining the services to be performed and the compensation to be paid for services authorized pursuant to the Scope of Services document attached to the Letter of Authorization. No payment for work performed shall be made to the Consultant unless a Letter of Authorization for that Task Work Order has been mutually agreed to in writing by CFX and Consultant (refer to the Method of Compensation).

For the duration of each project assigned under the Contract, the Consultant shall coordinate closely with CFX to minimize rescheduling of Consultant activities due to construction delays or changes in scheduling of the construction contractor's activities.

For estimating purposes, the Consultant will be allowed an accumulation of fifteen (15) calendar days to perform preliminary administrative services prior to the issuance of the notice to proceed to the construction contractor and fifteen (15) days to demobilize after final acceptance by CFX of an assigned project.

IV. SERVICES

The Consultant will perform the following tasks in the conduct of the Agreement for each assigned project. The following tasks provide an example of the type of work to be required but are not intended to be all inclusive.

A. General

It shall be the responsibility of the Consultant to provide services as necessary to administer the construction contracts in a manner so as to verify that the projects are constructed in conformity with the plans, specifications, contract provisions and within the time allotted by the construction contracts.

The Consultant is expected to pursue its work in such a manner as to cover all major contractor activities and make periodic condition inspections regardless of time of day, or date, or weather conditions.

The Consultant shall advise CFX of any omissions, substitutions, defects, or deficiencies noted in the work of the construction contractor and the corrective action taken. The work provided by the Contractor shall in no way relieve the construction contractor of responsibility for the satisfactory performance of the construction contract.

B. Inspection Services

The Consultant shall provide services to monitor the construction contractor's on-site construction operations as required to determine that the quality of workmanship and materials is such that the assigned project will be completed in substantial conformity with the plans, specifications, and other contract provisions, and within the specified contract time. The Consultant shall keep detailed, accurate records of the construction contractor's daily operations, progress, and significant events that affect the work.

The standard procedures and practices of CFX for inspection of construction projects are set forth in CFX's Construction Project Administration Manual (ACPAM) (www.expresswaydocs.com). The Consultant shall, in general, perform inspection services in accordance with these standard procedures and practices and approved variations as may be appropriate.

C. Testing

The Consultant shall perform field testing services including but not limited to nuclear density, moisture content, etc. Laboratory Testing of component materials shall be performed by others.

D. Management Engineering Services

The Consultant shall perform the management engineering services necessary to verify that proper coordination of the activities of all parties involved in accomplishing completion of the assigned project is achieved; to maintain complete, accurate records of all activities and events relating to the assigned project; to properly document the significant changes to the assigned project; to provide, upon request, interpretations of the plans, specifications and contract provisions; to make recommendations to CFX to resolve disputes which arise in relation to the assigned project; and to maintain an adequate level of surveillance of the construction contractor's activities. The Consultant shall also perform any other management engineering services that are required to fulfill its responsibilities under the Contract. All records and documentation will be in accordance with standard procedures, format and content, and the policies and procedures of CFX.

Services may include, but are not necessarily limited to the following:

1. At the direction of CFX, schedule and conduct a preconstruction conference for each assigned project. Record significant information and decisions made at this conference and distribute copies of the minutes to the appropriate parties.

2. Maintain project files in accordance with CFX's methods and utilizing CFX's filing system.
3. Receive, review, and recommend acceptance by CFX of the construction contractor's project construction schedule, prepared and submitted in accordance with the construction project's contract documents.
4. Maintain, on a daily basis, a complete and accurate record of the activities and events relating to the assigned project and a record of the work completed by the construction contractor, including quantities of pay items in conformity with final estimate preparation procedures and specifications. The Consultant shall immediately report apparent, significant changes in quantity, time, or cost as they are noted.
5. Maintain a construction diary, including weather, appropriate for the type of construction being performed.
6. Maintain a log of all materials entering into the work with proper indication of the basis of acceptance of each shipment of material.
7. Maintain records of all sampling and testing accomplished and analyze such records as required to ascertain acceptability of materials and completed work items. Reports for records of work and testing results shall be maintained in the Consultant's files for each assigned project.
8. Once each month, prepare a comprehensive tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be used for preparation of the monthly progress estimate. The monthly progress estimate will be jointly prepared by the construction contractor and Consultant. Progress estimates shall be submitted to CFX for review and processing.

The Consultant shall make and record such measurements as are necessary to calculate and document quantities for pay items; make and record preconstruction and excavated cross section surveys of the assigned project in those areas where earth work (subsoil excavation) will be paid by calculating volumes removed and paid for within authorized limits at contract unit prices specified in the construction contract. The Consultant shall perform incidental engineering surveys as may be necessary to carry out the services and to verify and confirm the accuracy of the construction contractor's survey layout work on an occasional and random basis.

9. If requested by CFX, provide to the construction contractor interpretations of the plans, specifications, and contract provisions. In such instances, the Consultant shall confer with CFX when an interpretation involves complex issues or may have an impact on the cost of performing the work.

10. Analyze problems that arise on a project and proposals submitted by the construction contractor and prepare and submit a recommendation to CFX.
11. Analyze changes to the plans, specifications, or contract provisions and extra work which appear to be necessary to carry out the intent of the contract when it is determined that a change or extra work is necessary and such work is within the scope and intent of the original contract for an assigned project.
12. When it is determined that a modification to the original contract for an assigned project is required due to a necessary change in the character of the work, negotiate prices with the construction contractor and prepare and submit for approval by CFX a change proposal request in accordance with applicable procedures.
13. In the event that the construction contractor gives notice, either written or verbal, that it deems certain work to be performed is beyond the scope of the construction contract, and that it intends to claim additional compensation, the Consultant shall maintain accurate force account records of the costs involved in such work. These records shall include manpower and equipment times and materials installed (temporary or permanent) in the portion of the work in dispute.
14. In the event that the construction contractor submits a claim for additional compensation on an assigned project, analyze the submittal and prepare a recommendation to CFX covering validity and reasonableness of charges, and conduct negotiations leading to recommendations for settlement of the claim. Maintain complete force account and other records of work involved in claims.
15. In the event that the construction contractor for a project submits a request for extension of the allowable contract time on an assigned project, analyze the request and prepare a recommendation to CFX covering accuracy of statements and the actual effect of delaying factors on completion of controlling work items.
16. Prepare and submit to CFX all close out documentation for each assigned project, including, but not limited to, formal notification of Final Construction Inspection, Final Acceptance; assembled and indexed written guarantees, certifications, operation and maintenance manuals, and similar items required by the construction contract documents; completed project (Final) Quantity Computation Manual, with supporting documentation; a written summary of any outstanding issues, claims and matters affecting the Final Contract close out process; the Final Estimate; one full size set each from the construction contractor and the Consultant of the marked record drawings; and similar project close out requirements. The Consultant shall complete this task within fifteen (15) calendar days after final acceptance by CFX of the assigned project (demobilization period).

17. Assist CFX's representatives in preparing for arbitration hearings or litigation that may occur during the Consultant's contract time in connection with an assigned project.
18. Monitor each assigned project to the extent necessary to determine whether construction activities violate the requirements of any permits. Notify the construction contractor of any violations or potential violations and require the construction contractor's immediate resolution of the problem. Immediately report violations to CFX.
19. Track shop drawing/sample submittals and approvals for each assigned project. Tracking shall include maintaining the status of each submittal as it progresses through review and approval. The Consultant shall actively encourage all reviewers to accomplish reviews promptly. The Consultant shall review samples, catalog data, shop drawings, laboratory, shop, and mill tests of materials and equipment, and other data which the construction contractor is required to submit, only for conformance and compliance with the design concept of the assigned project as set forth by the construction contract documents.
20. Provide coordination between the construction contractor and utility companies to facilitate that conflicting utilities are removed, adjusted, or protected in-place in a timely manner to minimize delays to construction operations. Maintain documentation in accordance with the procedures for the assigned project.
21. Attend weekly meetings with the respective contractor, subcontractors, and/or utility companies for each assigned project to review plans, schedules, problems, or other areas of concern. Prepare and transmit meeting minutes to CFX within two (2) days following the meeting.
22. Conduct and document field review for each assigned project of the maintenance of traffic operation during and after normal working hours, weekends, holidays, and during inclement weather. If maintenance of traffic features create a potential hazard to the public, notify the construction contractor's representative immediately and verify that corrective action is taken.
23. When needed to prevent delays in construction contractor's operations, provide the timely analysis of a situation, recommend alternative solutions, prepare any necessary sketches, field data, and other resources required to continue the construction progress.
24. When requested by CFX, perform Independent Assurance Services on work being performed by other CCEI or Materials Testing Consultants in accordance with CFX's IA Manual (www.expresswaydocs.com).

V. PERSONNEL

A. General Requirements

The Consultant shall provide the required number of qualified personnel as necessary to effectively carry out its responsibilities under the Contract.

B. Personnel Qualifications

The Consultant shall use only competent personnel who are qualified by education, experience, and certification where required. When requested by CFX, the Consultant shall submit resumes detailing education, experience qualifications and certifications of personnel in the required job classifications that the Consultant is proposing for consideration for assignment to the construction project. Minimum qualifications for the Consultant's personnel are defined in Paragraph "E" of this Article.

C. Staffing

For each assigned Task Work Order the Consultant shall staff personnel as required to complete the final project closeout. Responsible personnel, thoroughly familiar with all aspects of construction and measurement of the various pay items, shall be available to resolve disputed final pay quantities until the assigned project/task has been closed out. An individual on an assigned project whose performance is subsequently determined by CFX to be unsatisfactory shall be replaced by the Consultant within one (1) week after notification and shall not be proposed for future assignments unless authorized in writing by the Director of Construction.

Consultant personnel assigned to a project are considered by CFX to be committed to performing services under the Contract. Any changes will require written approval of CFX.

When the construction contractor's operations on a project diminish, CFX will direct an appropriate reduction, by job classification, in the Consultant's personnel. Such reduction of the Consultant's forces by CFX shall be accomplished within one (1) week after notification.

In the event of a construction contract suspension on an assigned project requires the removal of Consultant forces from the project, the Consultant will be allowed up to a maximum of ten (10) days to demobilize, relocate, or terminate such forces.

D. Licensing for Equipment Operation

The Consultant shall be responsible for obtaining proper licenses for equipment and personnel operating equipment when licenses are required. Licensing of surface moisture/density (nuclear) gauges shall be obtained through the State of Florida Department of Health, Bureau of Radiation

Control, Radio Active Materials Section. Only nuclear density inspectors approved by the FDOT shall be authorized to operate surface moisture/density gauges.

E. Personnel Training and Experience Standards

The following are the minimum training and experience standards for Consultant personnel.

1. Senior Project Engineer

Registration by the Florida State Board of Engineer Examiners as a Professional Engineer and six (6) years of highway construction engineering experience. Experience shall include at least five (5) years of major road or bridge construction. Qualifications include the ability to communicate effectively and actively direct a highly complex and specialized construction engineering administration and inspection program; plan and organize the work of subordinate staff members; consult with CFX's Director of Construction and his staff; develop and review policies, methods, practices and procedures; review the program for conformity with FDOT standards and as amended by CFX. The Senior Project Engineer must be able to interpret and monitor scheduled construction progress; must be qualified to manage field changes, change orders, claims and public complaints.

Qualification:

FDOT Advanced MOT

Attend the CTQP Quality Control Manager course and pass the examination.

Certifications:

None

A Master's Degree in Engineering may be substituted for one (1) year engineering experience.

2. Project Administrator

A Civil Engineering Degree plus four (4) years of engineering experience in construction of major road or bridge structures, or for non-degreed personnel eight (8) years of responsible and related engineering experience, two (2) years of which involved construction of major road or bridge structures.

Receives general instruction regarding assignments and is expected to exercise initiative and independent judgment in solution of work problems. Directs and assigns specific tasks to inspectors and assistants for all phases of the construction project. Will be responsible for the progress and final estimates throughout the construction project duration. Must have the following:

Qualifications:

FDOT Intermediate MOT
CTQP Final Estimates Level II

Other:

Attend CTQP Quality Control Manager Course and pass the examination.

A Master's Degree in Engineering may be substituted for one (1) year of engineering experience

3. Technical Project Administrator (Network and Integration)

*** This position will only be utilized when a specific need for integration of devices into the CFX Network is required. ***

A 4 year degree (Civil Engineering, Electrical Engineering, Computer Engineering or Information Systems) plus four (4) years of engineering experience related to integration of network devices onto server systems similar to that owned by CFX.

Receives general instruction regarding assignments and is expected to exercise initiative and independent judgment in solution of work problems. Directs and assigns specific tasks to inspectors and assistants for all phases of the construction project as required. Will be responsible for the progress and final estimates throughout the construction project duration. Must have the following:

Qualifications:

IMSA Level II or III

Meet requirements of CFX Specification 600; Intelligent Transportation System Certification

Meet requirements of Project Administrator above if the assigned task encompasses those items.

A Master's Degree in Engineering may be substituted for one (1) year of engineering experience

4. Contract Support Specialist

High school diploma or equivalent plus four (4) years construction project related experience. Should exercise independent judgment in planning work details and making technical decisions related to office aspects of the project. Must be able to interpret project drawings and technical specifications, organize and summarize construction quantities, and perform computer data entry. Must have technical skill to maintain As-Built (record) drawings.

Qualifications:

CTQP Final Estimates Levels I & II

5. Senior Inspector/Senior Engineer Intern

High School graduate plus four (4) years of experience in construction inspection two (2) years of which shall have been in bridge and/or roadway construction). Responsible for performing highly complex technical assignments in field surveying and construction layout, making and checking engineering computations, inspecting construction work and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under general supervision of the Project Administrator. Must have the following:

Qualifications:

CTQP Concrete Field Inspector Level I

CTQP Concrete Transportation Construction Inspector (CTCI) Level II (all bridges)

CTQP Asphalt Roadway Level I (If applicable)

CTQP Asphalt Roadway Level II (If applicable)

CTQP Earthwork Construction Inspection Level I

CTQP Earthwork Construction Inspection Level II

CTQP Pile Driving Inspection (If applicable)

CTQP Drilled Shaft Inspection (If applicable – required for inspection of all drilled shafts including miscellaneous structures such as Sign structures, Lighting structures, and Traffic Signal structures)

CTQP Grouting Technician Level I (If applicable)

CTQP Post-Tensioning Technician Level I (If applicable)

FDOT Intermediate MOT

CTQP Final Estimates Level I

Certifications:

Nuclear Radiation Safety

SSPC course: C-3 Supervisor/Competent Person Training for Deleading of Industrial Structures (If applicable)

6. Resident Compliance Specialist

Graduation from an accredited high school or equivalent with one (1) year of experience as a resident compliance officer on a construction project or two (2) years of assisting the compliance officer in monitoring the project. Should have prior experience in both State funded and Federal Aid funded construction projects with FDOT and knowledge of EEO/AA laws and FDOT's DBE and OJT programs. Ability to analyze, collect, evaluates data, and take appropriate action when necessary. Must attend all training workshops or meetings for Resident Compliance Specialists as determined necessary.

7. Inspector/Engineer Intern

High school graduate or equivalent plus two (2) years experience in construction inspection, one (1) year of which shall have been in bridge and/or roadway construction inspection, plus the following:

Qualifications:

CTQP Concrete Field Inspector Level I

CTQP Asphalt Roadway Level I (If applicable)

CTQP Earthwork Construction Inspection Level I

CTQP Pile Driving Inspection (If applicable)

CTQP Drilled Shaft Inspection (If applicable– required for inspection of all drilled shafts including miscellaneous structures such as Sign structures, Lighting structures, and Traffic Signal structures)

CTQP Final Estimates Level I

Certifications:

Nuclear Radiation Safety

Or a Civil Engineering degree with the ability to earn additional required qualifications within one year. (Note: Engineer Intern classification requires E.I.T. certificate.)

Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress. Civil Engineering graduates must obtain certifications within the first year of working as an inspector or Engineer Intern. Exceptions will be permitted on a case-by-case basis so long as qualifications and certifications are appropriate for specific inspection duties.

8. Asphalt Plant Inspector

High School graduate or equivalent plus one (1) year experience in the surveillance and inspection of hot mix asphalt plant operations and the following:

Qualifications:

CTQP Asphalt Plant Level I

CTQP Asphalt Plant Level II

CTQP Final Estimates Level I

Certifications:

None

9. Inspector's Aide

High School graduate or equivalent and able to perform basic mathematical calculation and follow simple technical instructions. Duties are to assist higher-level inspectors.

10. Survey Party Chief

High School graduate plus four years of experience in construction surveying (including two (2) years as Party Chief). Experienced in field engineering and construction layout, making and checking survey computations and supervising a survey party. Work is performed under general supervision of Project Administrator.

11. Instrument Man

High school graduate plus three (3) years of experience in construction surveying one (1) year of which shall have been as instrument-man. Responsible for performing assignments in assisting Party Chief in the performance of their duties. Receives general supervision from Party Chief who reviews work while in progress.

12. Rod Man/Chain Man

High school graduate with some survey experience or training preferred. Receives supervision from and assists Party Chief who reviews work while in progress.

13. Secretary/Clerk Typist

High school graduate or equivalent plus two (2) years of secretarial and/or clerical experience. Ability to type at a rate of 35 correct words per minute. Experienced in the use of standard word processing software. Should exercise independent initiative to help relieve the supervisor of clerical detail. Work under general supervision of the Senior Project Engineer and their staff.

14. Environmental Specialist

A bachelors degree with a major in one of the physical or natural sciences or engineering and two (2) years of professional experience in environmental protection, regulation or health; one of the physical or natural sciences; or engineering; or a Masters degree in one of the physical or natural sciences or engineering and one (1) year of professional experience described above; or a Doctorate degree in one of the physical of natural sciences or engineering or one (1) year of experience as an Environmental Specialist I with the State Of Florida. Receives general instruction regarding assignments and is expected to exercise initiative, and independent judgment in the solution of work problems. Must have knowledge of the terminology, principles, data collection, and analytical techniques and procedures of the physical or natural sciences. Also must have ability to collect, evaluate, analyze, and interpret scientific or technical data.

15. Geotechnical Engineer

Be a registered Professional Engineer in the State of Florida (or if registered in another state, have the ability to obtain registration in Florida within 6 months) with a minimum of 5 years of experience in being in responsible charge of the geotechnical foundation construction engineering and dynamic testing work on at least five (5) CFX or FDOT bridge projects, including FDOT Structures Design Category 2 bridge projects, having driven pile foundations/drilled shaft foundations or similar projects for other State Department of Transportations. "Responsible charge" experience shall include verifiable and successful drilled shaft installation and coring inspections and constructions, static, Osterberg Cell and/or Statnamic load test experience, as well as Pile Driving Analyzer (PDA), WEAP computer program and CAPWAP computer programs to analyze concrete/steel/timber piling.

16. Geotechnical Technician

Knowledge in the use and provisions of the PDA system, WEAP and CAPWAP computer programs to analyze concrete/steel/timber piling in conjunction with dynamic load tests with a minimum of three (3) years of experience on at least two (2) CFX or FDOT bridge projects.

Qualifications:

CTQP Pile Driving Inspection

CTQP Drilled Shaft Inspection

17. Public Information Officer

High school graduate or equivalent and be knowledgeable in public information and/or advertising involving mass circulation or distribution of literature, mass advertising or other similar activities and performed such work for a at least three (3) years.

18. Utility Coordinator

High school graduate or equivalent and be knowledgeable of CFX's Standards, policies, procedures, and agreements and shall have a minimum of 4 years of experience performing utility coordination in accordance with CFX or FDOT Standards, policies, procedures, and agreements.

19. Lead Senior ITS Inspector

High school graduate or equivalent with the demonstrated knowledge, skill and ability to take a lead role on CFX ITS projects (as determined by CFX) plus twelve (12) years of experience in construction inspection, ten (10) years of which shall have been in ITS construction inspection, plus the following:

Qualifications:

Fiber Installation Inspection and OTDR Fiber Testing
DMS Operation and Testing
Controller Operation and Testing
CCTV Installation, Operation and Testing
Familiarity with Existing Communication Equipment and Switches

Certifications:

IMSA Level II or a Civil Engineering degree and one (1) year of ITS CEI experience.

Responsible for performing highly complex technical assignments in field surveying and construction layout, making and checking engineering computations, inspecting construction work and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under the general supervision of the Project Administrator.

20. Senior ITS Inspector

High school graduate or equivalent plus four (4) years of experience in construction inspection, two (2) years of which shall have been in ITS construction inspection, plus the following:

Qualifications:

Fiber Installation Inspection and OTDR Fiber Testing
DMS Operation and Testing
Controller Operation and Testing
CCTV Installation, Operation and Testing
Familiarity with Existing Communication Equipment and Switches

Certifications:

IMSA Level II

or a Civil Engineering degree and one (1) year of ITS CEI experience.

Responsible for performing highly complex technical assignments in field surveying and construction layout, making and checking engineering computations, inspecting construction work and conducting field tests and is responsible for coordinating and managing the lower level inspectors. Work is performed under the general supervision of the Project Administrator.

21. ITS Inspector

High school graduate or equivalent plus two (2) years experience in construction inspection, one (1) year of which shall have been in ITS construction inspection, plus the following:

Qualifications:

Fiber Installation Inspection and OTDR Fiber Testing
DMS Operation and Testing
Controller Operation and Testing
CCTV Installation, Operation and Testing
Familiarity with Existing Communication Equipment and Switches

Certifications:

None

or a Civil Engineering degree.

Responsible for performing assignments in assisting Senior Inspector in the performance of their duties. Receive general supervision from the Senior Inspector who reviews work while in progress. Civil Engineering graduates must obtain certifications within the first year of working as an inspector or Engineer Intern. Exceptions will be permitted on a case-by-case basis so long as qualifications and certifications are appropriate for specific inspection duties.

VI. QUALITY ASSURANCE (QA) PROGRAM

A. Quality Reviews

The Consultant shall conduct semi-annual reviews to make certain its organization is in compliance with the requirements cited in the Scope of Services. Quality Reviews shall be conducted to evaluate the adequacy of materials, processes, documentation, procedures, training, guidance, and staffing included in the execution of the Contract. Quality Reviews shall also be developed and performed to achieve compliance with specific QA provisions contained in this Scope of Services. The semi-annual reviews shall be submitted to CFX in written form no later than one (1) month after the review.

On assigned projects with short duration (9 months or less), the Consultant shall perform an initial QA review within the first two (2) months of the start of construction.

On asphalt projects, the Consultant shall perform an initial QA review on its asphalt inspection staff after the construction contractor has completed ten (10) full work days of mainline asphalt paving operations, or 25% of the asphalt pay item amount (whichever is less) to validate that all sampling, testing, inspection, and documentation are occurring as required.

B. QA Plan

Within thirty (30) days after execution of the Contract, the Consultant shall furnish a QA Plan to the Director of Construction. The QA Plan shall detail the procedures, evaluation criteria, and instructions of the Consultant's organization for providing services pursuant to the Contract. Unless specifically waived, no payment will be made for any services until CFX approves the Consultant QA Plan.

Significant changes to the work requirements may require the Consultant to revise the QA Plan. The Consultant shall keep the plan current with the work requirements. The Plan shall include, but not be limited to, the following areas:

1. **Organization:** A description is required of the Consultant QA Organization and its functional relationship to the part of the organization performing the work under the Contract. CFX, responsibilities and autonomy of the QA organization shall be detailed as well as the names and qualifications of personnel in the quality control organization.
2. **Quality Reviews:** The Consultant QA shall detail the methods used to monitor and achieve organization compliance with Contract requirements for services and products.
3. **Quality Records:** The Consultant shall outline the types of records which will be generated and maintained during the execution of its QA program.
4. **Control of Subconsultants and Vendors:** The Consultant shall detail the methods used to control subconsultants and vendor quality.
5. **Quality Assurance Certification:** An officer of the Consultant firm shall certify that the inspection and documentation was done in accordance with specifications, plans, standard indices, and CFX procedures.
6. **Quality Records:** The Consultant shall maintain adequate records of the quality assurance actions performed by its organization (including subcontractors and vendors) in providing services and products under the Contract. All records shall indicate the nature and number of observations made, the number and type of deficiencies found, and the corrective actions taken. These records shall be available to CFX, upon request, during the term of the Contract. All records shall be kept at the primary job site and will be subject to audit review.

VII. ITEMS TO BE FURNISHED BY CFX TO THE CONSULTANT

The following printed documents, facilities, equipment and services are furnished by CFX, either directly or as provided by the Contractor on selected construction projects.

- A. Project Construction Contract.
- B. Project Construction (Design) Drawings.
- C. Project Supplemental Specifications.
- D. Project Special Provisions.
- E. R.O.W. Drawings, geotechnical reports, permits and similar documents.
- F. Copy of the original plan quantities project computation manual.
- G. CFX Policy and Procedures Manual.
- H. CFX standardized forms to be used with documentation and reporting procedures.
- I. CFX General Specifications and Technical Specifications.

Unless otherwise stated by CFX at the time of the Task Authorization, the Consultant shall provide office space for its personnel to effectively carry out the requirements of this Scope of Services. Such office expenses will not be paid separately but will be included in the fees negotiated for each assigned project.

VIII. ITEMS TO BE FURNISHED BY THE CONSULTANT

The Consultant shall furnish the quantity of the following items required to effectively perform the work and services required. Except as stated herein, these items are considered normal and incidental to the type of services provided and will not be reimbursed by CFX.

- A. FDOT Standard Specifications for Road and Bridge Construction, current edition.
- B. FDOT Design Standards, current edition.
- C. FDOT Structures Design Standards, current edition.
- D. FDOT Construction Manual, current edition.
- E. FDOT Materials Sampling, Testing and Reporting Guide, current edition.

- F. FDOT Qualified Products Listing, current edition.
- G. FDOT Utility Accommodation Guide, current edition.
- H. FDOT Inspection-In-Depth of the Materials and Construction Control Process Manual, current edition.
- I. FDOT Basis of Estimates and Computation Manual, current edition.
- J. FDOT Sample Computation Manual, Final Estimate Preparation Short Course, and Carter Key Manual, current edition.
- K. Miscellaneous office supplies and accommodations, such as stationery, rubber stamps, engineering rules, pads, pens, daily diaries, survey books, staplers, punches, electronic calculators, adding machines, tape recorder, mail box, postal fees, and any other items necessary to maintain an office.
- L. Project vehicles for CFX related business. Documentation of mileage for CFX related business will be required. Vehicles will be equipped with appropriate safety equipment and must be able to effectively carry out requirements of this Agreement. Vehicles shall have the name and phone number of the consulting firm visibly displayed on both sides of the vehicle.
- M. Project telephones and services, including long distance charges.
- N. CEI personnel qualification and registration fees, licenses, personnel badges, safety restrictions, carrying lockers, and security systems. Progress photographs, videos, project claim documentation, and expenditures directed by CFX's representatives.
- O. Applicable software to calculate Monthly Project Progress Estimates in a format acceptable to CFX and all other software packages determined by CFX to be essential to the execution of the Contract.
- P. The Consultant shall supply survey, inspection and testing equipment, essential in order to carry out the work under this Agreement. Such equipment includes those non-consumable and non-expendable items, which are normally needed for a CEI project and are essential in order to carry out the work under this Agreement.
- Q. Hard hats shall have the name of the consulting firm visibly displayed.
- R. Equipment described herein and expendable materials under this Agreement will remain the property of the Consultant and shall be removed at completion of the work.

- S. The Consultant's handling of nuclear density gauges shall be in compliance with their license.
- T. The Consultant shall retain responsibility for risk of loss or damage to said equipment during performance of this Agreement. Field office equipment shall be maintained and in operational condition at all times.
- U. Any additional equipment and furnishings considered by the Consultant to perform the required services are optional to the Consultant, at its expense.

IX. LIAISON

The Consultant shall be fully responsible for performing all tasks assigned under this Scope of Services and interrelated documents on each assigned project. All activities and decisions of the Consultant relating to the projects shall be subject to review and approval by CFX. The Consultant shall provide and maintain close coordination and support of all activities, correspondence, documentation, reports and other communication related to construction progress, delays, changes, claims, and significant events, whereby CFX may carry out its responsibilities.

Upon confirmation of award of an assigned project and scheduled start of construction, the Consultant shall be ready to assign personnel within two weeks after CFX's notification to the Consultant to begin the services. No personnel shall be assigned until written notification has been issued. Consultant personnel will generally be required at all times while the construction contractor is working on an assigned project.

X. COOPERATION AND PERFORMANCE OF THE CONSULTANT

During the term of the Contract, CFX will conduct reviews of the various phases and stages of the Consultant's operations.

Reviews will be conducted in accordance with established CFX policies on work phases to determine compliance with this Scope of Services and the sufficiency with which procedures are being effectively applied to verify that the construction work and administration activities are performed in reasonable conformity with policies, plans, specifications, and provisions of the assigned project. The Consultant shall cooperate and assist CFX's representative in the conduct of the reviews.

When deficiencies are indicated in a review, remedial action shall be immediately implemented by the Consultant in conformance with CFX's recommendations. CFX's remedial recommendations and the Consultant's actions will be documented by CFX. In general, remedial action shall be required commensurate with the degree and nature of the deficiencies cited. Additional compensation will not be paid for remedial action taken to correct deficiencies by the

Consultant. Remedial actions may include any or all of, but are not necessarily limited to, the following actions:

- A. Further subdivide assigned inspection responsibilities, re-assign inspection personnel or assign additional inspection personnel. The Consultant shall comply with this action within forty-eight (48) hours of notification.
- B. Replace personnel whose performance has been determined by CFX to be inadequate.
- C. Increase the frequency of the project control testing immediately in the appropriate phase of work when such is the responsibility of the Consultant.
- D. Increase the scope and frequency of training conducted by the Consultant.

XI. SUBCONSULTANT SERVICES

Services assigned to subconsultants must be approved in advance by CFX in accordance with the Contract requirements. The subconsultants must be qualified by CFX to perform all work assigned to them.

Subconsultant services will be paid in accordance with Exhibit B.

XII. OTHER SERVICES

The Consultant shall, upon written authorization by CFX, perform any additional services not otherwise identified in this Scope of Services as may be required in connection with an assigned project. The following items are not included as part of the Contract, but may be required to supplement the Consultant's services under the Contract.

- A. The Consultant shall, upon review, approval, and written authorization by CFX, make such changes and revisions to the plans and specifications as may be required in order to complete the construction activities for an assigned project.
- B. The Consultant shall, upon written request by CFX, provide qualified engineers and/or engineering technicians to serve as engineering witnesses, provide exhibits, and otherwise assist in any litigation or hearings in connection with the construction contract(s).
- C. The Consultant shall, upon written request by CFX, provide off-site inspection services.

XIII. POST CONSTRUCTION CLAIMS REVIEW

In the event the contractor for an assigned project submits a claim for additional compensation and/or time, and the Consultant has completed the terms of the Contract, the Consultant shall, at

the written request from CFX, analyze the claim, prepare a recommendation to CFX covering validity and reasonableness of charges and/or assist in negotiations leading to settlement of the claim. Compensation will be separately reimbursed by a supplement to the Contract.

XIV. INVOICING INSTRUCTIONS

Monthly invoices shall be submitted in a format and distribution schedule defined by CFX no later than the 20th day of the following month.

If the Consultant cannot submit their monthly invoice on time, the Consultant shall notify CFX's Resident Engineer prior to the due date the reason for the delay and the planned submittal date. Once submitted, the Consultant Project Principal or Senior Project Engineer shall notify CFX's Resident Engineer via e-mail of the total delay in calendar days and the reason(s) for the delay(s).

All invoices shall be submitted in hard copy formats with timesheets and other backup as appropriate. A Final Invoice will be submitted to CFX no later than the 30th day following Final Acceptance of the individual project or as requested by CFX.

XV. CONTRADICTIONS:

In the event of a contradiction between the provisions of this Scope of Services and the Consultant's proposal as made a part of their Agreement, the provisions of the Scope of Services shall apply.

XVI. METHOD OF COMPENSATION:

All consultant and subconsultant services authorized by CFX will be paid for in accordance with Exhibit B.

END OF SCOPE

**CONSENT AGENDA ITEM
#3**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams
Director of Procurement



DATE: November 25, 2019

SUBJECT: Approval of Contract Award to Rummel, Klepper & Kahl, LLP dba RK&K for Construction Engineering and Inspection (CEI) Services for SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road
Project 528-143, Contract No. 001530

The Board approved, on August 8, 2019, final rankings and authorized fee negotiations for CEI Services for SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road. Negotiations with Rummel, Klepper & Kahl, LLP dba RK&K have been completed. Board award of the contract to RK&K is requested in the not-to-exceed amount of \$9,600,000.00.

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

Reviewed by:


Ben Dreiling, PE
Director of Construction

for:



AGREEMENT

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
RUMMEL, KLEPPER & KAHL, LLP dba RK&K**

**CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
FOR
SR 528/SR 436 INTERCHANGE IMPROVEMENTS AND SR 528
WIDENING FROM SR 436 TO GOLDENROD ROAD**

PROJECT 528-143

CONTRACT NO. 001530

**CONTRACT DATE: DECEMBER 12, 2019
CONTRACT AMOUNT: \$9,600,000.00**

**AGREEMENT, SCOPE OF SERVICES, METHOD OF
COMPENSATION, DETAILS OF COSTS AND FEES,
PROJECT ORGANIZATIONAL CHART AND
POTENTIAL CONFLICT DISCLOSURE FORM**

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**SR 528/SR 436 INTERCHANGE IMPROVEMENTS AND SR 528 WIDENING FROM SR
436 TO GOLDENROD ROAD
PROJECT 528-143**

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DECEMBER 2019

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AGREEMENT FOR CONSTRUCTION ENGINEERING AND INSPECTION SERVICES
CONTRACT NO. 001530**

THIS AGREEMENT, made and entered into this 12th day of December 2019 by and between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a corporate body and agency of the State of Florida, created by Chapter 2014-171 Laws of Florida, 2014, (Chapter 348, Part V, Florida Statutes) hereinafter called the "CFX" and Rummel, Klepper & Kahl, LLP dba RK&K hereinafter called "CONSULTANT", carrying on professional practice in engineering with offices located at 3504 Lake Lynda Drive, Suite 165, Orlando, FL. 32717.

WITNESSETH:

WHEREAS, CONSULTANT represents that it is fully qualified and authorized to render the professional services contracted herein.

NOW, THEREFORE, in consideration of the mutual understandings and covenants set forth herein, CFX and CONSULTANT agree as follows:

1.0 SERVICES TO BE PROVIDED

CFX does hereby retain the CONSULTANT to furnish Construction Engineering and Inspection (CEI) services required by CFX for Contract No. 001530, SR 528/SR 436 Interchange Improvements and SR 528 Widening from SR 436 to Goldenrod Road. The CONSULTANT and CFX mutually agree to furnish, each to the other, the respective services, information and items as described in **Exhibit "A"**, Scope of Services, attached hereto and made a part hereof.

Before any additions or deletions to the work described in **Exhibit "A"**, and before undertaking any changes or revisions to such work, the parties shall negotiate any necessary cost changes and shall enter into a Supplemental Amendment covering such modifications and the compensation to be paid therefore.

Reference herein to this Agreement shall be considered to include any Supplemental Agreement thereto.

CFX's Director of Construction or his authorized designee shall provide the management and technical direction for this Agreement on behalf of CFX. All technical and administrative provisions of this Agreement shall be managed by the Director of Construction and the CONSULTANT shall comply with all of the directives of the Director of Construction that are within the purview of this Agreement. Decisions concerning Agreement amendments and adjustments, such as time extensions and supplemental agreements shall be made by the Director of Construction.

The work covered by this Agreement includes providing CEI services for Contract No. 001530 including, but not necessarily limited to, *construction of roadways and bridges, signing, roadway lighting, drainage, and utilities.*

This Agreement is considered a non-exclusive Agreement between the parties.

2.0 TERM OF AGREEMENT

Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a five-year term from the date of the Notice to Proceed from CFX which includes the construction period of 32 months and a period of one month before start of construction and one month after the scheduled completion of construction. An extension of the five year term may be approved by CFX at its sole discretion. For purposes of Exhibit B, Method of Compensation, the term shall be 34 months.

3.0 PROJECT SCHEDULE

It shall be the responsibility of the CONSULTANT to ensure at all times that sufficient time remains within the project schedule within which to complete the services on the project. In the event there have been delays which would affect the scheduled project completion date, the CONSULTANT shall submit a written request to CFX 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. CFX will review the request and make a determination as to granting all or part of the requested extension.

In the event the scheduled project completion date is reached and the CONSULTANT has not requested, or if CFX has denied, an extension of the completion date, partial progress payments will be stopped when the scheduled project completion date is met. No further payment for the project will be made until a time extension is granted or all work has been completed and accepted by CFX.

4.0 PROFESSIONAL STAFF

The CONSULTANT shall maintain an adequate and competent professional staff to enable the CONSULTANT to timely perform under this Agreement. The CONSULTANT shall continue to be authorized to do business within the State of Florida. In the performance of these professional services, the CONSULTANT shall use that degree of care and skill ordinarily exercised by other similar professionals in the field under similar conditions in similar localities. The CONSULTANT shall use due care in performing the required services and shall have due regard for acceptable standards of construction engineering and inspection principles. The CONSULTANT may associate with it such specialists, for the purpose of its services hereunder, without additional cost to CFX, other than those costs negotiated within the limits and terms of this Agreement. Should the CONSULTANT desire to utilize specialists, the CONSULTANT shall be fully responsible for satisfactory completion of all subcontracted work. It is understood and agreed that CFX will not, except for such services so designated herein, permit or authorize the CONSULTANT to perform less than the total contract work with other than its own organization.

Prior to retaining a subconsultant, or assigning any work to a subconsultant, the CONSULTANT shall verify that the subconsultant does not have any conflicts and acknowledges its duty to comply with CFX's Code of Ethics. The CONSULTANT shall ensure that each

subconsultant adheres to, and cause all subconsultants to be bound by, all requirements, conditions, and standards set forth herein. The CONSULTANT shall collect and maintain the necessary subconsultant compliance and acknowledgement documentation and remove any subconsultant immediately, if the necessary said documentation is unavailable or the subconsultant is not adhering to the requirements and standards herein. The CONSULTANT shall provide subconsultant compliance and acknowledgement documentation to CFX upon request.

The approved subconsultants are:

Civil Site Engineering, Inc.	Mehta and Associates, Inc.
GRL Engineers, Inc.	Johnson, Mirmiran & Thompson, Inc.
Page One Consultants, Inc.	Elipsis Engineering & Consulting, LLC
Echezabal & Associates, Inc.	Core Engineering Group, LLC.
Wood Environmental & Infrastructure Solutions, Inc.	
Greenfield Diversified, LLC dba CONSULEX	

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

If, during the term of the Contract, CONSULTANT desires to subcontract any portion(s) of the work to a subconsultant that was not disclosed by the CONSULTANT to CFX at the time that the Contract was originally awarded, and such subcontract would, standing alone or aggregated with prior subcontracts awarded to the proposed subconsultant, equal or exceed twenty five thousand dollars (\$25,000.00), the CONSULTANT shall first submit a request to CFX'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 CONSULTANT until it has been approved by CFX Board. In the event of a designated emergency, the CONSULTANT 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 CFX Board at its next regularly scheduled meeting.

5.0 COMPENSATION

CFX agrees to pay the CONSULTANT compensation as detailed in **Exhibit "B"**, Method of Compensation, attached hereto and made a part hereof, in the not-to-exceed amount of \$9,600,000.00. Bills for fees or other compensation for services or expenses shall be submitted to CFX in detail sufficient for a proper pre-audit and post audit thereof.

The CONSULTANT may be liable for CFX costs resulting from negligent, reckless or intentionally wrongful errors or deficiencies in designs furnished under this Agreement. CFX may

enforce such liability and collect the amount due if the recoverable cost will exceed the administrative cost involved or is otherwise in CFX's best interest. Records of costs incurred by the CONSULTANT under terms of this Agreement shall be maintained and made available upon request to CFX at all times during the period of this Agreement and for five (5) after final payment is made. Copies of these documents and records shall be furnished to CFX upon request. The CONSULTANT agrees to incorporate the provisions of this paragraph in any subcontract into which it might enter with reference to the work performed. Records of costs incurred includes 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 CFX for a proper audit of project costs. The obligations in this paragraph survive the termination of the Agreement and continue in full force and effect.

The general cost principles and procedures for the negotiation and administration, and the determination or allowance of costs under this Agreement shall be as set forth in the Code of Federal Regulations, Titles 23, 48, 49, and other pertinent Federal and State Regulations, as applicable, with the understanding that there is no conflict between State and Federal regulations in that the more restrictive of the applicable regulations will govern. Whenever travel costs are included in **Exhibit "B"**, the provisions of Section 112.061, Florida Statutes, shall govern as to reimbursable costs.

Payments shall be made in accordance with the Local Government Prompt Payment Act in part VII, Section 218, Florida Statutes.

6.0 DOCUMENT OWNERSHIP AND RECORDS

All plans, documents, reports, studies, and/or other data prepared or obtained under this Agreement shall be considered instruments made for services and shall become the property of CFX without restriction or limitation on their use on this project; and shall be made available, upon request, to CFX at any time. CFX will have the right to visit the site for inspection of the work and the drawings of the CONSULTANT at any time. Unless changed by written agreement of the parties, said site shall be 3504 Lake Lynda Drive, Suite 165, Orlando, FL. 32717.

Notwithstanding Section 16, entitled "Communications, Public Relations, and Use of Logos," CONSULTANT acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the CONSULTANT is in the possession of documents that fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, Consultant agrees to comply with Section 119.0701, Florida Statutes.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT Phone: 407-690-5000,

e-mail: publicrecords@cfxway.com, and address: Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, FL. 32807.

An excerpt of Section 119.0701, Florida Statutes is below.

Per Section 119.0701(1), "Contractor" means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

Per Section 119.0701(b). The contractor shall comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

The obligations in Section 6.0, Document Ownership and Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

7.0 COMPLIANCE WITH LAWS

The CONSULTANT shall comply with all federal, state and local laws and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.

The CONSULTANT shall keep fully informed regarding and shall fully and timely comply with all current laws and future laws that may affect those engaged or employed in the performance of this Agreement.

8.0 WAGE RATES AND TRUTH-IN-NEGOTIATIONS CERTIFICATE

The CONSULTANT hereby certifies, covenants and warrants that wage rates and other factual unit costs as shown in attached **Exhibit "C"**, Details of Costs and Fees, supporting the compensation provided in Paragraph 5.0 are accurate, complete and current as of the date of this Agreement. It is further agreed that said price provided in Paragraph 5.0 hereof shall be adjusted to exclude any significant sums where CFX 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 CFX, whichever is later.

9.0 TERMINATION

Upon written notice, CFX may terminate this Agreement in whole or in part, for any reason or no reason, at any time the interest of CFX requires such termination.

If CFX determines that the performance of the CONSULTANT is not satisfactory, CFX shall have the option of (a) immediately terminating the Agreement or (b) notifying the CONSULTANT of the deficiency with a requirement that the deficiency be corrected within a specified time, otherwise the Agreement will be terminated at the end of such time.

If CFX requires termination of the Agreement for reasons other than unsatisfactory performance of the CONSULTANT, CFX shall notify the CONSULTANT in writing of such termination, not less than seven (7) calendar days as to the effective date of termination or specify the stage of work at which the Agreement is to be terminated.

If CFX abandons the work or subtracts from the work, suspends, or terminates the Agreement as presently outlined, the CONSULTANT shall be compensated for actual costs, as determined in Exhibit "B", for work properly performed by the CONSULTANT prior to abandonment or termination of the Agreement. The ownership of all engineering documents completed or partially completed at the time of such termination or abandonment, shall be transferred to retained by CFX.

CFX reserves the right to cancel and terminate this Agreement in the event the CONSULTANT or any employee, servant, or agent of the CONSULTANT is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONSULTANT for or on behalf of CFX, without penalty. It is understood

and agreed that in the event of such termination, all tracings, plans, specifications, maps, and data prepared or obtained under this Agreement shall immediately be turned over to CFX. The CONSULTANT shall be compensated for work properly performed rendered up to the time of any such termination in accordance with Paragraph 7.0 hereof. CFX also reserves the right to terminate or cancel this Agreement in the event the CONSULTANT shall be placed in either voluntary or involuntary bankruptcy or an assignment be made for the benefit of creditors. CFX further reserves the right to suspend the qualifications of the CONSULTANT to do business with CFX upon any such indictment or direct information. In the event that any such person against whom any such indictment or direct information is brought shall have such indictment or direct information dismissed or be found not guilty, such suspension on account thereof may be lifted by CFX's Director of Construction.

10.0 ADJUSTMENTS

All services shall be performed by the CONSULTANT to the reasonable satisfaction of the Director of Construction who shall decide all questions, difficulties and dispute of any nature whatsoever that may arise under or by reason of this Agreement, the prosecution and fulfillment of the services hereunder and the character, quality, amount and value thereof; and his decision upon all claims, questions and disputes shall be final. Adjustments of compensation and term of the Agreement, 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 Director and Supplemental Agreement(s) of such a nature as required may be entered into by the parties in accordance herewith. Disputes between the Director of Construction and the CONSULTANT that cannot be resolved shall be referred to CFX's Executive Director whose decision shall be final.

In the event that the CONSULTANT and CFX are not able to reach an agreement as to the amount of compensation to be paid to the CONSULTANT for supplemental work desired by CFX, the CONSULTANT shall be obligated to proceed with the supplemental work in a timely manner for the amount determined by CFX to be reasonable. In such event, the CONSULTANT will have the right to file a claim with CFX 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.

11.0 CONTRACT LANGUAGE AND INTERPRETATION

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective functions and capacities.

If the CONSULTANT discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the CONSULTANT shall immediately notify CFX and request clarification of CFX's interpretation of this Agreement.

The Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

12.0 HOLD HARMLESS AND INDEMNIFICATION, SOVEREIGN IMMUNITY

The CONSULTANT shall indemnify and hold harmless CFX, 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 design professional in the performance of the Agreement.

Subject to the provisions and limitations set forth in law, the CONSULTANT expressly agrees to indemnify, defend, and hold harmless CFX, and its officers, and employees, from any claim, liabilities, losses, damages, and costs, including, but not limited to, reasonable attorneys' fees, arising from any act, error or omission of the CONSULTANT and other persons employed or utilized by the CONSULTANT in the performance of the Agreement, except that the CONSULTANT will not be liable under this paragraph for claims of, or damages resulting from, gross negligence, or willful, wanton or intentional misconduct of CFX, its officers, or employees during the performance of the Agreement.

When CFX receives a notice of claim for damages that may have been caused by the CONSULTANT in the performance of services required by the CONSULTANT under this Agreement, CFX will immediately forward the notice of claim to the CONSULTANT. The CONSULTANT and the AUTHORITY will evaluate the notice of claim and report their findings to each other within fourteen (14) calendar days.

In the event a lawsuit is filed against CFX alleging negligence or wrongdoing by the CONSULTANT, CFX and the CONSULTANT will jointly discuss options in defending the lawsuit. After reviewing the lawsuit, CFX will determine whether to request the participation of the CONSULTANT in the defense of the lawsuit or to request that the CONSULTANT defend CFX in such lawsuit as described in this section. CFX's failure to notify the CONSULTANT of a notice of claim will not release the CONSULTANT from any of the requirements of this section upon subsequent notification by CFX to the CONSULTANT of the notice of claim or filing of a lawsuit. CFX and the CONSULTANT will pay their own cost for the evaluation, settlement negotiations and trial, if any. However, if only one party participates in the defense of the claim at trial, that party is responsible for all of its costs, but if the verdict determines that there is joint responsibility, the costs of defense and liability for damages will be shared in the same percentage as that judicially established, provided that CFX's liability does not exceed the limits and limitations arising from Section 768.28, Florida Statutes, the doctrine of sovereign immunity, and law.

CFX is an agency of the State of Florida whose limits of liability are set forth in Section 768.28, Florida Statutes, and 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, or law. Nothing hereby shall inure to the benefit of any third party for any purpose, which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of CFX's obligations 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, except for payments for work properly performed, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

The obligations in Section 12.0, Hold Harmless and Indemnification, shall survive the expiration or termination of this Agreement and continue in full force and effect.

13.0 INFRINGEMENT OF PATENTS AND COPYRIGHTS

The CONSULTANT shall pay all royalties and assume all costs arising from the use of any invention, design, process materials, equipment, product or device which is the subject of patent rights or copyrights. The CONSULTANT shall, at its expense, hold harmless and defend CFX against any claim, suit or proceeding brought against CFX which is based upon a claim, whether rightful or otherwise, that the goods or services, or any part thereof, furnished under this Agreement, constitute an infringement of any patent or copyright of the United States. The CONSULTANT shall pay all damages and costs awarded against CFX. The obligations in Section 13.0, Infringement of Patents and Copyrights, shall survive the expiration or termination of this Agreement and continue in full force and effect.

14.0 THIRD PARTY BENEFICIARY

The CONSULTANT warrants that it 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 the CONSULTANT has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the CONSULTANT any fee, commission, percentage, gift or 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, CFX 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.

15.0 INSURANCE

The CONSULTANT, at its own expense, shall keep in force and at all times maintain during the term of this Agreement all insurance of the types and to the limits specified herein.

The CONSULTANT shall require and ensure that each of its subconsultants providing services hereunder procures and maintains, until the completion of the services, insurance of the requirements, types and to the limits specified herein. Upon request from CFX, the

CONSULTANT shall furnish copies of certificates of insurance and endorsements evidencing coverage of each subconsultant.

The CONSULTANT shall require all insurance policies in any way related to the work and secured and maintained by the CONSULTANT to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The CONSULTANT shall require of subconsultants, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, the CONSULTANT agrees to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition that specifically prohibits such an endorsement or voids coverage should the CONSULTANT enter into such an agreement on a pre-loss basis. At the CONSULTANT's expense, all limits must be maintained.

15.1 Commercial General Liability coverage shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. The general aggregate limit shall apply separately to this Agreement (with the ISO CG 25 01 or insurer's equivalent endorsement provided to CFX) or the general aggregate limit shall be twice the required occurrence limit. CFX shall be listed as an additional insured. ISO Form CG 20 10 11 85 or if not available, ISO Forms CG 20 10 10 01 and CG 20 37 10 01, or if not available, their equivalent acceptable to CFX, shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate. The CONSULTANT further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Independent Consultants, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Severability of Interests. The Additional Insured Endorsement included on all such insurance policies shall state that coverage is afforded the additional insured with respect to claims arising out of operations performed by or on behalf of the insured. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be excess to any policy of insurance required herein. The amount of the insurer's liability shall not be reduced by the existence of such other insurance.

15.2 Business Automobile Liability coverage shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event the CONSULTANT does not own automobiles the CONSULTANT shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Each of the above insurance policies shall include the following provisions: (1) The standard severability of interest clause in the policy and when applicable the cross liability insurance coverage provision which specifies that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverages afforded shall apply as though separate policies had been issued to each insured; (2) The stated limits of liability coverage for Commercial/Comprehensive General Liability, and Business Automobile

Liability, assumes that the standard "supplementary payments" clause will pay in addition to the applicable limits of liability and that these supplementary payments are not included as part of the insurance policies limits of liability.

15.3 Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the CONSULTANT, its employees, agents and subconsultants.

15.4 Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) Combined Single Limit (CSL) or its equivalent, protecting the selected firm or individual against claims of CFX for negligence, errors, mistakes or omissions in the performance of services to be performed and furnished by the CONSULTANT.

The CONSULTANT shall provide CFX with Certificate(s) of Insurance with required endorsements on all the policies of insurance and renewals thereof in a form(s) acceptable to CFX. CFX shall be notified in writing of any reduction, cancellation or substantial change of policy or policies at least thirty (30) days prior to the effective date of said action.

All insurance policies shall be issued by responsible companies who are acceptable to CFX and licensed to do business under the laws of the State of Florida. Each Insurance company shall minimally have an A.M. Best rating of A-VII. If requested by CFX, CFX shall have the right to examine copies and relevant provisions of the insurance policies required by this Agreement, subject to the appropriate confidentiality provisions to safeguard the proprietary nature of CONSULTANT manuscript policies.

Any deductible or self-insured retention must be declared to and approved by CFX. At the option of CFX, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as requested by CFX, or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

All such insurance required by the CONSULTANT shall be primary to, and not contribute with, any insurance or self-insurance maintained by CFX.

Compliance with these insurance requirements shall not relieve or limit the CONSULTANT's liabilities and obligations under this Agreement. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONSULTANT's obligation to maintain such insurance.

The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

16.0 COMMUNICATIONS, PUBLIC RELATIONS, AND USE OF LOGOS

The CONSULTANT agrees that it shall 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 CFX and securing its consent in writing, except as required by law. The CONSULTANT also agrees that it shall not publish, copyright or patent any of the data, documents, reports, or other written or electronic materials furnished in compliance with this Agreement, it being understood that, under Paragraph 8.0 hereof, such data or information is the property of CFX.

Regarding the use of logos, printed documents and presentations produced for CFX shall not contain the name of logo of the CONSULTANT unless approved by CFX's Public Affairs Officer or his/her designee. Prior approval by CFX's Public Affairs Officer or his/her designee is required if a copy of the CFX logo or any CFX trademarks, service marks, or other mark (collectively referred as "Marks" is to be used in a document or presentation. The Marks shall not be altered in any way. The width and height of the Marks shall be of equal proportions. If a black and white Marks is utilized, the Marks shall be properly screened to insure all layers of the Marks are visible. The proper presentation of CFX Marks is of utmost importance to CFX. Any questions regarding the use of CFX Marks shall be directed to the CFX Public Affairs Officer or his/her designee.

17.0 STANDARD OF CONDUCT

The CONSULTANT covenants and agrees that it and its employees shall be bound by the standards of conduct provided in the Florida Statutes, Chapter 112, Part III, Section 348.753, and Section 104.31 and the CFX Code of Ethics, as it relates to work performed under this Agreement, which standards will be made a part of this Agreement by reference as though set forth in full. The CONSULTANT agrees to complete the Potential Conflict Disclosure Form with contract execution, annually by July 1, and in the event of changed circumstances. The CONSULTANT agrees to incorporate the first sentence of this paragraph and the second paragraph of this provision in any subcontract into which it might enter with reference to the work performed.

The CONSULTANT acknowledges that it has read CFX's Code of Ethics and the referenced statutes and to the extent applicable to the CONSULTANT, agrees to act in a manner that is consistent with CFX's Code of Ethics.

18.0 DOCUMENTED ALIENS

The CONSULTANT warrants that all persons performing work for CFX under this Agreement, regardless of the nature or duration of such work, shall be United States citizens or properly authorized and documented aliens. The CONSULTANT shall comply with all federal, state and local laws and regulations pertaining to the employment of unauthorized or undocumented aliens at all times during the performance of this Agreement and shall indemnify and hold CFX harmless for any violations of the same. Furthermore, if CFX determines that CONSULTANT has knowingly employed any unauthorized alien in the performance of this Agreement, CFX may immediately and unilaterally terminate this Agreement for cause.

The obligations in Section 18.0, Documented Aliens, shall survive the expiration or termination of this Agreement and continue in full force and effect.

19.0 E-VERIFY CLAUSE

CONSULTANT 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. CONSULTANT shall require all of its subconsultants to verify the employment eligibility of all new employees hired by the subconsultants during the term of the Agreement.

20.0 CONFLICT OF INTEREST

The CONSULTANT shall not knowingly enter into any other contract with CFX during the term of this Agreement which would create or involve a conflict of interest with the services provided herein. Likewise, subconsultants shall not knowingly enter into any other contract with CFX during the term of this Agreement which would create or involve a conflict of interest with the service provided herein and as described below. Questions regarding potential conflicts of interest shall be addressed to the Executive Director for resolution.

During the term of this Agreement, the CONSULTANT is NOT eligible to pursue any advertised construction engineering and inspection projects of CFX as either a prime or subconsultant where the CONSULTANT participated in the oversight of the projects or for any project which the CONSULTANT prepared plans and/or specifications. Subconsultants are also ineligible to pursue construction engineering and inspection projects where they participated in the oversight of the projects or for any project which the subconsultant was involved in the preparation of plans and/or specifications.

21.0 INSPECTOR GENERAL

CONSULTANT agrees to comply with Section 20.055(5), Florida Statutes, and agrees to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. CONSULTANT agree to incorporate in all subcontracts the obligation to comply with Section 20.055(5). The obligations in Section 21.0, Inspector General, shall survive the expiration or termination of this Agreement and continue in full force and effect.

22.0 PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT

Pursuant to Section 287.133(2)(a), Florida Statutes, "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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.” Pursuant to Section 287.134(2)(a), Florida Statutes, “an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.”

23.0 COMPANIES PURSUANT TO SECTION 287.135 AND 215.473

CFX may terminate this Agreement for breach of contract if the Consultant:

- 23.1. submitted a false certification as provided under Florida Statute 287.135(5);
or
- 23.2. been placed on the Scrutinized Companies with Activities in Sudan List; or
- 23.3. been placed on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or
- 23.4. been engaged in business operations in Cuba or Syria; or
- 23.5. found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

24.0 AVAILABILITY OF FUNDS

CFX’s performance and obligation to pay under this contract are contingent upon an annual budget appropriation by its Board. The parties agree that in the event funds are not appropriated, this Agreement may be terminated, which shall be effective upon CFX giving notice to the CONSULTANT to that effect.

25.0 AUDIT AND EXAMINATION OF RECORDS

25.1 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 CONSULTANT’s performance of the Contract determined necessary or desirable by CFX 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 CONSULTANT in determining labor, unit price, or any other component of a bid submitted to CFX.

(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 CONSULTANT in determining a price.

25.2 CFX 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 CONSULTANT or any subcontractor. By submitting a response to the Request for Proposal, CONSULTANT or any subcontractor submits to and agree to comply with the provisions of this section.

25.3 If CFX requests access to or review of any Contract Documents or Proposal Records and CONSULTANT refuses such access or review, or delays such access or review for over ten (10) business days, CONSULTANT shall be in default under its Contract with CFX, and such refusal shall, without any other or additional actions or omissions, constitute grounds for suspension or disqualification of CONSULTANT. These provisions shall not be limited in any manner by the existence of any CONSULTANT claims or pending litigation relating to the Contract. Disqualification or suspension of the CONSULTANT for failure to comply with this section shall also preclude the CONSULTANT from acting in the future as a subcontractor of another contractor doing work for CFX during the period of disqualification or suspension. Disqualification shall mean the CONSULTANT is not eligible for and shall be precluded from doing future work for CFX until reinstated by CFX.

25.4 Final Audit for Project Closeout: The CONSULTANT shall permit CFX, at CFX's option, to perform or have performed, 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 the Contract are subsequently determined to have been inadvertently paid by CFX because of accounting errors or charges not in conformity with the Contract, the CONSULTANT agrees that such amounts are due to CFX upon demand. Final payment to the CONSULTANT shall be adjusted for audit results.

25.5 CONSULTANT 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 CFX, (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.

25.6 The obligations in Section 25.0, Audit and Examination of Records, shall survive the expiration or termination of this Agreement and continue in full force and effect.

26.0 GOVERNING LAW AND VENUE

This Agreement shall be governed by and constructed in accordance with the laws of the State of Florida. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 26.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

27.0 NOTICE

All notices required pursuant to the terms hereof shall be sent by First Class United States Mail. Unless prior written notification of an alternate address for notices is sent, all notices shall be sent to the following addresses:

To CFX: Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807
Attn: Chief of Infrastructure

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807
Attn: General Counsel

To CONSULTANT: RK&K
3504 Lake Lynda Drive, Suite 165
Orlando, FL. 32717
Attn: Michael Lausier, P.E.

RK&K
3504 Lake Lynda Drive, Suite 165
Orlando, FL. 32717
Attn: Miriam Kronisch, P.E.

28.0 HEADINGS

Headings are given to the sections of the Agreement solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of the Agreement.

29.0 CONTRACT LANGUAGE AND INTERPRETATION

All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well known technical or industry meanings, are used in accordance with such recognized meanings. References to persons include their respective functions and capacities.

If the CONSULTANT discovers any material discrepancy, deficiency, ambiguity, error, or omission in this Agreement, or is otherwise in doubt as to the meaning of any provision of the Agreement, the CONSULTANT shall immediately notify CFX and request clarification of CFX's interpretation of this Agreement.

The Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

30.0 ASSIGNMENT

This Agreement may not be assigned without the written consent of CFX.

31.0 SEVERABILITY

The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

32.0 INTEGRATION

This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no other agreements between the parties in connection with the subject matter hereof. No waiver, amendment, or modification of these terms hereof will be valid unless in writing, signed by all parties and only to the extent therein set forth.

33.0 ATTACHMENTS

- Exhibit "A", Scope of Services
- Exhibit "B", Method of Compensation
- Exhibit "C", Details of Cost and Fees
- Exhibit "D", Project Organization Chart
- Exhibit "E", Potential Conflict Disclosure Form

IN WITNESS WHEREOF, the CONSULTANT and CFX have caused this instrument to be signed by their respective duly authorized officials, as of the day and year first above written. This Contract was awarded by CFX's Board of Directors at its meeting on December 12, 2019.

RUMMEL, KLEPPER & KAHL, LLP
dba RK&K

CENTRAL FLORIDA
EXPRESSWAY AUTHORITY

BY: _____
Authorized Signature

BY: _____
Director of Procurement

Title: _____

Print Name: _____

Print Name: _____

ATTEST: _____ (Seal)
Secretary or Notary

Approved as to form and execution, only.

General Counsel for CFX

EXHIBIT A
SCOPE OF SERVICES

SCOPE OF SERVICES

CONSTRUCTION ENGINEERING AND INSPECTION CONSULTANT

I. PURPOSE

CFX requires the assistance of a CONSULTANT to provide construction engineering and inspection services; including but not limited to, contract administration, engineering, inspection, material sampling and testing, claim analysis and evaluation, constructability plan reviews and other services deemed necessary and authorized by CFX, for Contract No. 001530, S.R. 528 / SR 436 Interchange Improvements and SR 528 Widening to Goldenrod Road, Project No. 528-143.

The CONSULTANT shall provide qualified technical and professional personnel to perform the duties and responsibilities assigned under the terms of the Agreement.

The CONSULTANT shall minimize, to the extent possible, CFX's need to apply its own resources to assignments authorized by CFX. CFX, at its option, may elect to expand, reduce or delete the extent of each work element described in this Scope of Services.

There is no guarantee that any or all of the services described in this Scope of Services will be assigned during the term of the Agreement. Further, the CONSULTANT will provide these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services performed by other consultants or CFX staff.

II. GENERAL REQUIREMENTS

The CONSULTANT's work shall be performed and/or directed by the key personnel identified in the Agreement. Any changes in the key personnel by the CONSULTANT shall be subject to review and approval by CFX.

The CONSULTANT must be prequalified by the Florida Department of Transportation (FDOT) to perform the appropriate work categories established by the FDOT.

III. BEGINNING AND LENGTH OF SERVICES

Work shall commence on the date established in the Notice to Proceed and for a period of five (5) years thereafter. For purposes of Exhibit B, Method of Compensation, the term shall be considered 34 months.

IV. SERVICES

The CONSULTANT will perform the following tasks in the conduct of the Agreement. The following tasks provide an example of the type of work to be required but are not intended to be all inclusive.

A. General

It shall be the responsibility of the CONSULTANT to provide services as necessary to administer the construction contracts in a manner so as to verify that the projects are constructed in conformity with the plans, specifications, contract provisions and within the time allotted by the construction contracts.

The CONSULTANT is expected to pursue its work in such a manner as to cover all major contractor activities and make periodic condition inspections regardless of time of day, or date, or weather conditions.

The CONSULTANT shall advise CFX of any omissions, substitutions, defects, or deficiencies noted in the work of the contractor and the corrective action taken. The work provided by the CONSULTANT shall in no way relieve the contractor of responsibility for the satisfactory performance of the construction contract.

B. Resident Inspection

The CONSULTANT shall provide services to monitor the contractor's on-site construction operations, and to inspect the materials entering into the work as required to determine that the quality of workmanship and materials is such that the projects will be completed in substantial conformity with the plans, specifications, and other contract provisions, and within the specified contract time. The CONSULTANT shall keep detailed, accurate records of the Contractor's daily operations, progress, and significant events that affect the work.

The standard procedures and practices for inspection of construction projects are set forth in the FDOT and the CFX Construction Administration Procedures Manuals. The CONSULTANT shall, in general, perform inspection services in accordance with these standard procedures and practices and approved variations as may be appropriate.

C. Testing

The CONSULTANT shall perform sampling and testing of component materials and completed work items to the extent that will verify that the materials and workmanship incorporated in each project are in conformity with the plans, specifications and contract provisions. The minimum sampling frequencies set forth in the FDOT's Materials Sampling, Testing and Reporting Guide or approved variation shall be met. In complying with the aforementioned guide, the

CONSULTANT shall perform the on-site sampling of materials and such testing of materials and completed work items that are normally done in the vicinity of the project.

The CONSULTANT, through the services of its subconsultant, will provide off-site inspection and sampling of materials and components incorporated into the work. When applicable the CONSULTANT shall determine the acceptability of all materials and work performed at off-site facilities on the basis of certifications, certified mill analysis, FDOT labels, FDOT stamps, etc.

Sampling, testing and laboratory methods shall be as required by the aforementioned guide or as modified by the contract provisions.

Documentation reports on sampling and testing shall be submitted to responsible parties during the same week that the construction work is done or as otherwise directed by CFX's representative.

The CONSULTANT shall be responsible for storing and transporting samples to be tested. The CONSULTANT is responsible for the testing of all concrete production, if required. The CONSULTANT, as required by the project documents, will provide daily surveillance of the Contractor's Quality Control activities at the project site, and/or site of production in regard to concrete and perform verification sampling and testing at the specified frequency.

The CONSULTANT shall perform all necessary surveillance and inspection of the on-site hot-mix asphalt operations. The CONSULTANT shall provide surveillance and verification sampling and testing at any hot-mix asphalt plant providing mixes to the project.

D. Management Engineering Services

The CONSULTANT shall perform the management engineering services necessary to verify that proper coordination of the activities of all parties involved in accomplishing completion of the projects is achieved; to maintain complete, accurate records of all activities and events relating to the projects; to properly document the significant changes to the projects; to provide interpretations of the plans, specifications and contract provisions; to make recommendations to CFX to resolve disputes which arise in relation to the construction contracts; and to maintain an adequate level of surveillance of the contractor's activities. The CONSULTANT shall also perform any other management engineering services normally assigned to a Resident Engineer that are required to fulfill its responsibilities under the Agreement. All records and documentation will be in accordance with standard procedures, format and content, and the policies and procedures of CFX.

Services include, but are not limited to the following:

1. At the direction of CFX, schedule and conduct a preconstruction conference for each project. Record significant information and decisions made at this conference and

distribute copies of these minutes to the appropriate parties.

2. Maintain project files in accordance with CFX's methods and utilizing CFX's filing system.
3. Receive, review, and recommend acceptance by CFX of the Contractor's Project Construction Schedule, prepared and submitted in accordance with the Contract Documents.
4. Maintain, on a daily basis, a complete and accurate record of the activities and events relating to the project and a record of the work completed by the contractor, including quantities of pay items in conformity with final estimate preparation procedures and specifications. The CONSULTANT shall immediately report apparent, significant changes in quantity, time, or cost as they are noted.
5. Maintain a roadway and bridge construction diary, including weather.
6. Maintain a log of all materials entering into the work with proper indication of the basis of acceptance of each shipment of material.
7. Maintain records of all sampling and testing accomplished and analyze such records as required to ascertain acceptability of materials and completed work items. Reports for records of work and testing results shall be maintained in the CONSULTANT's files for each individual project.
8. Once each month, prepare a comprehensive tabulation of the quantity of each pay item satisfactorily completed to date. Quantities shall be based on daily records or calculations. Calculations shall be retained. The tabulation will be used for preparation of the monthly progress estimate. The monthly progress estimate will be jointly prepared by the contractor and CONSULTANT. Progress estimates will be submitted to CFX for review and processing.

The CONSULTANT shall make and record such measurements as are necessary to calculate and document quantities for pay items; make and record preconstruction and excavated cross section surveys of the project in those areas where earth work (subsoil excavation) will be paid by calculating volumes removed and paid for within authorized limits at contract unit prices specified in the construction contract. The CONSULTANT will perform incidental engineering surveys as may be necessary to carry out the services and to verify and confirm the accuracy of the contractor's survey layout work on an occasional and random basis.

9. Provide to the contractor interpretations of the plans, specifications, and contract provisions. The CONSULTANT shall consult with CFX when an interpretation involves

complex issues or may have an impact on the cost of performing the work.

10. Analyze problems that arise on a project and proposals submitted by the contractor and prepare and submit a recommendation to CFX.
11. Analyze changes to the plans, specifications, or contract provisions and extra work which appear to be necessary to carry out the intent of the contract when it is determined that a change or extra work is necessary and such work is not within the scope of the original contract.
12. When it is determined that a modification to the original contract for a project is required, due to a necessary change in the character of the work, negotiate prices with the contractor and prepare and submit for approval by CFX a finding of facts and request for contract modification in accordance with applicable procedures.
13. In the event that the contractor gives notice, either written or verbal, that he deems certain work to be performed is beyond the scope of the construction contract, and that he intends to claim additional compensation, the CONSULTANT shall maintain accurate force account records of the costs involved in such work. These records shall include manpower and equipment times and materials installed (temporary or permanent) in the portion of the work in dispute.
14. In the event that the contractor submits a claim for additional compensation, analyze the submittal and prepare a written recommendation based on documented facts to CFX covering validity and reasonableness of charges, and conduct negotiations leading to recommendations for settlement of the claim. Maintain complete force account and other records of work involved in claims.
15. In the event that the Contractor for a project submits a request for extension of the allowable contract time, analyze the request in accordance with the contract and prepare a written recommendation to CFX covering accuracy of statements and the actual effect of delaying factors on completion of controlling work items.
16. Prepare and submit to CFX all project close out documentation, including, but not limited to, formal notification of Final Construction Inspection, Final Acceptance; assembled and indexed written guarantees, certifications, operation and maintenance manuals, and similar items required by the Contract Documents; completed project (Final) Quantity Computation Manual, with supporting documentation; a written summary of any outstanding issues, claims and matters affecting the Final Contract close out process; the Final Estimate; one full size set each from the contractor and the CONSULTANT of the marked As-Built (Record) plans; and similar project close out requirements. This task must be completed within fifteen (15) calendar days after final acceptance of the project by CFX. The CONSULTANT is allowed an additional fifteen (15) calendar days to

complete indexing and boxing project files, coordination of demobilization of CONSULTANT's property, CFX's property, and contractor's removal and cleanup of the Resident Engineer's office facilities.

17. Assist CFX's representatives in preparing for arbitration hearings or litigation that may occur during the CONSULTANT's contract time in connection with a project covered by the Agreement.
18. Monitor each construction project to the extent necessary to determine whether construction activities violate the requirements of any permits. Notify the contractor of any violations or potential violations and require his immediate resolution of the problem. Violations must be reported to CFX immediately.
19. Shop drawing/sample submittals and approvals shall be tracked. Tracking shall include maintaining the status of each submittal as it progresses through review and approval. The CONSULTANT shall actively encourage all reviewers to accomplish reviews promptly. The CONSULTANT will review samples, catalog data, shop drawings, laboratory, shop, and mill tests of materials and equipment, and other data which the contractor is required to submit, only for conformance and compliance with the design concept of the project as set forth by the Contract Documents.
20. Provide thorough and complete coordination between the contractor and utility companies to ensure that conflicting utilities are removed, adjusted, or protected in-place in a timely manner to minimize delays to construction operations. Documentation will be maintained in accordance with the project procedures. Provide quality control of all utility locates using CEI furnished locating technology and equipment.
21. The CONSULTANT's Resident Engineer will conduct a weekly meeting with the respective contractor, subcontractors, and/or utility companies to review plans, schedules, problems, or other areas of concern. The meeting minutes will be prepared and a copy transmitted to CFX within two (2) business days following the meeting.
22. Conduct and document field review of the existing/proposed highway lighting, maintenance of traffic operation during and after normal working hours, weekends, holidays, and during inclement weather. If maintenance of traffic features represent a potential hazard to the public, notify the contractor's representative immediately and verify that corrective action is taken.
23. When needed to prevent delays in contractor's operations, provide the timely analysis of a situation, recommend alternative solutions, prepare any necessary sketches, field data, and other resources required to continue the construction progress.
24. The CONSULTANT shall review the contractor's baseline CPM Schedule, or other

alternative schedule accepted by CFX, as well as the contractor's monthly schedule updates consistent with the requirements of the construction contract. Prepare a detailed As-Built schedule of the contractor's work efforts. If applicable, use a minimum of the same activity codes and descriptions listed in the contractor's CPM schedule to prepare an As-Built schedule of the contractor's activities.

V. PERSONNEL

A. General Requirements

The CONSULTANT shall provide a sufficient number of qualified personnel as necessary to effectively carry out its responsibilities under the Agreement.

B. Personnel Qualifications

The CONSULTANT shall utilize only competent personnel who are qualified by education, experience, and certification where required. The CONSULTANT shall submit in writing to CFX the names of all personnel to be considered for assignment to the construction projects, together with a detailed resume with respect to salary, education, experience qualifications of each individual, and certifications. Minimum qualifications for the CONSULTANT's Resident Engineer and key staff members are defined in Paragraph "E" of this Article.

The CONSULTANT's personnel approval request shall be submitted at least two (2) weeks prior to the date an individual is to report to work.

C. Staffing

The CONSULTANT shall adequately staff the project and shall maintain an appropriate staff after completion of construction to complete the final project closeout. Responsible personnel, thoroughly familiar with all aspects of construction and measurement of the various pay items, shall be available to resolve disputed final pay quantities until the respective contract has been closed out. The qualifications of each person proposed for assignment must be reviewed and approved in writing by CFX. An individual previously approved by CFX whose performance is later determined by CFX to be unsatisfactory shall be replaced by the CONSULTANT within one (1) week after notification.

Personnel identified in the CONSULTANT's fee proposal will be assigned to the construction projects as proposed by the CONSULTANT and are considered by CFX to be committed to performing services under the CONSULTANT's Agreement. Any changes will require written approval of CFX.

When the contractor's operations on a project diminish, the CONSULTANT shall reduce the number of its personnel assigned to that project, as appropriate. Any adjustment of the

CONSULTANT forces as recommended by CFX will be accomplished within one (1) week after notification.

In the event of a construction contract suspension which requires the removal of CONSULTANT forces from the project, the CONSULTANT will be allowed up to a maximum of ten (10) days to demobilize, relocate, or terminate such forces.

D. Licensing for Equipment Operation

The CONSULTANT will be responsible for obtaining proper licenses for equipment and personnel operating equipment when licenses are required. Licensing of surface moisture/density (nuclear) gauges shall be obtained through the State of Florida Department of Health, Bureau of Radiation Control, Radio Active Materials Section. Only nuclear density inspectors approved by the FDOT shall be authorized to operate surface moisture/density gauges.

E. Personnel Training and Experience Standards

The following are the minimum training and experience standards for CONSULTANT personnel.

1. Resident Engineer/Sr. Project Engineer

Registration by the Florida State Board of Engineer Examiners as a Professional Engineer and ten (10) years of highway construction engineering experience. Experience shall include at least five (5) years of major bridge construction and at least five (5) years of roadway construction. Qualifications include the ability to communicate effectively and actively direct a highly complex and specialized construction engineering administration and inspection program; plan and organize the work of subordinate staff members; consult with CFX's Director of Construction and his staff; develop and review policies, methods, practices and procedures; review the program for conformity with FDOT standards and as amended by CFX. The Resident Engineer must be able to interpret and monitor scheduled construction progress; must be qualified to manage field changes, change orders, claims and public complaints.

2. Project Engineer/Project Administrator

A Civil Engineering Degree plus six (6) years of highway construction engineering experience; or ten (10) years of responsible highway construction engineering experience. Experience shall include at least two (2) years of major bridge construction. Receives general instruction regarding assignments and is expected to exercise initiative and independent judgment in solution of work problems. Directs and assigns specific tasks to inspectors and assistants for all phases of the construction project. A master's degree may be substituted for one (1) year of experience.

3. Office Engineer/Contract Support Specialist

High school graduate plus five (5) years construction project related experience. Should exercise independent judgment in planning work details and making technical decisions related to office aspects of the project. Receives general supervision and verbal instructions from Resident Engineer. Must be able to interpret project drawings and technical specifications, organize and summarize construction quantities, and perform computer data entry. Must have technical skill to maintain As-Built (record) drawings.

4. Senior Inspector (Roadway/Bridge)

High School graduate plus eight (8) years of experience in construction inspection (four (4) years of which shall have been in roadway/bridge construction). Responsible for performing highly complex technical assignments in field surveying and construction layout, making and checking engineering computations, inspecting construction work and conducting field tests. Work is performed under general supervision of Project Engineer.

VI. ITEMS TO BE FURNISHED BY CFX TO THE CONSULTANT

The following printed documents, facilities, equipment and services are furnished by CFX, either directly or as provided by the Contractor on selected construction projects.

- A. Project Construction Contract.
- B. Project Construction (Design) Drawings.
- C. Project Supplemental Specifications.
- D. Project Special Provisions.
- E. R.O.W. Drawings, geotechnical reports, permits and similar documents.
- F. Copy of the original plan quantities project computation manual.
- G. CFX Construction Project Administration Procedures.
- H. CFX standardized forms to be used with documentation and reporting procedures.

It is the intent of CFX to provide sufficient office space to accommodate the CONSULTANT's staff during the duration of the assigned construction project. However, if CFX is unable to provide space at any time during the term of the Agreement, the CONSULTANT shall secure the necessary office space to effectively carry out the requirements of this Scope of Services. CFX

will reimburse the CONSULTANT for such office expenses based on costs and fees as provided in the Method of Compensation.

VII. ITEMS TO BE FURNISHED BY THE CONSULTANT

The CONSULTANT shall furnish the quantity of the following items required to effectively perform the work and services required. Except as stated herein, these items are considered normal and incidental to the type of services provided and will not be reimbursed by CFX unless specifically detailed in the costs and fees as provided in the Method of Compensation.

- A. FDOT Standard Specifications for Road and Bridge Construction, edition required by contract documents.
- B. FDOT Roadway and Traffic Design Standards, edition required by contract documents.
- C. FDOT Structures Design Standards, current edition.
- D. FDOT Construction Manual, current edition.
- E. FDOT Materials Sampling, Testing and Reporting Guide, current edition.
- F. FDOT Qualified Products Listing, current edition.
- G. FDOT Utility Accommodation Guide, current edition.
- H. FDOT Inspection-In-Depth of the Materials and Construction Control Process Manual, current edition.
- I. FDOT Basis of Estimates and Computation Manual, current edition.
- J. FDOT Sample Computation Manual, Final Estimate Preparation Short Course, and Carter Key Manual, current edition.
- K. FDOT Guidelines for Determination of Compliance with Equal Employment Opportunity Policies, current edition.
- L. Testing and sampling supplies such as disposable molds for casting concrete cylinders, sample cartons, sample bags, sample cans and other expendable type testing supplies.
- M. Testing and sampling equipment, tools, hand levels, measuring wheels, tapes, rules, protective and warning equipment, and all other required devices to effectively perform the services of testing, sampling, inspection and measurement of the project.

- N. Miscellaneous office supplies and accommodations, such as stationery, rubber stamps, engineering rules, pads, pens, daily diaries, survey books, staplers, punches, electronic calculators, adding machines, tape recorder, mail box, postal fees, and any other items necessary to maintain an office.
- O. Project vehicles for CFX related business. Documentation of mileage for CFX related business will be required.
- P. Project telephones and services, including long distance charges.
- Q. Surface moisture/density (nuclear) gauges, CEI personnel qualification and registration fees, licenses, personnel badges, safety restrictions, carrying lockers, and security systems.
- R. Progress photographs, videos, project claim documentation, and expenditures directed by CFX's representatives.
- S. Applicable software to calculate Monthly Project Progress Estimates in a format acceptable to CFX and all other software packages determined by CFX to be essential to the execution of the Agreement.
- T. Any additional equipment and furnishings considered by the CONSULTANT to perform the required services are optional to the CONSULTANT, at his expense.

VIII. LIAISON

The CONSULTANT shall be fully responsible for performing all tasks assigned under this Scope of Services and interrelated documents on the construction project. All activities and decisions of the CONSULTANT relating to the projects shall be subject to review and approval by CFX. The CONSULTANT shall provide and maintain close coordination and support of all activities, correspondence, documentation, reports and other communication related to construction progress, delays, changes, claims, and significant events, whereby CFX may carry out its responsibilities.

The CONSULTANT will be kept advised of project pre-bid and post-bid activities. Upon confirmation of award of the construction contract and scheduled start of construction, the CONSULTANT shall be ready to assign personnel within two weeks after CFX's notification to the CONSULTANT to begin CEI services. No personnel shall be assigned until written notification has been issued.

Construction Engineering and Inspection forces will generally be required of the CONSULTANT at all times while the contractor is working on the construction contract where traffic is being or could be impacted. The Resident Engineer will designate his responsible alternate at times he

may be absent from the project. If the construction contract is suspended, or the work is slowed for any reason, the CONSULTANT's forces will be adjusted at the direction of CFX.

IX. COOPERATION AND PERFORMANCE OF THE CONSULTANT

During the life of the Agreement, CFX may conduct reviews of the various phases and stages of the CONSULTANT's operations, such as construction inspection, materials sampling and testing, and administrative activities.

Reviews will be conducted in accordance with established CFX policies on work phases to determine compliance with this agreement, and the sufficiency with which procedures are being effectively applied to verify that the construction work and administration activities are performed in reasonable conformity with policies, plans, specifications, and contract provisions. The CONSULTANT shall cooperate and assist CFX's representative in the conduct of the reviews.

When deficiencies are indicated in a review, remedial action shall be immediately implemented by the CONSULTANT in conformance with CFX's recommendations. CFX's remedial recommendations and the CONSULTANT's actions will be documented by CFX. In general, remedial action shall be required commensurate with the degree and nature of the deficiencies cited. Additional compensation will not be allowed for remedial action taken to correct deficiencies by the CONSULTANT. Remedial actions may include any or all of, but are not necessarily limited to, the following actions:

- A. Further subdivide assigned inspection responsibilities, re-assign inspection personnel or assign additional inspection personnel. The CONSULTANT will comply with this action within forty-eight (48) hours of notification.
- B. Replace personnel whose performance has been determined by CFX to be inadequate.
- C. Increase the frequency of the project control testing immediately in the appropriate phase of work when such is the responsibility of the CONSULTANT.
- D. Increase the scope and frequency of training conducted by the CONSULTANT.

X. SUBCONSULTANT SERVICES

Services assigned to subconsultants must be approved in advance by CFX in accordance with the Contract requirements. The subconsultants must be qualified by CFX to perform all work assigned to them.

In the event services of a subconsultant are authorized, the CONSULTANT shall obtain a schedule of rates and CFX shall review and must approve any rates to be paid to the

subconsultant. No subconsultant shall be added with out the prior written authorization of the Director of Construction. No subconsultant shall be added with projected fees over \$25,000.00 without documented prior authorization of CFX Board.

XI. OTHER SERVICES

The CONSULTANT will, upon written authorization by CFX, perform any additional services not otherwise identified in the Agreement as may be required in connection with the project. The following items are not included as part of the Agreement but may be required to supplement the CONSULTANT's services under the Agreement.

- A. The CONSULTANT will, upon review, approval, and written authorization by CFX, make such changes and revisions to the plans and specifications as may be required in order to complete the construction activities.
- B. The CONSULTANT will, upon written request by CFX, provide qualified engineers and/or engineering technicians to serve as engineering witnesses, provide exhibits, and otherwise assist in any litigation or hearings in connection with the construction contract(s).

XII. POST CONSTRUCTION CLAIMS REVIEW

In the event the contractor for the project submits a claim for additional compensation and/or time, and the CONSULTANT has completed the terms of its Agreement with CFX, the CONSULTANT shall, at the written request from CFX, analyze the claim, prepare a recommendation to CFX covering validity and reasonableness of charges and/or assist in negotiations leading to settlement of the claim. Compensation will be separately reimbursed by a supplement to the Agreement.

END OF SCOPE

**CONSENT AGENDA ITEM
#4**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 21, 2019

SUBJECT: Approval of Final Ranking and Authorization for Fee Negotiations for Professional Engineering Consultant Services for Construction Engineering and Inspection (CEI) Services for SR 417 Widening from Landstar Boulevard to Boggy Creek Road
Project 417-149, Contract No. 001605

Letters of Interest for the referenced project was advertised on September 29, 2019. Responses were received from three (3) firms by the deadline. Those firms were: Jacobs Engineering Group, Inc., KCCS, Inc. and Metric Engineering, Inc.

The Evaluation Committee unanimously agreed to shortlist the firms.

As part of the scoring process, the Technical Review Committee heard oral presentations from the firms on November 19, 2019. After the oral presentations were completed, the Technical Review Committee prepared its final ranking. The results of that process are shown below:

<u>Ranking</u>	<u>Firm</u>
1	Metric Engineering, Inc.
2	KCCS, Inc.
3	Jacobs Engineering Group, Inc.

Board approval of the final ranking and authorization to enter into fee negotiations with Metric Engineering, Inc. is requested. Once fee negotiations are completed, Board approval of the negotiated amount and award of contract will be requested. If negotiations with Metric Engineering, Inc. are not successful, Board authorization to enter into negotiations in ranked order is requested.

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

Reviewed by: 
Ben Dreiling, P.E.
Director of Construction



LOI-001605 Technical Review Committee Meeting November 19, 2019 Minutes

Technical Review Committee for Construction Engineering and Inspection (CEI) Consultant Services for SR 417 Widening from Landstar Boulevard to Boggy Creek Road; Contract No. 001605, held a duly noticed meeting on Tuesday, November 19, 2019 at 9:00 a.m. in the Pelican Conference Room (Room 107) at the CFX Administrative Bldg., Orlando, Florida.

Committee Members Present:

Ben Dreiling, Director of Construction
Jack Burch, Resident Engineer
Glenn Pressimone, Chief of Infrastructure
Will Hawthorne, Director of Engineering
Kim Murphy, Project Administrator

Other Attendees:

Aneth Williams, Director of Procurement

Presentations / Q and A:

Aneth Williams began each interview with a brief overview of the process and introduced the Technical Review Committee. This portion of the meeting is closed to the public and is being recorded in accordance with Florida Statute.

Jacobs Engineering Group	9:00 – 9:35 a.m.
Metric Engineering, Inc.	9:45 – 10:20 a.m.
KCCS, Inc.	10:30 – 11:05 a.m.

Evaluation Portion:


The evaluation portion of the meeting is open to the public in accordance with Florida Statutes. The committee members individually scored the proposers and submitted them to Aneth for tallying. The score sheets were tallied by utilizing the rankings assigned by each Committee member based on the raw scores each Proposer received. Below are the results:

<u>FIRM</u>	<u>Points</u>	<u>Ranking</u>
Jacobs Engineering Group	15	03
Metric Engineering, Inc.	06	01
KCCS, Inc.	09	02

Committee recommends CFX Board approve ranking and authorize negotiations in ranked order. Ben Dreiling reviewed and approved the minutes on behalf of the Committee.

There being no other business to come before the Committee; the meeting was adjourned at 11:30 a.m. These minutes are considered to be the official minutes of the Technical Review Committee meeting held Tuesday, November 19, 2019, and no other notes, tapes, etc., taken by anyone takes precedence.

Submitted by:


Aneth Williams

Approved by:


Ben Dreiling

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

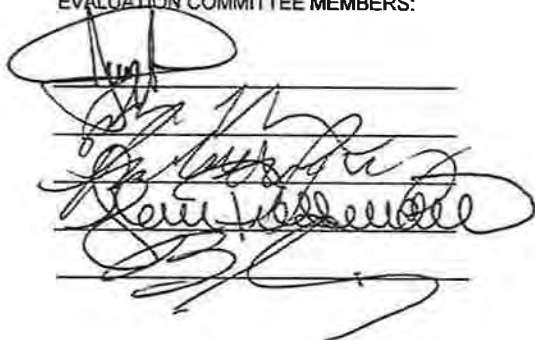
TECHNICAL COMMITTEE MEMBER FINAL SUMMARY RANKING

CEI SERVICES FOR SR 417 WIDENING FROM LANDSTAR BLVD. TO BOGGY CREEK ROAD

PROJECT 417-149, CONTRACT NO. 001605

CONSULTANT	Jack Burch Score	Ben Dreiling Score	Glenn Pressimone Score	Will Hawthorne Score	Kim Murphy Score	TOTAL SCORE	RANKING
JACOBS ENGINEERING GROUP	3	3	3	3	3	15	3
METRIC ENGINEERING, INC.	1	1	1	2	1	6	1
KCCS, INC.	2	2	2	1	2	9	2

EVALUATION COMMITTEE MEMBERS:



Tuesday, November 19, 2019

Tuesday, November 19, 2019

Tuesday, November 19, 2019

Tuesday, November 19, 2019


Tuesday, November 19, 2019

**CONSENT AGENDA ITEM
#5**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 22, 2019

SUBJECT: Approval of Environmental Transportation Planning, LLC as a Subconsultant for the General Engineering Consultant Services Contract with Dewberry Engineers, Inc.
Contract No. 001145

Dewberry Engineers, Inc., CFX's General Engineering Consultant, has requested approval to use Environmental Transportation Planning, LLC to perform noise studies for planning and design. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by Dewberry Engineers, Inc. when its contract with CFX was originally awarded.

Board approval of Environmental Transportation Planning, LLC as a subconsultant to Dewberry Engineers, Inc. is requested.

Reviewed by:



Will Hawthorne, PE
Director of Engineering



CENTRAL FLORIDA EXPRESSWAY AUTHORITY
REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Dewberry Engineers, Inc. Date: October 25, 2019

CFX Contract Name: General Engineering Consultant Services CFX Contract No.: 001145

Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant requests approval to sublet services to:

Subconsultant Name: Environmental Transportation Planning, LLC.

Address: 37 Jackson Avenue, Ponte Vedra Beach, FL 32082

Phone No.: (904) 273-0788

Federal Employee ID No.: 47-5340645

Description of Services to Be Sublet: Noise Studies for Planning & Design

Estimated Beginning Date of Sublet Services: 11/1/19

Estimated Completion Date of Sublet Services: 12/8/21

Estimated Value of Sublet Services*: \$ greater than \$25,000

*(Not to exceed \$25,000 without prior Board Approval)

Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:

Requested By: 

(Signature of Consultant Representative)

Assoc Vice-President

Title

Recommended by: 

(Signature of Appropriate CFX Director/Manager)

Date: 11/21/19

Approved by: 

(Signature of Appropriate Chief)

Date: 11/21/2019


Attach Subconsultant's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM
#6**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

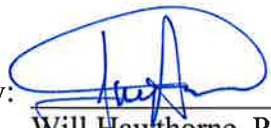
FROM: Aneth Williams 
Director of Procurement

DATE: November 22, 2019

SUBJECT: Approval of GPI Geospatial, Inc. as a Subconsultant for the General Engineering Consultant Services Contract with Dewberry Engineers, Inc.
Contract No. 001145

Dewberry Engineers, Inc., CFX's General Engineering Consultant, has requested approval to use GPI Geospatial, Inc. to perform aerial photogrammetry and mobile LIDAR mapping. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by Dewberry Engineers, Inc. when its contract with CFX was originally awarded.

Board approval of GPI Geospatial, Inc. as a subconsultant to Dewberry Engineers, Inc. is requested.

Reviewed by: 
Will Hawthorne, PE
Director of Engineering



CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Dewberry Engineers, Inc. Date: November 21, 2019

CFX Contract Name: General Engineering Consultant Services CFX Contract No.: 001145

Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant requests approval to sublet services to:

Subconsultant Name: GPI Geospatial, Inc.

Address: 423 S. Keller Rd, Suite 300, Orlando, FL 32810

Phone No.: (407) 851-7880

Federal Employee ID No.: 45-0535502

Description of Services to Be Sublet: Aerial Photogrammetry and mobile LIDAR mapping

Estimated Beginning Date of Sublet Services: 12/16/19

Estimated Completion Date of Sublet Services: 12/8/21

Estimated Value of Sublet Services*: \$ greater than \$25,000

*(Not to exceed \$25,000 without prior Board Approval)

Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:

Requested By: 

(Signature of Consultant Representative)

Program Manager

Title

Recommended by: 

(Signature of Appropriate CFX Director/Manager)

Date: 11/22/19

Approved by: 

(Signature of Appropriate Chief)


Date: 11/22/2019

Attach Subconsultant's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM
#7**

MEMORANDUM

TO: CFX Board Members

FROM: Jeffrey Tecau, Managing Director, Protiviti


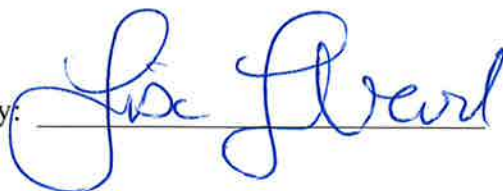
DATE: November 25, 2019

SUBJECT: Internal Audit Reports

Attached, please find the following Internal Audit reports as reviewed and accepted by the Audit Committee on October 30, 2019.

1. IT Project Management Review
2. Tolling System Replacement – LENS Access Control Review
3. Prior Audit Recommendations: Semi-Annual Follow-Up

Reviewed by:



IT Project Management Review

Central Florida Expressway Authority

June 2019

Table of Contents

I.	Executive Summary	1
II.	Scope and Approach	3
III.	Approach to Evaluation of Results	4
IV.	Summary of Improvement Opportunities	5
V.	Detailed Improvement Opportunities	6

I. Executive Summary

Background

During the period between April 9th and May 15th, 2019, Internal Audit (“IA”) performed an IT Project Management review for Central Florida Expressway Authority (“CFX”). CFX’s IT Management requested this project be included in the audit plan to understand where improvement opportunities exist within its project management practices. CFX’s growth in recent years has necessitated a more formalized project management structure. As CFX continues to grow, project management is essential in maintaining a consistent repeatable approach to manage projects throughout their lifecycle. Strong project management processes allow an organization to streamline the intake, prioritization, coordination of resources, and execution of projects to give the organization planning, risk, and objective measurement capabilities throughout the project lifecycle.

Overview

This report represents the improvement opportunities and recommendations based on the IT Project Management Review conducted by IA for CFX. IA reviewed the existing IT Project Management Plan as well as related policies, procedures, and supporting tools within the environment used to assist in the intake, planning, resource management, execution, and completion of projects.

Summary of Improvement Opportunities

As a result of this review, IA identified four (4) improvement opportunities. The observations describe issues with the overall project management practices at CFX. Specifically:

- A project management framework, including supporting protocols and documents, is not yet formalized.
- Formalized project intake processes could be improved to allow CFX to prioritize, resource, and initiate projects in a consistent manner.
- Portfolio management capabilities can be developed or implemented to manage initiatives, programs, and projects throughout their lifecycle.
- Resource management procedures can be enhanced to track internal and external resources and their current project workload.

Summary of Recommendations

To address the above issues, CFX should consider:

- Formalizing a project management framework to which all projects are subject such that projects are managed and governed in a consistent manner.

2019 IT Project Management Review

- Formalizing the project intake process so that a succinct method of requesting projects from IT exists. This process can include specifics such as the requestor, business case, priority, scope and requirements, risks and assumptions, budgets, and stakeholders.
- Continuing plans to implement the portfolio management function within the Cherwell application to track programs and projects within the IT portfolio to ensure projects are coordinated and monitored effectively allowing for risks and setbacks to be identified in a timely manner.
- Developing a formal resource planning and tracking system or process to identify current resource availability and capacity.

2019 IT Project Management Review

II. Scope and Approach

Scope

The scope of this project was the IT Project Management program at CFX. CFX currently manages project lifecycles utilizing Microsoft Project and Cherwell as project management tools to assist in the intake, planning, resource management, and completion of projects.





Approach

IA took the following approach during this review:

- Project intake and demand management
 - Assessed the way requests are received and accepted, both from the business (functionality or performance requests) and internally from IT (proactive technology implementation or continuous improvement)
- Project risk management program and procedures
 - Examined how CFX identifies, analyzes and controls potential threats that could impact projects
- Project/Development methodologies
 - Examined the design and development standards utilized at CFX
 - Reviewed the Quality Assurance team organizational structure
 - Reviewed testing procedures such as unit testing, peer review, integration, regression, and user acceptance
 - Assessed how CFX documents the results of the project
- Project Governance
 - Reviewed the CFX project charter, if applicable
 - Assessed how projects are planned, executed, and monitored
 - Assessed how changes in scope and prioritization affect the project
- Project Health metrics (how are we measuring the success of projects)
 - Assessed how metrics such as cost, schedule, quality, resources, and scope are captured and how variance of each of these items initiates action
 - Requirements management (standards and processes)
 - Examined how changes in requirements are documented, prioritized and approved by all affected stakeholders
- Resource management
 - Assessed how internal resources are assigned to projects
 - Assessed how CFX determines a project will be outsourced
 - Assessed how CFX selects vendors, and how vendors are monitored during the project to ensure the vendor delivers what is required
 - Reviewed the process to ensure that projects have been properly staffed

III. Approach to Evaluation of Results

Observations made during this review have received one of the following rankings defined below. These rankings indicate the significance and likelihood of risk in the business environment. This assessment can be used as a tool by management to determine how quickly attention should be given to each finding specified.

-  **Critical** priority observations are risks to the business that are grave in nature. These vulnerabilities should be addressed and/or fixed immediately because they may pose an immediate danger to the security of the networks, systems, or data involved. Almost no mitigating controls exist.
-  **High** priority observations should be addressed in an expedited manner. While mitigating controls may exist, these issues present an increased level of risk associated and should be addressed as soon as possible.
-  **Moderate** priority observations should be noted and implemented at a later date, but may not pose a real threat to the network and connected systems at this time.
-  **Low** priority observations are system configurations, cultural issues, and technical process-related items observed throughout this review. These items are included to help improve technical processes and assist in defining its long-term strategy.

For each risk identified, IA has assigned an observation ID specific to this assessment. The observation ID is used to reference each risk in a confidential manner through verbal or written communications and in other reporting without revealing the details of the actual issue. The assigned number is noted in the far left column of the summary of observation table in section IV.

IV. Summary of Improvement Opportunities

The following table summarizes the number of observations in each priority ranking associated with this review:

Observation and Significance Summary				
Critical	High	Moderate	Low	Total
0	3	1	0	4

The table below provides a categorical summary of the observations discovered as a result of the review performed:

Observation ID	Description	Significance			
		Critical	High	Moderate	Low
1	Project Management Framework		X		
2	Project Intake Process		X		
3	Portfolio Management		X		
4	Resource Planning			X	

V. Detailed Improvement Opportunities

The four (4) items identified during this review are listed below. They are listed in the order in which CFX should consider addressing them.

1	Project Management Framework
	<p>Opportunity: CFX has not formalized a project management framework to aid in a structured and repeatable approach to projects. This had led to inconsistent performance and results across projects within the organization. A project management framework contains policies, procedures, and document templates to facilitate the project management lifecycle at CFX. Documents such as project charters, budget and scheduling templates, and status update dashboards would provide CFX with the ability to accurately and efficiently execute projects and identify potential risks, as well as having consistent governance over all projects.</p> <p>Without formal project management frameworks, projects may not be governed consistently and may lead to challenges throughout the project lifecycle including project intake, prioritization planning, resource management, and completion.</p>
	<p>Significance: High</p>
	<p>Recommendation: CFX should utilize industry best practices, such as ITIL, to develop a project management framework surrounding their project management lifecycle. The framework should include policies and procedures surrounding demand planning to provide IT with the ability for visibility, prioritization, tractability, and governance of projects. The procedures should include step by step guidance around project intake, prioritization, scoping, budgeting, monitoring, handling changes related to ongoing projects, and completion.</p>
	<p>Management Response:</p> <p>Owner: Jim Greer, Chief Technology and Operations Officer</p> <p>Due Date: July 31, 2020</p> <p>Action Plan: Management will develop a plan for implementing a formalized project management framework that includes policies, procedures and templates to facilitate project management life cycles at CFX. ITIL will be considered as this framework is developed.</p>

2	Project Intake Process
	<p>Opportunity: CFX has not formalized the project intake process to capture key factors of a project including the requestor, business case, priority, scope and requirements, risks, budgets, and stakeholders. In the past, this has come in the form of a document to be filled out with preliminary information such that stakeholders can assist prioritizing and budgeting practices. The document is no longer utilized, which has led to challenges around meeting project requirements and budgets in an efficient manner.</p> <p>Without a formalized project intake processes, an organization may experience challenges in identifying and tracking key factors that may affect the efficiency of projects, visibility of incoming demand, and in turn impede resource and capacity planning.</p>
	<p>Significance: High</p>
	<p>Recommendation: CFX should consider developing a project intake process to explicitly identify and document key factors such as a description of the project and business case, budget, priority, scope and requirements, services impacted, organizational sponsors, and stakeholders. Documenting these factors assists in managing the projects ensuring projects are appropriately prioritized and desired milestones and results are achieved.</p>
	<p>Management Response:</p> <p>Owner: Jim Greer, Chief Technology and Operations Officer</p> <p>Due Date: December 31, 2019</p> <p>Action Plan: Management will develop a project intake template (and supporting process) that can be used by project requestors at CFX that includes business case, priority, scope, risks, budget, and stakeholders.</p>

3	Portfolio Management
	<p>Opportunity: CFX has not implemented a formal portfolio management function within the environment. This has led to challenges surrounding management of resources, prioritizing projects, and risk management of projects. Within the Cherwell tool, a portfolio management function exists to manage ongoing projects around planning, execution, and management, however it has not been implemented.</p> <p>The portfolio management function involves the use of people, processes, and methodologies to plan, execute, monitor, and complete projects within the organization. Without a portfolio management function, an organization's may not be able to continue driving towards goals within the strategic plan.</p>
	<p>Significance: High</p>
	<p>Recommendation: CFX should continue plans to implement the portfolio management function within Cherwell. The portfolio management function should identify initiatives within the strategic plan and coordinate people, processes, and methodologies to plan, execute, monitor, and complete projects.</p>
	<p>Management Response:</p> <p>Owner: Jim Greer, Chief Technology and Operations Officer</p> <p>Due Date: March 31, 2020</p> <p>Action Plan: Management will continue plans to enhance and leverage the Cherwell deployment to support the portfolio management function at CFX.</p>

4	Resource Planning
	<p>Opportunity: Through review of the current project management process, IA found that CFX has not yet formalized the resource management processes in place to track internal and external resources as they work on projects. This has led to CFX on- and off-boarding internal and external resources throughout the project lifecycle due to project requirements, scheduling conflicts, and project prioritization.</p> <p>Without formalized planning and coordination of resources, CFX may encounter challenges meeting budgets and timelines associated with projects. Resource planning ensures proper resources and skills are allocated to projects vital to the overall success of the project.</p>
	<p>Significance: <i>Moderate</i></p>
	<p>Recommendation: CFX should identify requirements and budgets associated with projects and identify current resources and availability required to complete the project. Formalizing resource management will assist CFX in identifying current availability of internal resources and justifying the requirement for external resources.</p>
	<p>Management Response:</p> <p>Owner: Jim Greer, Chief Technology and Operations Officer</p> <p>Due Date: July 31, 2020, contingent on the implementation of an Enterprise Resource Planning (“ERP”) system.</p> <p>Action Plan: Management will formalize resourcing practices with regard to projects at CFX based on requirements and budgets defined in the project intake process (see Observation 2). CFX will integrate these practices within the ERP system planned for 2020.</p>

LENS Access Control Review

Central Florida Expressway Authority

June 2019

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III.	Approach to Evaluation of Results	Error! Bookmark not defined.
IV.	Summary of Observations	Error! Bookmark not defined.
V.	Detailed Observations	Error! Bookmark not defined.

2019 LENS Access Control Review

I. Executive Summary

Background

During the period between June 4th and June 14th, 2019, Internal Audit (“IA”) performed an Access Control Review for Central Florida Expressway Authority (“CFX”). The review focused on the Law Enforcement Notification System (“LENS”) application. LENS is an application within the Toll Management Console (“TMC”) utilized by CFX operations team to monitor toll plazas and lanes to ensure continuous operation. The LENS application is an alerting system used by law enforcement officials to receive alerts for vehicles identified within the application passing through nearby toll plazas.

Overview

This report represents the results of the LENS Access Control Review conducted by IA for CFX. While executing this review, IA interviewed key personnel involved in the access administration process and tested the authentication mechanism for use of strong authentication mechanisms.

As a result of this review, IA identified two (2) observations (one rated Moderate and one rated Low). The observations describe gaps with both process and technology related controls. Specifically:

- User access within the LENS application
- Password requirements

To address the above issues, CFX should consider:

- Developing administrative procedures surrounding account review
- Continuing plans regarding authentication mechanism

2019 LENS Access Control Review

II. Scope and Approach

Scope

The scope of this project was on the review of Access Rights Administration and a review of Authentication of the LENS application.

Approach

IA identified and assessed the controls of Access Rights Administration and Authentication Mechanisms. Specifically:

- The Access Rights Administration component included a review of how CFX:
 - Assigns users and devices only the access required to perform their job duties
 - Updates access rights based on personnel or system changes
 - Periodically reviews users' access rights at an appropriate frequency
- The Authentication Mechanism component included a review of how CFX:
 - Enforces the use of authentication mechanisms (passwords/PINs/tokens/etc.)
 - Enforces strong authentication mechanism parameters
 - Protects users' authenticators (passwords/PINs/tokens)





CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Prior Audit Recommendations Follow-Up

October 15, 2019

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- 5 Status of Past Due Recommendations**
- 6 Status of All Open Recommendations**

EXECUTIVE SUMMARY



Overview

As part of the Fiscal Year 2020 Internal Audit plan, Internal Audit performed a review of open audit recommendations from prior audit reports as of October 15, 2019 to verify the implementation status reported by management. Open recommendations from the following audits were evaluated:



2013 Toll Revenue Audit	2019 Cybersecurity Incident Response
2017 Customer Service Center Performance Assessment	2019 Ransomware Review
2017 Change Management – Tolling System Replacement Audit	2019 Accounting and Financial Controls Review
2018 Penetration Test	2019 Customer Service Center Performance Review
2018 Pay by Plate Audit	2019 IT Project Management Review
2018 IT General Controls Review	2019 Toll Revenue Audit

Internal Audit last reviewed the status of open audit recommendations in February 2019. Results were reported to the Audit Committee at that time.




Objectives, Scope, and Approach

This review was completed as of October 15, 2019 and consisted of meetings with management to determine the status of open audit recommendations and testing of management's response and status. In addition, only those recommendations that remained open at the time of the last review have been included in this report. If a recommendation was completed as of February 15, 2019, no further work was performed and the recommendation was not included for review.

Testing performed included inquiry with the employees responsible for completing the recommendations and/or review of documentation evidence to confirm management's reported status and explanation. In instances where the evidence obtained did not agree with management's status, discussions with management were held and the differences were resolved. There were no instances where management and Internal Audit did not come to an agreement on the status of a prior audit recommendation.

EXECUTIVE SUMMARY

 Recommendations Summary					
Audit	Open as of February 15, 2019	New Action Plans	Completed as of October 15, 2019	In Progress as of October 15, 2019*	Past Due
2013 Toll Revenue Audit	1	0	0	1	0
2017 Customer Service Center Performance Assessment	1	0	1	0	0
2017 Change Management - Tolling System Replacement Audit	1	0	0	1	1
2018 Penetration Test	2	0	2	0	0
2018 Pay By Plate Audit	2	0	1	1	1
2018 IT General Controls Review	1	0	0	1	0
2019 Cyber Security Incident Response Review	0	2	1	1	0
2019 Ransomware Review	0	5	5	0	0
2019 Accounting and Financial Controls Audit	0	6	2	4	1
2019 Customer Service Center Performance Review	0	4	2	2	0
2019 IT Project Management Review	0	4	1	3	0
2019 Toll Revenue Audit	0	4	3	1	0
Total	8	25	18	15	3

*15 recommendations are classified as "In Progress." 3 of these recommendations are considered "Past Due."

STATUS OF PAST DUE RECOMMENDATIONS

Audit	Observation	Management Action Plan	Responsible Party	Summary of Status	Revised Due Date
2017 Change Management - Tolling System Replacement Audit	<p>Though the Critical and High vulnerabilities identified by the vulnerability scanner have been remediated, we recommend that CFX and Transcore continue plans to remediate the remaining vulnerabilities by using a risk-based approach, beginning with the remaining Medium vulnerabilities.</p>	<p>Management will remediate the Medium vulnerabilities near the completion of the TSR project.</p>	<p>Jim Greer, Chief of Technology and Operations</p>	<p>In Progress (Past Due)</p>	<p>12/31/20</p>
2018 Pay by Plate Audit	<p>There is no formal set of procedures that defines standardized parameters for the UTC report and no formal schedule that rotates when records from each set of parameters are reviewed. In addition, the criteria for deciding whether to issue an UTC/UTN is subjective and there is no formal guideline for making the determination.</p>	<p>The Director of Toll Operations, the Manager of E-PASS and Plaza Operations, and the Manager of VES and Special Projects will document written procedures for CFX's Pay By Plate program to address the clearly define the review and monitoring control activity. The procedures will be reviewed and updated at least annually and published on SharePoint.</p>	<p>David Wynne, Director of Toll Operations Paul Schatz, Manager of VES and Special Projects</p>	<p>In Progress (Past Due)</p>	<p>12/31/19</p>
2019 Accounting and Financial Controls Review	<p>To create a new vendor or modify vendor information in the EDEN financial reporting system, the requesting party must submit a new/modify vendor request form to the Contract Compliance Analyst with the appropriate support documentation, W-9, and check request along with applicable management approvals. However, there is no secondary review of vendor additions or modifications by the Contract Compliance Analyst once the vendor is added to EDEN.</p>	<p>CFX will implement a review of new vendors into the Accounting Clerk's review of invoices to ensure the vendor was entered completely and accurately. CFX will further implement a review of vendor changed into the CFOs monthly review procedures.</p>	<p>Lisa Lumbard, CFO</p>	<p>In Progress (Past Due)</p>	<p>6/30/21</p>

STATUS OF ALL OPEN RECOMMENDATIONS

STATUS OF ALL OPEN RECOMMENDATIONS

2013 Toll Revenue Audit

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
Potential Revenue Leakage: Due to the manual nature of the Attendant's Shift Record used as a reconciling item during toll collections audits the third-party contractor auditors are required to make assumptions as to what is being communicated by the TSA.	CFX will automate certain aspects of the Toll Plaza Attendant's Shift Record Log by integrating tracking of unusual occurrences, violations, and insufficient fund transactions within system. This recommendation will be implemented as a function of the Tolling System replacement.	David Wynne, Director of Toll Operations	In Progress - Pending Completion of the Toll System Replacement Project	Per discussion with Dave Wynne, Director of Toll Operations, this recommendation will be implemented within the Toll System Replacement project. The new system is currently operational except for the manned cash lanes. The implementation of this system automation includes collector buttons that are pre-designated for specific occasions and vehicles that come through the tolls. This management action plan is expected to be implemented by the revised due date.	Original: 7/1/15 Revised: 12/31/17 Revised: 12/31/19

2017 Change Management - Tolling System Replacement Audit

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
Though the Critical and High vulnerabilities identified by the vulnerability scanner have been remediated, IA recommends that CFX and Transcore continue plans to remediate the remaining vulnerabilities by using a risk-based approach, beginning with the remaining Medium vulnerabilities.	TSR Vulnerability Scans: Management will remediate the Medium vulnerabilities near the completion of the TSR project.	Jim Greer, Chief of Technology and Operations	In Progress (Past Due)	Per discussion with Jim Greer, Chief of Technology and Operations, the remediation of these vulnerabilities is contingent upon the Toll System Replacement project completion. Due to external factors affecting the priorities of IT project completion, this management action plan is expected to be implemented by the revised due date.	Original: 6/30/19 Revised: 12/31/20

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STATUS OF ALL OPEN RECOMMENDATIONS

2018 Pay By Plate Audit

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
There is no formal set of procedures that defines standardized parameters for the UTC report and no formal schedule that rotates when records from each set of parameters are reviewed. In addition, the criteria for deciding whether to issue an UTC/UTN is subjective and there is no formal guideline for making the determination.	The Director of Toll Operations, the Manager of E-PASS and Plaza Operations, and the Manager of VES and Special Projects will document written procedures for CFX's Pay By Plate program to address the clearly define the review and monitoring control activity. The procedures will be reviewed and updated at least annually and published on SharePoint.	David Wynne, Director of Toll Operations Paul Schatz, Manager of VES and Special Projects	In Progress (Past Due)	Per discussion with David Wynne, Director of Toll Operations, and Paul Schatz, Manager of VES and Special Projects, the algorithms for the new system are complete. CFX is in the process of documenting the process by which tolling transactions are reviewed and monitored. This management action plan is expected to be implemented by the revised due date.	Original: 6/30/19 Revised: 12/31/19

2018 IT General Controls Review **Exempt F.S.282.318**

2019 Cybersecurity Incident Response Review **Exempt F.S.282.318**

2019 Ransomware Review **Exempt F.S.282.318**

STATUS OF ALL OPEN RECOMMENDATIONS

2019 Accounting and Financial Controls Review

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
<p>To create a new vendor or modify vendor information in the EDEN financial reporting system, the requesting party must submit a new/modify vendor request form to the Contract Compliance Analyst with the appropriate support documentation, W-9, and check request along with applicable management approvals.</p> <p>Proper segregation of duties exists between the employees requesting vendor additions and changes and the Contract Compliance Analyst that enters the vendor into EDEN. However, there is no secondary review of vendor additions or modifications by the Contract Compliance Analyst once the vendor is added to EDEN.</p>	CFX will implement a review of new vendors into the Accounting Clerk's review of invoices to ensure the vendor was entered completely and accurately. CFX will further implement a review of vendor changed into the CFOs monthly review procedures.	Lisa Lumbard, CFO	In Progress (Past Due)	Per discussion with the CFO, the EDEN accounting system recognizes every invoice paid as an update to the vendor within the AP module. As such, it is not possible to review monthly vendor changes as part of the current review process. The Authority is currently undergoing the RFP process to implement a new ERP system which, among other things, will allow management to review actual vendor changes in the AP module. In the meantime, the invoice review process has been updated to include a review of vendor information per EDEN against the invoice received to ensure appropriateness of the payee. The implementation of the new ERP system is expected to be completed by the revised due date.	Original: 8/31/19 Revised: 6/30/21
<p>A year-end accounting checklist is maintained electronically to track the performance of all tasks essential to the compilation of the financial statements. However, there is no evidence of a final review of the checklist by management to ensure the completion of all tasks included on the checklist.</p>	CFX will implement a review of the year-end accounting checklist by the Director of Accounting and Finance prior to publishing the CAFR to ensure that all procedures have been completed. The review will be evidenced through electronic sign-off on the year-end annual checklist.	Mike Carlisle, Director of Accounting	In Progress	Per discussion with the Director of Accounting and Finance and inspection of the revised checklist, this management action plan is on target to be implemented by the original due date.	Original: 12/31/19

STATUS OF ALL OPEN RECOMMENDATIONS

2019 Accounting and Financial Controls Review (Continued)

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
There is no defined process or mechanism, such as a checklist, to track new accounting pronouncements or required disclosures and the corresponding implementation dates.	CFX will implement a formalized review of the GFOA comments from the prior year's CAFR to ensure accounting and disclosure requirements are appropriately reflected in the current year CAFR. The review will be evidenced by initial on the GFOA comments by the Director of Accounting and Finance.	Mike Carlisle, Director of Accounting	In Progress	Per discussion with the Director of Accounting and Finance and inspection of the revised year-end checklist which will be used to evidence review and comments, this recommendation is on target to be implemented by the original due date.	Original: 12/31/19
At the close of the external audit, the draft CAFR is reviewed by the Accounting Supervisor, Manager of Accounting and Finance, the Director of Accounting and Finance, the CFO, and the Chief of Staff. However, evidence of each party's final review is not documented except for the CFO's sign-off on the final CAFR.	CFX will enhance the year-end accounting checklist to include sign-off procedures for the review of the financial data within the final CAFR.	Mike Carlisle, Director of Accounting	In Progress	Per discussion with the Director of Accounting and Finance and inspection of the revised year-end checklist which will be used to evidence review and comments, this recommendation is on target to be implemented by the original due date.	Original: 12/31/19

STATUS OF ALL OPEN RECOMMENDATIONS

2019 Customer Service Center Performance Review

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
In June 2016, CFX implemented an IVR solution from Swampfox to identify callers, direct calls, and automate common functions such as payment of toll violations. The current reporting makes it difficult to ascertain how calls are flowing through the IVR, what paths these calls are taking and where improvements could be made to the IVR to increase service automation.	CFX will develop a roadmap or strategy to update and modernize the IVR as it is integrated with the new tolling operations system.	Jim Greer, Chief of Technology and Operations David Wayne, Director of Toll Operations	In Progress	Per discussion with the Chief of Technology and Operations, as a part of the Microsoft development for IVR, "screen pops" have been added which alert CSRs servicing customers of any data that has been already captured by the system, based on account or phone number, so that the CSR is more readily able to address the customers' needs. This process is ongoing and will be completed as part of the updates to the tolling operations system. The management action plan is expected to be completed by the revised due date.	Original: 12/31/19 Revised: 6/30/20
Through the changes and improvements CFX has made to its organizational structure, QA programs, and Workforce management, CFX currently has easy access to accurate and complete historical data related to performance as well as real-time data from its various platforms. While this complete data is available via various historical reports, it is not generally available to the broader contact center team or to the management team.	As CFX pursues the new tolling operations system, CFX will perform a cost analysis to evaluate the cost of capturing detailed level data for 13 months. In addition, CFX will develop a roadmap for designing dashboards and reports that contain pertinent information, performance indicators and trend analysis in a user-friendly presentation.	Jim Greer, Director of Information Technology, and David Wayne, Director of Toll Operations	In progress	Per discussion with the Chief of Technology and Operations, while dashboards are being enhanced on an ongoing basis, the inputs require manual loading and manipulation. To implement this finding, the Authority will continue to explore more options around how to optimize data through further project planning and development. The management action plan is expected to be completed by the revised due date.	Original: 12/31/19 Revised: 12/31/20

STATUS OF ALL OPEN RECOMMENDATIONS

2019 IT Project Management Review

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
CFX has not formalized a project management framework to aid in a structured and repeatable approach to projects. This had led to inconsistent performance and results across projects within the organization.	Management will develop a plan for implementing a formalized project management framework that includes policies, procedures and templates to facilitate project management life cycles at CFX. ITIL will be considered as this framework is developed.	Jim Greer, Chief Technology and Operations Officer	In Progress	Per discussion with the Chief of Technology and Operations, remediation of this finding is in progress and expected to be completed by the original due date.	Original: 7/31/20
CFX has not implemented a formal portfolio management function within the environment. This has led to challenges surrounding management of resources, prioritizing projects, and risk management of projects.	Management will formalize resourcing practices regarding projects at CFX based on requirements and budgets defined in the project intake process (see Observation 2). CFX will integrate these practices within the ERP system planned for 2020.	Jim Greer, Chief Technology and Operations Officer	In Progress	Per discussion with the Chief of Technology and Operations, remediation of this finding is in progress and expected to be completed by the original due date.	Original: 7/31/20
CFX has not yet formalized the resource management processes in place to track internal and external resources as they work on projects. This has led to CFX on- and off-boarding internal and external resources throughout the project lifecycle due to project requirements, scheduling conflicts, and project prioritization.	Management will continue plans to enhance and leverage the Cherwell deployment to support the portfolio management function at CFX.	Jim Greer, Chief Technology and Operations Officer	In Progress	Per discussion with the Chief of Technology and Operations, remediation of this finding is in progress and expected to be completed by the original due date.	Original: 3/31/20

STATUS OF ALL OPEN RECOMMENDATIONS

2019 Toll Revenue Audit

Observation	Management Action Plan	Responsible Party	Status	Summary of Status	Due Date
As errors and outages occur, tickets are submitted for resolution to the Maintenance Monitoring Center operated by TransCore. For six of the 28 system errors tested, at least one of the metrics exceeded the threshold of four hours to solution as defined within maintenance and support service level agreements. Additionally, one instance was identified where no support ticket had been created for an observed issue.	CFX will continue to monitor vendor performance and benchmark according to defined service level agreements.	Joann Chizlett, Director of Special Project	In progress	Per discussion with the Director of Special Projects, this recommendation is on target to be implemented by the original due date.	Original: 12/31/20

Face the Future with Confidence

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**CONSENT AGENDA ITEM
#8**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Diego "Woody" Rodriguez, General Counsel 

DATE: November 25, 2019

RE: *Central Florida Expressway Authority v. Lee H. Shollenberger, et al.*
Case No. 2015-CA-005566-O, Project: 429-205, Parcel 289
Owners: Lee and Jennifer Shollenberger
Easement Holder: Orange County, Florida
Location: Haas Road
Date of Value: June 21, 2016

BACKGROUND INFORMATION

This eminent domain case involved the acquisition of property encumbered by a drainage easement owned by Orange County, Florida, recorded in 1997 at O.R. Book 5203, Page 4002. The drainage easement is adjacent to Haas Road and is only 10 feet by 10 feet. It is at the southern end of the flagged shaped driveway to Parcel 289.

Orange County has agreed to subordinate its easement interests to CFX. Attached is a proposed Subordination of Easement Agreement between CFX and Orange County. The form of the agreement has been reviewed and approved by both the Orange County Public Works Department and the County Attorney's Office.

REQUEST

Board approval of the following is requested:

- (1) Subordination of Easement Agreement for Parcel 289.

The Right of Way Committee recommended approval on November 20, 2019.

Attachments:

- Aerial, Sketch, and Photograph
- Subordination of Easement Agreement for Parcel 289

Subordination of Easement Agreement

Exhibit A



AERIAL PHOTO
PARCEL 289

Subordination of Easement Agreement



1. LOOKING WEST AT THE FRONTAGE ALONG HAAS ROAD

Prepared By and Return To:
Linda S. Brehmer Lanosa, Deputy General Counsel
Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, Florida 32807

SUBORDINATION OF DRAINAGE EASEMENT AGREEMENT
FOR PROJECT 429-205

THIS SUBORDINATION OF DRAINAGE EASEMENT AGREEMENT FOR PROJECT 429-205, entered into this ___ day of _____, 2019, by and between the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a public corporation of the State of Florida (“CFX”), having an address of 4974 ORL Tower Road, Orlando, Florida 32807, and **ORANGE COUNTY**, a political subdivision of the State of Florida and charter county, (“County”), having an address of 201 South Rosalind Avenue, Orlando, Florida 33801.

RECITALS:

WHEREAS, CFX has completed the construction of State Road 429 also known as the Wekiva Parkway, including the construction of an expressway bridge over a portion of Parcel 289 and appurtenant facilities (collectively referred to as the “Expressway System” as defined in Section 348.752(5), Florida Statutes); and

WHEREAS, County has a drainage easement recorded in **O.R. Book 5203, Page 4002**, included as part of the CFX eminent domain case (*Central Florida Expressway Authority v. Shollenberger, et al.*, Ninth Judicial Circuit Case No. 2015-CA-005566-O), hereinafter “**Easement Area**,” encumbering certain lands hereinafter described that have been determined necessary for expressway purposes; and

WHEREAS, the use of these lands for expressway purposes requires subordination of the interest in such lands by County to CFX; and

WHEREAS, County has the authority to subordinate its interest as hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties hereto, County and CFX agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. **Subordination.** County subordinates to CFX, its successors and assigns, any and all of its existing or future easement only to the extent they encumber the listed property in the lands described in the Easement Area to the property rights of CFX for the purpose of constructing, improving, and maintaining the Expressway System over, through, upon, and/or across such lands.

3. **Reservation of Rights.** County reserves the right to construct, operate, maintain, improve, add to, upgrade, remove, or relocate facilities on, within, and upon the lands described within Easement Area herein in accordance with CFX's current minimum standards, as may be amended, for such facilities as required by the State of Florida Department of Transportation ("FDOT"), Utility Accommodation Guide. Prior to entering CFX's property or engaging in any activities within CFX's property, County shall apply for a permit from CFX. In the exercise of the rights and privileges under this paragraph, County shall not damage or disturb any improvements located outside of the Easement Area and, upon completion of any work, shall repair and restore any damage to CFX property or improvements to the satisfaction of CFX. County shall be responsible for the proper construction, operation, maintenance and repair of the facilities installed and maintained by County, and CFX shall assume no responsibility or liability for the maintenance, repair or safe operation of such facilities. In addition to the foregoing, County shall have reasonable right to enter upon the lands, described herein, for the purpose of trimming such trees, brush, and growth which may endanger or otherwise interfere with such facilities, provided that such rights do not interfere with the operation and safety of CFX's facilities. All entries upon property owned by CFX by County, its employees, agents and contractors, shall be at County's risk and expense.

4. **Non-Interference with Facilities.** CFX covenants not to interfere with County's facilities within the Easement Area.

5. **General Provisions.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein shall constitute a waiver of either party's right to demand strict compliance with the terms hereof. This Agreement contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the parties hereto unless such amendment is in writing and executed by the parties. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. The headings inserted at the beginning of each paragraph are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. This Agreement shall be interpreted under the laws of Florida. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above written.

Signed, sealed and delivered
in our presence as witnesses:

(Print Name)

(Print Name)

**CENTRAL FLORIDA
EXPRESSWAY AUTHORITY**

By: _____

Print Name: _____

Title: _____

Approved as to form for execution by the
Authorized Signatory of the Central
Expressway Authority

By: _____

Linda S. Brehmer Lanosa
Deputy General Counsel

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ as _____ of CENTRAL FLORIDA EXPRESSWAY AUTHORITY, an agency of the State of Florida, who is personally known to me or has produced _____ as identification.

Notary Public

Print Name

Notary Public, State of Florida
Commission No. _____
My commission expires: _____

Signed, sealed and delivered
in our presence as witnesses:

ORANGE COUNTY, FLORIDA

(Print Name)

By: _____

Print Name: _____

Title: _____

(Print Name)

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by _____ as _____ of Orange County, Florida, on behalf of the County, who is personally known to me or has produced _____ as identification and who did/did not take an oath.

Notary Public


Print Name

Notary Public, State of Florida
Commission No. _____
My commission expires:

**CONSENT AGENDA ITEM
#9**

MEMORANDUM

TO: CFX Board Members

FROM: Diego “Woody” Rodriguez, General Counsel 

DATE: November 25, 2019

RE: Agreement for the Donation of Limited Access Rights along a portion of Ocoee Village located at the northeast corner of SR 429 and SR 438 a/k/a Franklin Street
Owner: 501 Franklin Land Trust
Trustee: Land Trustee, LLC
Project 429-152, Parcel 62-115 (Portion)

BACKGROUND INFORMATION

The owner of the property located at the northeast corner of SR 429 and Franklin Street has agreed to donate a 227-foot limited access line to CFX by delivering the attached Quit Claim Deed. The donation of the limited access line to CFX will benefit the health, safety and welfare of the public by prohibiting driveway connections in areas that are too close to expressway ramps. As consideration for the donation, CFX must approve property owner’s request for a driveway connection. The driveway connection was provided to the Florida Department of Transportation and they have no objections to its designed location. CFX’s consultant has also reviewed the location of the proposed driveway connection and has no objections.

REQUEST

Board approval of the following is requested:

- (1) Approval for a Donation of Limited Access Rights along SR 438 a/k/a Franklin Street.

The Right of Way Committee recommended approval on November 20, 2019.

Attachments:

- Agreement for the Donation of Limited Access Rights Along SR 438 a/k/a Franklin Street
- Quit Claim Deed

**AGREEMENT FOR THE DONATION OF LIMITED ACCESS RIGHTS
ALONG SR 438 A/K/A FRANKLIN STREET
(S.R. 429-602, Parcel 62-115)**

THIS AGREEMENT is made and entered into on the last date of execution below by and between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body corporate and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, whose address is 4974 ORL Tower Road, Orlando, Florida 32807 ("CFX") and 501 Franklin Land Trust, a Florida Land Trust, whose address is 2400 East Colonial Drive, Suite 2400, Orlando, Florida 32803 ("Owner"). CFX and Owner are sometimes collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, pursuant to section 348.753, Florida Statutes, CFX is empowered to construct, improve, maintain, and operate the Central Florida Expressway System ("Expressway System") and, in connection therewith, to construct any extensions, additions or improvements to said system or appurtenant facilities, including all necessary approaches, roads, bridges and avenues of access; and

WHEREAS, the Owner desires to donate limited access rights to CFX subject to the receipt of CFX's approval of a driveway connection;

NOW THEREFORE, for and in consideration of the mutual agreements herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby expressly acknowledged, CFX and Owner agree as follows:

1. **Owner's Conveyance.** Owner shall convey to CFX by Quit Claim Deed the limited access rights more particularly described in **Exhibit "A"** attached hereto and made a part hereof, collectively referred to the "Property." The Quit Claim Deed to be executed and delivered under the provisions of this paragraph shall be in a form substantially similar to **Exhibit "B."**

2. **Donation.** The Owner agrees to donate the limited access rights to CFX in return for CFX's consent to the driveway connections identified in Exhibit "C" attached hereto and made part hereof commonly referred to as the "Owner's Driveway Connection Plans." CFX has the right to review Owner's current site plans and other documentation to evaluate the impact on CFX's property and easement.

3. **Notices.** Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CFX: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: Executive Director
Telephone: (407) 690-5000

With a copy to: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, Florida 32807
Attn: General Counsel
Telephone: (407) 690-5000

OWNER: 501 Franklin Land Trust
2400 East Colonial Drive
Suite 200
Orlando, Florida 32803
Attn: Trustee
Telephone: (407) 447-5000

With a copy to: 501 Franklin Land Trust
2400 East Colonial Drive
Suite 200
Orlando, Florida 32803
Attn: Manager of Franklin Management LLC
Telephone: (407) 447-5000

or to such other address as either party hereto shall from time to time designate to the other party by notice in writing as herein provided.

4. General Provisions. No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by both Parties. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. City and CFX do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be executed and

delivered by each party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The Parties hereto agree that the exclusive venue and jurisdiction for any legal action authorized hereunder shall be in the courts of Orange County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF.

5. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

6. Survival of Provisions. All covenants, representations and warranties set forth in this Agreement shall survive the Closing and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.

7. Effective Date. The effective date of this Agreement shall be the date the last of the following has occurred, each of which is a condition precedent:

- a. Approval by the Owner;
- b. Approval by the CFX Board and execution by its Chairman or another duly authorized CDX Official; and
- c. The occurrence of the requirements of CFX's Property Acquisition, Disposition and Permitting Procedures Manual including CFX's receipt of a certificate from its Consulting Engineer after evaluation of any and all impacts.

(the rest of this page left intentionally blank)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in a manner and form sufficient to bind them on the date set forth herein below.

OWNER

By: _____

Print Name: Spencer Putnam

Title: Manager of the Trustee

Date: November, 2019

ATTEST:

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

BY: _____
CHAIRMAN JAY MADARA

Date: _____

ATTEST: _____

Regla ("Mimi") Lamaute
Recording Clerk

**APPROVED AS TO FORM FOR
RELIANCE BY CFX ONLY**

By: _____
General Counsel

**APPROVED BY THE CFX BOARD ON
_____, 2019, UNDER AGENDA
ITEM NO. _____.**

EXHIBIT A

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
SR 429
PROJECT NO. 429-152
PARCEL 62-115 - PORTION

PURPOSE: ESTABLISH LIMITED ACCESS RIGHTS
ESTATE: FEE SIMPLE

LEGAL DESCRIPTION

ALL RIGHTS OF INGRESS, EGRESS, LIGHT, AIR AND VIEW BETWEEN THE PROPERTIES LYING ON EITHER SIDE OF THE FOLLOWING DESCRIBED LINE LYING IN A PORTION OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 22 SOUTH, RANGE 28 EAST, ORANGE COUNTY, FLORIDA, BEING A FOUND AXLE AS SHOWN ON THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY RIGHT OF WAY MAP FOR WESTERN BELTWAY (SR 429), PROJECT NUMBER 75320-6460-602/603; THENCE SOUTH 00°01'17" EAST ALONG THE WEST LINE OF THE SOUTHWEST 1/4 OF SAID SECTION 18, A DISTANCE OF 469.83 FEET TO THE INTERSECTION WITH THE EXISTING NORTH RIGHT OF WAY LINE OF STATE ROAD 438 AS SHOWN ON SAID MAP; THENCE DEPARTING SAID WEST LINE, RUN THE FOLLOWING FOUR COURSES ALONG SAID NORTH RIGHT OF WAY LINE; RUN NORTH 89°14'54" EAST, A DISTANCE OF 228.49 FEET; THENCE NORTH 89°22'44" EAST, A DISTANCE OF 1060.30 FEET; THENCE NORTH 00°18'52" WEST, A DISTANCE OF 32.92 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89°19'03" EAST, A DISTANCE OF 227.00 FEET TO THE POINT OF TERMINUS.

LIMITED ACCESS RIGHTS ONLY ALONG A LINE WITHOUT AREA.

SEE SHEET 2 & 3 FOR SKETCH OF DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

SHEET 1 OF 4

FOR: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY

DATE: NOVEMBER 07, 2019

PROJECT NO.: D08-01

DRAWN: RTS CHECKED: RJH

SR 429
CFX PROJECT NO.
429-152



GEODATA CONSULTANTS, INC.

SURVEYING & MAPPING

1349 S INTERNATIONAL PKWY

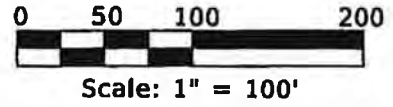
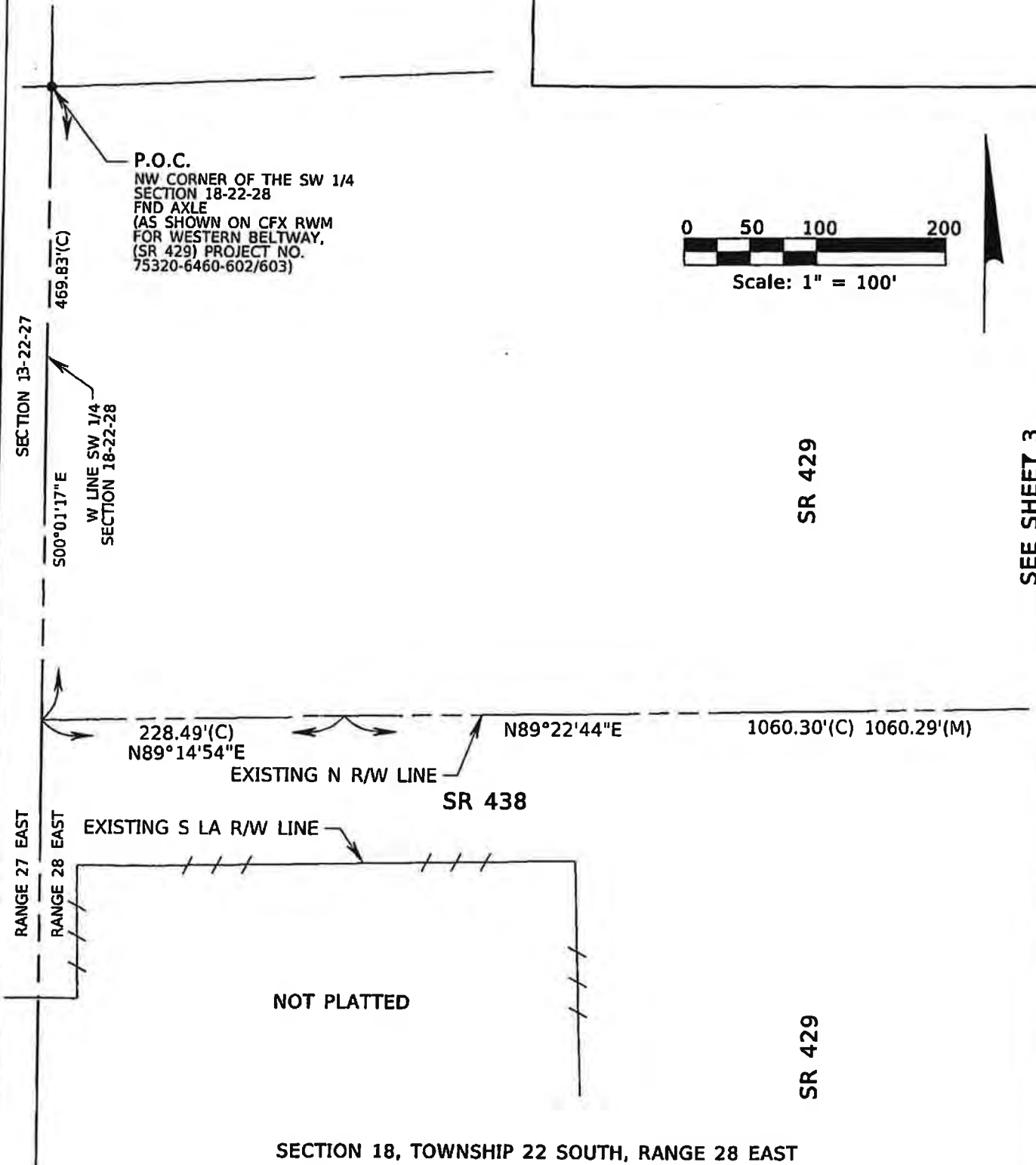
SUITE 2401

LAKE MARY, FLORIDA 32746

VOICE: (407) 732-6965 FAX: 878-0841

LAND SURVEYOR BUSINESS LICENSE NO. 6556

SKETCH OF DESCRIPTION



SEE SHEET 3

SEE SHEET 1 FOR LEGAL DESCRIPTION
 SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

SHEET 2 OF 4

FOR: CENTRAL FLORIDA
 EXPRESSWAY AUTHORITY
 DATE: NOVEMBER 07, 2019
 PROJECT NO.: D08-01
 DRAWN: RTS CHECKED: RJH

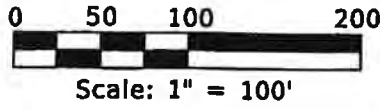
SR 429
CFX PROJECT NO.
429-152



GEODATA CONSULTANTS, INC.
 SURVEYING & MAPPING
 1349 S INTERNATIONAL PKWY
 SUITE 2401
 LAKE MARY, FLORIDA 32746
 VOICE: (407) 732-6965 FAX: 878-0841
 LAND SURVEYOR BUSINESS LICENSE NO. 6556

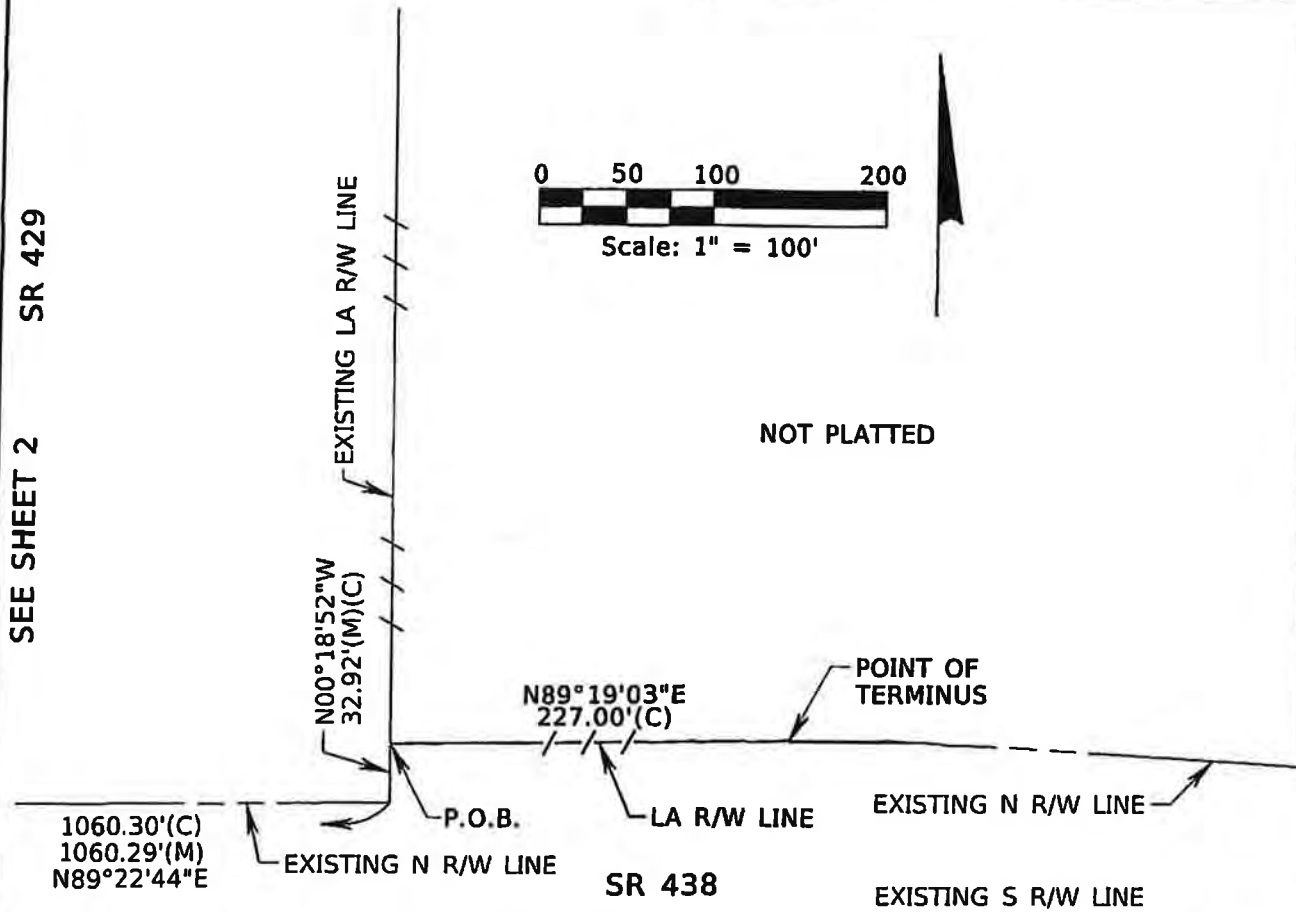
SKETCH OF DESCRIPTION

SEE SHEET 2
SR 429



NOT PLATTED

UNNAMED STREET
BLOCK C, HICKEY SUBDIVISION
PLAT BOOK G, PAGE 69



SR 429

NOT PLATTED

SECTION 18, TOWNSHIP 22 SOUTH, RANGE 28 EAST

SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEET 4 FOR GENERAL NOTES AND LEGEND

SHEET 3 OF 4

FOR: CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
DATE: NOVEMBER 07, 2019
PROJECT NO.: D08-01
DRAWN: RTS CHECKED: RJH

SR 429
CFX PROJECT NO.
429-152



GEODATA CONSULTANTS, INC.
SURVEYING & MAPPING
1349 S INTERNATIONAL PKWY
SUITE 2401
LAKE MARY, FLORIDA 32746
VOICE: (407) 732-6965 FAX: 878-0841
LAND SURVEYOR BUSINESS LICENSE NO. 6556

SKETCH OF DESCRIPTION

LEGEND AND ABBREVIATIONS

AC	= ACRES	NO.	= NUMBER
(C)	= CALCULATED	P.O.B.	= POINT OF BEGINNING
CFX	= CENTRAL FLORIDA EXPRESSWAY AUTHORITY	P.O.C.	= POINT OF COMMENCEMENT
FND	= FOUND	R/W	= RIGHT OF WAY
LA	= LIMITED ACCESS	(RWM) OR (M)	= RIGHT OF WAY MAP
		SEC	= SECTION
		SF	= SQUARE FEET
		SR	= STATE ROAD

GENERAL NOTES:

1. THE PURPOSE OF THIS SKETCH IS TO DELINEATE THE DESCRIPTION ATTACHED HERETO. THIS DOES NOT REPRESENT A BOUNDARY SURVEY.
2. THE BEARINGS SHOWN HEREON ARE RELATIVE TO THE FLORIDA STATE PLANE COORDINATE SYSTEM, NORTH AMERICAN DATUM OF 1983 ADJUSTMENT (NAD83), EAST ZONE, WITH THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 18, TOWNSHIP 22 SOUTH, RANGE 28 EAST, HAVING A BEARING OF SOUTH 00°01'17" EAST.
3. UNLESS IT BEARS THE SIGNATURE AND ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER, THIS SKETCH IS FOR INFORMATIONAL PURPOSES ONLY.
4. THIS SKETCH MAY HAVE BEEN REDUCED IN SIZE BY REPRODUCTION. THIS MUST BE CONSIDERED WHEN OBTAINING SCALED DATA.
5. ALL RECORDING REFERENCES SHOWN ON THIS SKETCH REFER TO THE PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA, UNLESS OTHERWISE NOTED.
6. THIS SKETCH IS NOT A SURVEY.

SEE SHEET 1 FOR LEGAL DESCRIPTION
SEE SHEETS 2 & 3 FOR SKETCH OF DESCRIPTION

SHEET 4 OF 4

I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER CERTIFY THAT THIS LEGAL DESCRIPTION AND SKETCH MEETS THE STANDARDS OF PRACTICE AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN CHAPTER 53-17, FLORIDA ADMINISTRATIVE CODE, PURSUANT TO CHAPTER 472 OF THE FLORIDA STATUTES. SUBJECT TO NOTES AND NOTATIONS SHOWN HEREON.

H. Paul deVivere, Professional Land Surveyor No. 4990

DATE

REVISION	BY	DATE

FOR: CENTRAL FLORIDA EXPRESSWAY AUTHORITY
DATE: NOVEMBER 07, 2019
PROJECT NO.: D08-01
DRAWN: RTS CHECKED: RJH

SR 429
CFX PROJECT NO.
429-152



GEODATA CONSULTANTS, INC.
SURVEYING & MAPPING
1349.S INTERNATIONAL PKWY
SUITE 2401
LAKE MARY, FLORIDA 32746
VOICE: (407) 732-6965 FAX: 878-0841
LAND SURVEYOR BUSINESS LICENSE NO. 6556

SR 438 A/KA FRANKLIN ST. (SR 429 - 602. PARCEL 62-115)

EXHIBIT "B"
QUIT CLAIM DEED

This instrument prepared by:

Central Florida Expressway Authority
4974 ORL Tower Road
Orlando, FL 32807

Project: SR 429, Section 75320-6460-602/603
Parcel 62-115

NOTE TO RECORDER: This document constitutes a conveyance from a state agency or instrumentality to an agency of the state and is not subject to documentary stamp tax. Department of Revenue Rules 12B-4.0114(10), F.A.C.

QUIT-CLAIM DEED

(EXHIBIT B)

THIS QUIT-CLAIM DEED, executed on November 7, 2019, by Land Trustee, LLC, a Florida limited liability company, as Trustee of the 501 Franklin Land Trust, a Florida land trust, by virtue of Warranty Deed recorded December 3, 2015 in Official Records Book 11022, Page 3813, Public Records of Orange County, Florida, whose address is 2400 E. Colonial Dr. Suite 200, Orlando, FL 32803, GRANTOR, to Central Florida Expressway Authority, a body politic and corporate, and an agency of the State of Florida, created by Part III of Chapter 348, Florida Statutes, having its principal place of business at 4974 ORL Tower Road, Orlando, Florida 32807, GRANTEE.

WITNESSETH: That the said GRANTOR, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable considerations, in hand paid by the said GRANTEE, the receipt whereof is hereby acknowledged, does hereby remise, release, and quit-claim unto the said GRANTEE forever, all the right, title, interest, claim, and demand – including all rights of ingress, egress, light, air, and view to, from, or across the line as described in Schedule "A" – which the said GRANTOR has in and to the following described lot, piece, or parcel of land, situate, lying and being in Orange County, Florida, to-wit:

SEE ATTACHED SCHEDULE "A"

Property Appraiser's Parcel Identification Number:

Unassigned

TO HAVE AND TO HOLD the same together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, lien, equity, and claim, including all rights of ingress, egress, light, air, and view to, from, or across the line as described in Schedule "A", whatsoever of the said GRANTOR, either in law or equity, to the only proper use, benefit, and behoove of the said GRANTEE forever.

IN WITNESS WHEREOF, the said GRANTOR has caused these presents to be executed in its name by its Board, acting by the County Mayor, the day and year aforesaid.

Signed, sealed, and delivered
in the presence of:

First Witness:

Brittany Aslin
Signature

Brittany Aslin
Print Name

Second Witness:

Caitlin Williamson
Signature

Caitlin Williamson
Print Name

"GRANTOR"

LAND TRUSTEE, LLC, A FLORIDA LIMITED LIABILITY COMPANY, AS TRUSTEE OF THE 501 FRANKLIN LAND TRUST, A FLORIDA LAND TRUST

Spencer Putnam
Signature

Name: Spencer Putnam

Title: Manager

Date: 11/7/19

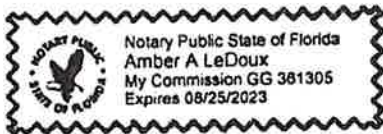
STATUTORY SHORT FORM OF ACKNOWLEDGMENT PER § 695.25, FLA. STAT.

STATE OF FLORIDA)
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 7 day of November, 2019, by Spencer Putnam, as Manager of the Trustee, for GRANTOR, who is personally known to me OR produced Florida Drivers License as identification.

NOTARY PUBLIC

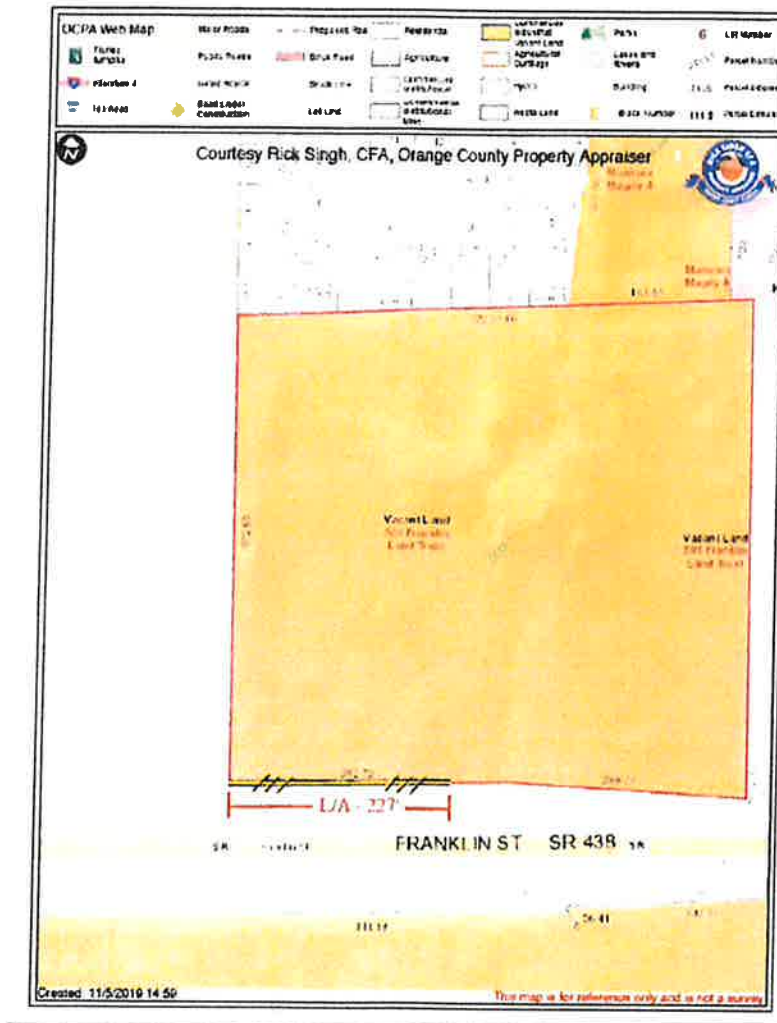
Signature: *Amber A LeDoux*
Signature of Notary Public - State of Florida




Print, Type or Stamp Commissioned Name of Notary Public

SCHEDULE "A"

"WHEREAS, the Owner desires to donate limited access rights to CFX *along a line from the SW corner of the 501 Franklin property, shown below, heading east for 227'* subject to the receipt of CFX's approval of a driveway connection *for a driveway as located at 227' from the SW corner of the property extending east, as shown on the plan named Exhibit C (Dimension Plan 1 South, created by Denham Engineering, Inc., dated 07-22-19)*



 OWNER
 INTIALS

 _____ CFX
 INTIALS

SCHEDULE A:
 TO THE QUIT-CLAIM DEED AND EXHIBIT A TO THE AGREEMENT FOR THE DONATION OF LIMITED ACCESS RIGHTS ALONG
 SR 438 A/K/A FRANKLIN ST. (SR 429 - 602. PARCEL 62-115)

EXHIBIT C

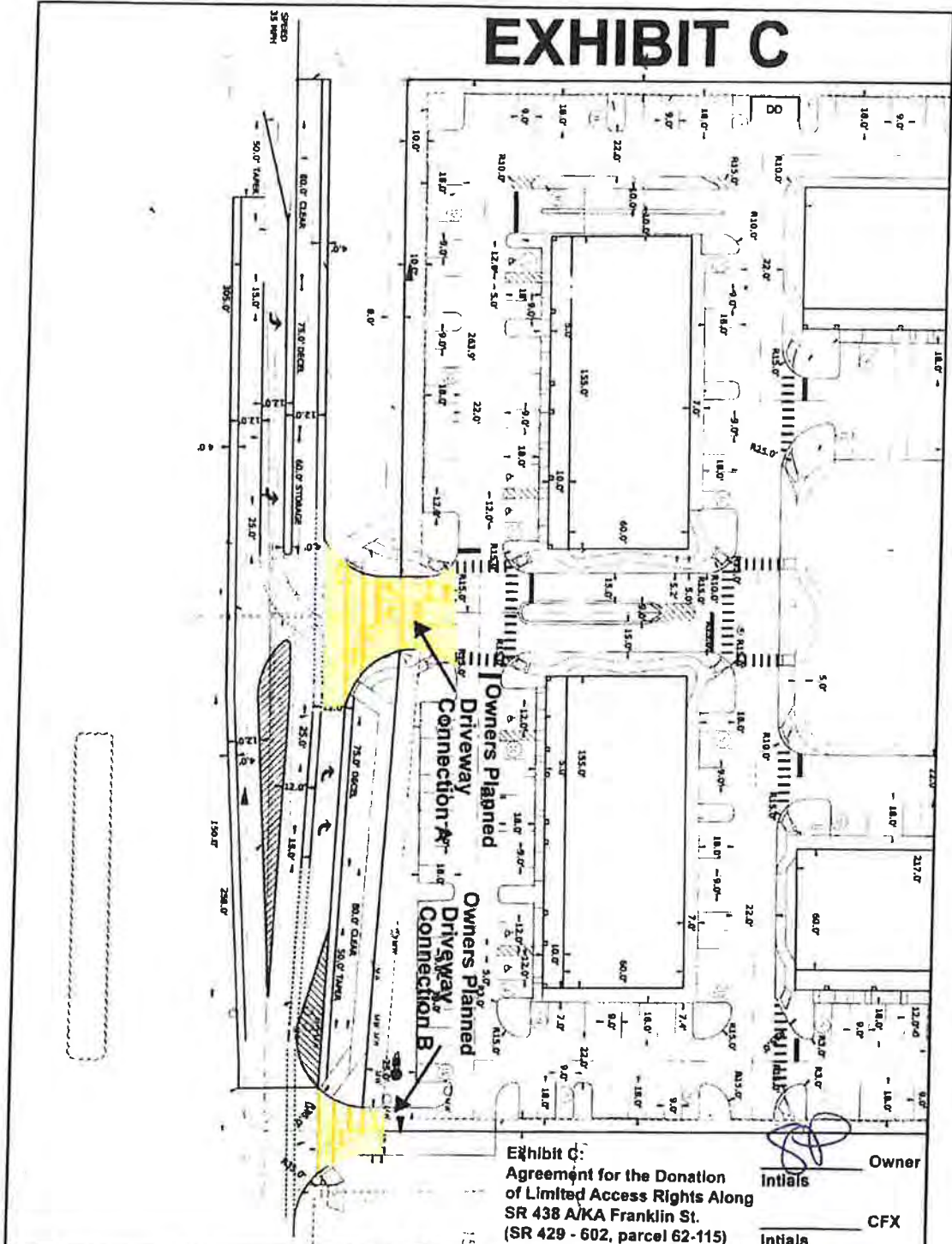


Exhibit C:
 Agreement for the Donation
 of Limited Access Rights Along
 SR 438 A/K A Franklin St.
 (SR 429 - 602, parcel 62-115)

Owner
 Initials
 CFX
 Initials


<p>Denham Engineering, LLC 407 217-3447 11111 South US Highway 1 Suite 100, Jacksonville, FL 32218 www.denhamengineering.com</p>	<p>Franklin Management LLC</p>	<p>Ocoee Village Ocoee, FL</p>	<p>Final Site Plans</p>	<p>Dimension Plan 1 South</p>	<p>T. Brian Davidson, P.E. Professional Engineer License No. 12488 State of Florida</p>	<p>Sheet Number 6A of 14</p>
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**CONSENT AGENDA ITEM
#10**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 27, 2019

SUBJECT: Approval of Consortium Appraisal, Inc. as a Subconsultant for the Right of Way Counsel Services Contract with Nelson Mullins Riley & Scarborough, LLP
Contract No. 001477

Nelson Mullins Riley & Scarborough, LLP, CFX's Right of Way Counsel Services Consultant has requested approval to use Consortium Appraisal, Inc. to perform appraisal services. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by Nelson Mullins Riley & Scarborough, LLP when its contract with CFX was originally awarded.

Board approval of Consortium Appraisal, Inc. as subconsultant to Nelson Mullins Riley & Scarborough, LLP is requested.

Reviewed by: 
Diego "Woody" Rodriguez
General Counsel

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: Nelson Mullins Broad + Casel Date: 11/27/19
CFX Contract Name: Row Counsel Services CFX Contract No.: 001477

Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant requests approval to sublet services to:

Subconsultant Name: Consortium Appraisal, Inc.
Address: 180 S. Knowles Ave, Suite 3
Phone No.: 407-647-0800

Federal Employee ID No.: _____


Description of Services to Be Sublet: Appraisal Services

Estimated Beginning Date of Sublet Services: 5/1/2019

Estimated Completion Date of Sublet Services: 2/27/2021

Estimated Value of Sublet Services*: \$ > 25,000⁰⁰
*(Not to exceed \$25,000 without prior Board Approval)

Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:

Requested By: 
(Signature of Consultant Representative)
OF Counsel Attorney
Title

Recommended by: _____ Date: _____
(Signature of Appropriate CFX Director/Manager)

Approved by:  Date: 11/27/19
(Signature of Appropriate Chief)


Attach Subconsultant's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM
#11**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 21, 2019

SUBJECT: Approval of Contract Award to LaFleur Nurseries & Garden Center, LLC for SR 429/SR 453 Wekiva Parkway Interchange Landscape Improvements Project 429-827, Contract No. 001602

An Invitation to Bid for the referenced project was advertised on September 15, 2019. Responses to the invitation were received from three (3) contractors by the November 18, 2019 deadline.

Bid results were as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1. LaFleur Nurseries & Garden Center, LLC	\$1,417,331.50
2. Arazoza Brothers Corp.	\$1,644,664.00
3. Green Construction Technologies, Inc.	\$2,069,131.14

The engineer's estimate for this project is \$1,605,366.75 and \$2,110,000.00 is included in the Five-Year Work Plan.

The Landscape Architect of Record for Project 429-827 has reviewed the low bid submitted by LaFleur Nurseries & Garden Center, LLC and determined that the low bid unit prices are not unbalanced.

This project consists of providing all labor, materials, equipment and incidentals necessary to landscape the SR 429/SR 453 Wekiva Parkway Interchange.

The Procurement Department has evaluated the bids and has determined the bid from LaFleur Nurseries & Garden Center, LLC to be responsible and responsive to the bidding requirements. Board award of the contract to LaFleur Nurseries & Garden Center, LLC in the amount of \$1,417,331.50 is recommended.

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

Reviewed by: 
Donald Budnovich, P.E.
Director of Maintenance



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

CONTRACT

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
LAFLEUR NURSERIES AND GARDEN CENTER, LLC**

**SR 429 / SR 453 WEKIVA PARKWAY INTERCHANGE
LANDSCAPE IMPROVEMENTS**

**PROJECT 429-827
CONTRACT NO. 001602**

**CONTRACT DATE: DECEMBER 12, 2019
CONTRACT AMOUNT: \$1,417,331.50**

**CENTRAL FLORIDA
EXPRESSWAY AUTHORITY**

**CONTRACT, MEMORANDUM OF AGREEMENT, GENERAL
SPECIFICATIONS, TECHNICAL SPECIFICATIONS, SPECIAL
PROVISIONS, PROPOSAL, ADDENDA, PUBLIC CONSTRUCTION
BOND AND FORMS**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

**CONTRACT, MEMORANDUM OF AGREEMENT, GENERAL SPECIFICATIONS,
TECHNICAL SPECIFICATIONS, SPECIAL PROVISIONS, PROPOSAL, PUBLIC
CONSTRUCTION BOND AND FORMS**

FOR

**SR 429 / SR 453 WEKIVA PARKWAY INTERCHANGE
LANDSCAPE IMPROVEMENTS**

**PROJECT 429-827
CONTRACT NO. 001602**

DECEMBER 2019

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P	PROPOSAL	P-1 to P-11
VR	VEHICLE REGISTRATION FORM	VR-1 to VR-2
PCB	PUBLIC CONSTRUCTION BOND	PCB-1 to PCB-4

Attached compact disk contains the following and are incorporated herein

TS	TECHNICAL SPECIFICATIONS	TS-1 to TS-2
	(See Technical Specifications Table of Contents for listing of individual specifications sections.)	
SP	SPECIAL PROVISIONS	SP-1 to SP-3
	(See Special Provisions Table of Contents for listing of each special provision.)	

Addendum No. 1
Addendum No. 2

Plans

CONTRACT

This Contract No. 001602 (the "Contract"), made this 12th day of December 2019, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, hereinafter called CFX and LAFLEUR NURSERIES AND GARDEN CENTER, LLC, of 6275 W. SR 46, Sanford, FL. 32771, hereinafter the CONTRACTOR:

WITNESSETH: The CONTRACTOR shall, for the consideration herein mentioned 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 (and under security as set forth in the attached Public Construction Bond) all of which are hereby adopted and made part of this Contract as completely as if incorporated herein. The Contract shall be performed to the satisfaction of the duly authorized representatives of CFX, who shall have at all times full opportunity to inspect the materials furnished and the work done under this Contract.

The work to be done under this Contract includes construction of all items associated with Project 429-827, SR 429 / SR 453 Wekiva Parkway Interchange Landscape Improvements, as detailed in the Contract Documents and any addenda or modifications thereto. Contract time for this project shall be 820 calendar days. The Contract Amount is \$1,417,331.50. This Contract was awarded by the Governing Board of CFX at its meeting on November 14, 2019.

The Contract Documents consist of:

1. The Contract,
2. The Memorandum of Agreement,
3. The Addenda (if any), modifying the General Specifications, Technical Specifications, Special Provisions, Plans or other Contract Documents,
4. The Plans,
5. The Special Provisions,
6. The Technical Specifications,
7. The General Specifications,
8. The Standard Specifications,
9. The Design Standards, and
10. The Proposal.

In consideration of the foregoing premises, CFX agrees to pay the CONTRACTOR for work performed and materials furnished at the unit and lump sum prices, and under the conditions set forth, in the Proposal.

IN WITNESS WHEREOF, the authorized signatures named below have executed this Contract on behalf of the parties on the date set forth below.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

DATE: _____

LAFLEUR NURSERIES AND GARDEN CENTER, LLC

By: _____
Signature

Print Name

Title

ATTEST: _____ (Seal)

DATE: _____

Approved as to form and execution, only.

General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
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CENTRAL FLORIDA EXPRESSWAY AUTHORITY
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CENTRAL FLORIDA EXPRESSWAY AUTHORITY

GENERAL SPECIFICATIONS

SECTION 1 - ABBREVIATIONS AND DEFINITIONS

1.1 General

These General Specifications are intended for use on all construction projects awarded by CFX. However, each Article, subarticle or paragraph of the General Specifications may not be relevant or applicable to every project. It is the responsibility of the Contractor to submit to the CEI any questions regarding relevance or applicability of any article or sub-article prior to the Pre-Construction conference. The CEI will respond with a determination which will be binding and final.

1.2 Abbreviations

Whenever in these General Specifications or in other documents pertaining to the Contract the following terms and abbreviations appear, their intent and meaning shall, unless specifically stated otherwise, be interpreted as shown in this Section.

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	The Associated General Contractors of America, Inc.
AIA	American Institute of Architects
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWPA	American Wood Preservers Association
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
FDOT	Florida Department of Transportation
FNGA	Florida Nursery Growers Association
FSS	Federal Specifications and Standards
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
MUTCD	Manual on Uniform Traffic Control Devices
NEC	National Electrical Code (as recommended by the National Fire Protection Association)
NEMA	National Electrical Manufacturers Association
SSPC	Steel Structures Painting Council

When any of the above abbreviations is followed by a number or letter designation, or combination of numbers or letters, it is understood to designate a specification, test method or other code or recommendation of the particular organization so shown.

1.3 Definitions

Wherever used in these General Specifications or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof and all genders:

1.3.1 **Article** - The prime subdivision of a Section of the General and/or Technical Specifications.

1.3.2 **Bid** - The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed. All Bids will include a Bid Bond in the amount of 5% of the total bid as a surety to CFX that the Bidder will honor the Bid and enter into a Contract with CFX.

1.3.3 **Bridge** - A structure, including supports, erected over a depression or over an obstruction such as water, highway, railway, or for elevated roadway, for carrying traffic or other moving loads and having a length, measured along the center of the roadway, of more than 20 feet between the inside faces of bridge supports. A multi-span box culvert is considered a bridge when the length between the extreme ends of the openings exceeds 20 feet.

1.3.4 **Calendar Day** - Every day shown on the calendar, ending and beginning at midnight.

1.3.5 **CFX** - The Central Florida Expressway Authority. To avoid unnecessary repetition of expressions, whenever in the General Specifications, Technical Specifications or Special Provisions the term "CFX" is used, it is understood that "or designated representative" is a part of the term unless specifically indicated otherwise. Such designated representative may be the "Engineer", the "CEI", the "Resident Engineer" or other individual or entity identified by CFX and defined herein.

1.3.6 **Construction Engineering & Inspection (CEI) Consultant** - The firm employed by CFX to observe the progress and quality of the Work being performed by the Contractor.

1.3.7 **Consultant** - The Professional Engineer or engineering firm, registered in the State of Florida, under contract to CFX to perform professional services for CFX. The Consultant may be the Engineer of Record or may provide services through and be subcontracted to the Engineer of Record.

1.3.8 **Contract** - The written agreement between CFX and the Contractor setting forth the obligations of the parties thereto including but not limited to, the performance of the Work, the furnishing of labor and materials and the basis of payment.

1.3.9 **Contract Claim (Claim)** - A written demand submitted to CFX by the Contractor in compliance with Article 2.4 of these General Specifications seeking additional monetary compensation, time and/or other adjustments to the Contract, the entitlement or impact of which is disputed by CFX.

1.3.10 Contract Documents - The Contract, addenda (which pertain to the Contract Documents), the Memorandum of Agreement, Contractor's Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award), the Notice to Proceed, the Public Construction Bond, these General Specifications, the Technical Specifications, the Standard Specifications, the Contractor's certification required pursuant to Article 3.4 of these General Specifications, the Special Provisions, the Plans, any supplemental agreements required to complete the construction of the Project and elements incorporated by reference including, but not necessarily limited to, the FDOT Design Standards (January 2015 edition).

1.3.11 Contract Price - The money payable by CFX to the Contractor for completion of the Work in accordance with the Contract Documents.

1.3.12 Contract Time - The number of calendar days allowed for completion of the Work including authorized time extensions.

1.3.13 Contractor - The person, firm or corporation with whom CFX has entered into the Contract.

1.3.14 Controlling Work Items - The activity or work item on the critical path having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

1.3.15 Culverts - Any structure not classified as a bridge, which provides an opening under the roadway.

1.3.16 Delay - With the exception of the items listed in Subarticle 6.7.3.1 of these General Specifications, any unanticipated event, action, force or factor which extends the Contractor's time of performance of any critical path activity under the Contract. The term delay is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance" or otherwise, which are beyond the control of and not caused by the Contractor or Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include Extra Work.

1.3.17 Director of Construction - Director of Construction, Central Florida Expressway Authority, acting directly or through an authorized representative.

1.3.18 Engineer - The term as may be used in various documents is understood to mean CFX or designated representative.

1.3.19 Engineer of Record - The professional engineer or engineering firm, contracted with by CFX and registered in the State of Florida, who develops criteria and concept for the Project, performs the analysis and is responsible for the preparation of the plans and specifications.

1.3.20 Equipment - The machinery and equipment, together with the necessary supplies for upkeep and maintenance thereof, the tools and all other apparatus necessary for the construction and acceptable completion of the Work.

1.3.21 **Executive Director** - Executive Director, Central Florida Expressway Authority, acting directly or through an authorized representative.

1.3.22 **Extra Work** - Any Work which is required by CFX to be performed and which is not otherwise covered or included in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions or otherwise. This term does not include a “delay”.

1.3.23 **Force Account** – Work authorized by CFX and performed in addition to that set forth in the original Contract and is paid on an actual cost basis plus a fixed percent markup and stipulated rental rates for equipment. All costs paid under Force Account will be fully documented and signed by both parties not later than the following work day.

1.3.24 **Holidays** - Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive.

1.3.25 **Inspector** – Agent of CFX through the CEI that will record day-to-day activities of construction and advise the Contractor regarding compliance with the Plans and Specifications of the Contract.

1.3.26 **Invitation to Bid** - The invitation by which the Contractor submitted its Bid for the Work.

1.3.27 **Laboratory** – A Testing facility certified with the Florida Department of Transportation.

1.3.28 **Major Item of Work** - Any item of Work having an original Contract value in excess of 5% of the original Contract amount.

1.3.29 **Materials** - Any substances to be incorporated in the Work.

1.3.30 **Median** - The portion of a divided highway or street separating the traveled ways for traffic moving in opposite directions.

1.3.31 **Notice to Proceed** - A written notice given by CFX to the Contractor fixing the latest date on which the Contract Time will commence to run and on which the Contractor shall start to perform the Contractor’s obligations under the Contract Documents.

1.3.32 **Plans** - The drawings which show the scope, extent and character of the Work to be furnished and performed by the Contractor and which are referred to in the Contract Documents.

1.3.33 **Project** - The total construction of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.

1.3.34 **Public Construction Bond** - The security furnished by the Contractor and the surety as a guaranty that the Contractor will fulfill the terms of the Contract in accordance with the Contract Documents and pay all legal debts pertaining to the construction of the Project.

1.3.35 **Resident Project Representative** - The authorized representative of the CEI who may be assigned to the site or any part thereof.

1.3.36 **Right of Way** - The land to which CFX has title or right of use for the road and its structures and appurtenances and for material pits furnished or to be furnished by CFX.

1.3.37 **Roadbed** - That portion of the roadway occupied by the subgrade and shoulders.

1.3.38 **Roadway** - The portion of a highway within the limits of construction.

1.3.39 **Shop Drawings** - All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.

1.3.40 **Shoulder** - That portion of the roadbed outside the edges of the travel way (or back of curb) and extending to the top of front slopes. The shoulders may be either paved or unpaved.

1.3.41 **Special Provisions** - Specific requirements for the Project not otherwise addressed in the General Specifications, Technical Specifications or Standard Specifications.

1.3.42 **Specialty Engineer** - A Professional Engineer registered in the State of Florida (specifically other than the Engineer of Record or its subcontracted consultant) who undertakes the design and drawing preparation of components, systems or installation methods and equipment for specific portions of the Project Work. The Specialty Engineer may be an employee or officer of the Contractor or a fabricator, an employee or officer of an entity providing components to a fabricator or an independent consultant.

A Specialty Engineer shall be qualified in accordance with the Rules of the Florida Department of Transportation, Chapter 14-75, Florida Administrative Code. Any corporation or partnership, which offers engineering services, must hold a current Certification of Authorization from the Florida State Board of Professional Engineers. Prior approval by CFX is required if the Contractor wishes to use a Specialty Engineer not qualified in accordance with Chapter 14-75. Approval must be received prior to proceeding with the specialty design.

For items of Work not specifically covered by Chapter 14-75, a Specialty Engineer will be considered qualified if he/she has the following qualifications:

- 1) Registration as a Professional Engineer in the State of Florida
- 2) Education and experience necessary to perform the submitted design as required by the Florida Department of Professional Regulation.

1.3.43 **Specifications** - The directions, provisions and requirements contained in the General Specifications, Technical Specifications, Special Provisions and Standard Specifications.

1.3.44 **Standard Specifications** - The FDOT Standard Specifications for Road and Bridge Construction, 2015 edition, Divisions II and III, hereby incorporated by reference and as may be amended in the Technical Specifications and Plans. Division I of the FDOT Standard Specifications is specifically not included in this definition and is not a part of the Contract Documents.

1.3.45 **State** - State of Florida

1.3.46 **Subarticle** - Any headed subdivision of an Article of the General Specifications, Technical Specifications, or Standard Specifications.

1.3.47 **Subgrade** - That portion of the roadbed immediately below the base course or pavement (including below the curb and gutter, valley gutter, shoulder and driveway pavement), the limits of which will ordinarily include those portions of the roadway bed shown in the plans to be constructed to a design bearing value or to be otherwise specially treated. Where no limits are shown in the plans, the subgrade section shall be considered to extend to a depth of 12 inches below the bottom of the base or pavement and outward to 6 inches beyond the base, pavement or curb and gutter.

1.3.48 **Subcontractor** - An individual, firm or corporation having a direct contract with the Contractor or with any other subcontractor for performance of a part of the Work at the site.

1.3.49 **Substantial Completion** - The completion of all pay item Work in their entirety in conjunction with the performance of the inspection for Substantial Completion. As a minimum the following conditions apply;

1. All pay item work is installed and functioning including Supplemental Agreement Work, Force Account, or Extra Work.
2. All disturbed areas have been restored and vegetative growth is emerging including landscaping.
3. All erosion control measures have been taken up, and sediments removed from traps and drainage structures.
4. All pavement areas are complete and final signing and stripping in place.
5. All Signals, Lighting, ITS, and Tolling systems are tested, commissioned, and operating.
6. All roadway appurtenances are installed, intact and functioning such as signs, guardrail, stripping, rumble strips, curbing, sidewalk, etc.
7. All structures such as bridges, walls, barriers, attenuators, overhead trusses, toll buildings, tolling gantries, etc. are in place with their final coatings applied, and devoid of blemishes or graffiti.
8. All temporary traffic control devices are removed, and traffic is using the facility as designed.
9. All testing is complete, and documentation has been received.

The inspection for Substantial Completion may generate a punch list that will be provided to the

Contractor within seven (7) calendar days following the conclusion of the inspection. Direction by CFX to open a bridge or roadway or portion thereof does not constitute an acceptance or Substantial Completion of the Project or portion or waive any part of the Contract provisions.

1.3.50 **Substructure** - All of that part of a bridge structure below the bridge seats including the parapets, backwalls and wingwalls of abutments.

1.3.51 **Superintendent** - The Contractor's authorized representative responsible and in charge of the Work.

1.3.52 **Superstructure** - The entire bridge structure above the substructure including anchorage and anchor bolts but excluding the parapets, backwalls, and wingwalls of abutments.

1.3.53 **Supplemental Agreement** - A written agreement between CFX and the Contractor modifying the Contract within the limitations set forth in these specifications.

1.3.54 **Surety** - The corporate body, bound by the Public Construction Bond with and for the Contractor, who agrees to be responsible for acceptable performance of the Work by the Contractor and for payment of all debts pertaining thereto.

1.3.55 **Supplier** - A manufacturer, fabricator, supplier, distributor, materialmen or vendor having a direct contract with the Contractor or with any subcontractor to furnish materials or equipment to be incorporated in the Work by the Contractor or any subcontractor.

1.3.56 **Technical Specifications** - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work associated with road and bridge construction.

1.3.57 **Travel Way** - The portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

1.3.58 **Unilateral Adjustment**- A payment of money or granting of Contract time made to the Contractor by CFX for sums CFX determines to be due to the Contractor for work performed on the project, and whereby the Contractor by acceptance of such payment does not waive any rights the Contractor may otherwise have against CFX for payment of any additional sums the Contractor claims are due for the work.

1.3.59 **Work** - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishings and incorporating materials and equipment into the construction and performing or furnishing services and furnishing documents all as required by the Contract Documents.

1.3.60 **Work Order Allowance** - A monetary amount established by CFX and included in the Contract Price to cover the cost of Work, that may or may not be anticipated, but is not otherwise defined by defined by the Drawings or Specifications. No Work paid for under the Work Order Allowance shall be performed until written authorization is given to the Contractor by CFX. Any amount remaining in the Allowance upon completion and acceptance of the project remains the property of CFX.

END OF SECTION 1

SECTION 2 - SCOPE OF WORK

2.1 Intent of Contract

It is the intent of the Contract Documents to provide for the construction and completion of every detail of the Work described in the Contract Documents. Any labor, documentation, services, Materials, or Equipment that may be reasonably inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result shall be provided whether or not specifically called for, at no additional cost to CFX.

2.2 Work Not Covered by the General Specifications

Proposed construction and any contractual requirements not covered by these General Specifications may be covered by notes shown on the Plans or by the Technical Specifications or Special Provisions for the Contract.

2.3 Alteration of Plans

2.3.1 General: CFX reserves the right to make, at any time prior to or during the progress of the Work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a significant change or not, including but not limited to alteration in the grade or alignment of the road or structure or both, as may be found necessary or desirable by CFX. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the Work, as altered, the same as if it had been part of the original Contract.

The term "significant change" applies only when:

- A) CFX determines that the Work as altered differs materially in kind or nature from that involved or included in the original proposed construction or
- B) A Major Item of Work, as defined in Section 1, is increased in excess of 125% or decreased below 75% of the original Contract quantity. CFX will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity, or in case of a decrease below 75% to the actual amount of work performed, such allowance to be determined in accordance with 2.3.2, below.

In the instance of A) above, the determination by CFX shall be final and shall not be subject to challenge by the Contractor except through the claims procedure as described herein.

- 2.3.2 Increase, Decrease or Alteration in the Work: CFX reserves the right to make alterations in the character of the Work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 2.4.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 2.4.2, submit to CFX a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be CFX's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 2.4.13. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or CFX, CFX will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by CFX thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by CFX.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary

compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 2.4.5.3.

2.3.2.1 Allowable Costs for Extra Work: The CEI may direct in writing that extra work be done and, at the CEI's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

- (a) **Labor and Burden:** The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1 % of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

***** Area Intentionally Left Blank *****

Payment for burden shall be limited solely to the following:

Table 2.3.2.1

Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual

*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).

At the pre-construction conference, certify to the CEI the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the Contract,
- (2) Actual Rate for items listed in Table 2.3.2.1,
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the CEI as part of the cost proposal or seven calendar days in advance of performing such extra work.

- (b) **Materials and Supplies:** For materials accepted by the CEI and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.
- (c) **Equipment:** For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the CEI will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

(1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.

(2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.

(3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.

(4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the CEI to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

CFX will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, CFX will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

- (d) Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

- (1) Solely a mark-up on the payments in (a) through (c), above in accordance with the corresponding portions of section 7.4.

- (i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work; provided, however, that such payment for additional bond will only be paid upon presentment to CFX of clear and convincing proof that the Contractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount. Should the Contractor elect to provide subguard coverage in lieu of requiring a bond from a sub, the Contractor shall be entitled to reimbursement for the subguard premium for the added work upon proof of said premium.

- (ii) The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first-tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

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(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by CFX is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by CFX is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by CFX and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by CFX but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item is equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item that when cumulatively totaled together are equal to or less than ten calendar days. All calculations under this provision shall exclude days granted for performing additional work.

2.3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 2.3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to CFX of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount. The Contractor shall require the subcontractor to provide a certification, in

accordance with 2.3.2.1(a), as part of the cost proposal and provide such to the CEI. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

2.3.2.3 No Waiver of Contract: Changes made by CFX will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes or by reason of any variation between the approximate quantities and the quantities of Work actually performed. All Work shall be performed as directed by CFX and in accordance with the Contract Documents.

2.3.2.4 Suspensions of Work Ordered by CFX: If the performance of all or any portion of the Work is suspended or delayed by CFX, in writing, for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the Contractor believes additional compensation is due as a result of such suspension or delay, the Contractor shall submit to CFX in writing a request for adjustment within 7 calendar days of receipt of the notice to resume Work. The request shall be complete, set forth all the reasons and support for such adjustment.

CFX will evaluate the Contractor's request. If CFX agrees the cost and/or time required for the performance of the Contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the Contractor, its suppliers or subcontractors at any approved tier (and not caused by weather), CFX will make an adjustment (excluding profit) and modify the Contract in writing accordingly. CFX will notify the Contractor whether an adjustment of the Contract is warranted.

No Contract adjustment will be allowed unless the Contractor has submitted the complete request for adjustment within the time prescribed.

No Contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for, excluded under, or effectively precluded by any other term or condition of the Contract.

2.3.2.5 Conditions Requiring Supplemental Agreement: A Supplemental Agreement will be used to clarify the Plans and Specifications of the Contract; to document quantities that deviate from the original Contract amount; to provide for unforeseen Work, grade changes or alterations in Plans which could not reasonably have been contemplated or foreseen in the original Plans and Specifications; to change the

limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto; to settle Contract claims.

No Work covered by a Supplemental Agreement shall be performed before written authorization is given by CFX. Such written authorization will set forth the prices and other pertinent information and will be promptly reduced to written Contract document form.

2.3.2.6 Unilateral Payments: Unilateral Payments will be used to pay the Contractor for Work performed on the Project when:

- a) The Contractor agrees to perform the Work at an agreed upon cost but refuses to timely execute a Supplemental Agreement so as to allow timely payment for the Work by CFX or,
- b) CFX and the Contractor cannot agree on the cost of the Work and the Contractor refuses to execute a Supplemental Agreement or,
- c) CFX determines it is in the best interest to make a Unilateral Payment for Work CFX directed to be performed in lieu of pursuing a Supplemental Agreement.

2.3.2.7 Extra Work: Alterations, changes, additional or unforeseen Work of the type already provided by the Contract for which there is a Contract Price will be paid for at such Contract price.

Alterations, changes, additional or unforeseen Work having no quantity or price provided in the Contract will be paid at a negotiated price. Where the cost is negotiated, the Contractor shall submit an estimate to CFX in terms of labor, Materials, Equipment, overhead with a time impact analysis and other expenses incurred solely as a result of the alteration, change, additional or unforeseen Work as stipulated in 2.3.2.

Where a price cannot be negotiated for alterations, changes, additional or unforeseen Work having no quantity or price provided in the Contract, payment will be made in accordance with 2.3.2.

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- 2.3.3 Connections to Existing Pavements, Drives and Walks: Limits of construction at the beginning and end of the Project are detailed in the Plans and will generally be adhered to; however, where in the opinion of CFX it is necessary to extend the construction in order to make suitable connections to existing pavement, such change may be permitted upon written authorization.

For any connections to existing walks and drives which are necessary although not indicated on the Plans, proper connections shall be made at the direction of CFX in accordance with the FDOT's Design Standards identified in the Contract Documents.

- 2.3.4 Differing Site Conditions: During the progress of the Work, if subsurface or latent conditions are encountered at the site differing materially from those indicated on the Plans or in the Specifications or if unknown physical conditions of an unusual nature (differing materially from those ordinarily encountered and generally recognized as inherent in the Work) are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before they are disturbed and before the affected Work is performed.

Upon written notification from the Contractor, CFX will have the conditions investigated and if it is determined that the conditions differ materially and cause an increase or decrease in the cost or time required for the performance of any Work under the Contract, an adjustment (excluding loss of anticipated profits) will be made and the Contract modified in writing accordingly. CFX will notify the Contractor whether an adjustment of the Contract is warranted.

No Contract adjustment that results in a benefit to the Contractor will be allowed unless the Contractor has provided the required written notice.

No Contract adjustment will be allowed under this clause for any impacts caused to or by any other projects.

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- 2.3.5 Changes Affecting Utilities: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor and the Contractor shall, at the time of making the request for change, notify CFX in writing of any such potential impacts to utilities.

CFX approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the utility plans, joint project agreements or utility relocation schedules.

2.3.6 Cost Savings Initiative Proposal

2.3.6.1 Intent and Objective: This subarticle applies to any Cost Savings Initiative Proposal (CSIP) that the Contractor initiates and develops for the purpose of refining the Contract to increase cost effectiveness or significantly improve the quality of the end result. Any potential CSIPs being considered by the Contractor shall NOT be discussed at the pre-award meeting, as this meeting is for the sole purpose of discussing the Contractor's bid and the documents on which the bid is based. Subsequent to Contract execution and prior to Contract Time beginning, a mandatory Cost Savings Initiative Workshop will be held for the Contractor and CFX to discuss potential Proposals.

This subarticle does not apply to any CSIP unless the Contractor identifies it at the time of its submission to CFX as a CSIP submitted in accordance with this subarticle.

CFX will consider CSIPs that, in the sole opinion of CFX, will result in net savings to CFX by providing a decrease on the cost of the Contract. Additionally, the CSIP must result in savings without impairing essential functions and characteristics such as safety, service life, reliability, economy of operation, ease of maintenance, aesthetics and necessary standard design features. CFX will not recognize the Contractor's elimination of work, or correction of plan errors that result in a cost reduction as a CSIP.

CFX reserves the right to reject, at its sole discretion, any CSIP submitted that proposes a change in the design of the pavement system or that would require additional right-of-way. Pending CFX's execution of a formal supplemental agreement implementing an approved CSIP, the Contractor shall remain obligated to perform the Work in accordance with the terms of the Contract. CFX is under no obligation to grant time extensions to allow for the time required to develop and review a CSIP.

For potential CSIPs not discussed between Contract Execution and Contract Time beginning, a mandatory concept meeting will be held between CFX and the Contractor to discuss the potential CSIP prior to its development.

2.3.6.2 Data Requirements: As a minimum, the Contractor shall submit the following information with each CSIP:

1. a description of the differences between the existing Contract requirements, including any time extension request, and the proposed change, and the comparative advantages and disadvantages.
2. separate detailed (Labor, Equipment, Material and Subcontract) cost estimates for both the existing Contract requirement and the proposed change. Allocate the above detailed cost estimates by pay item numbers indicating quantity increases or decreases and deleted pay items. Identify additional proposed work not covered by pay items within the Contract, by using pay item numbers in the FDOT Basis of Estimates Manual. In preparing the estimates, include overhead, profit, and bond within pay items in the Contract. Separate pay item(s) for the cost of overhead, profit, and bond will not be allowed.
3. an itemization of the changes, deletions or additions to plan details, plan sheets, design standards and Specifications that are required to implement the CSIP if CFX adopts it. Provide preliminary plan drawings sufficient to describe the proposed changes.
4. engineering or other analysis in sufficient detail to identify and describe specific features of the Contract that must be changed if CFX accepts the CSIP with a proposal as to how the changes can be accomplished and an assessment of their effect on other Project elements. CFX may require that engineering analyses be performed by a Specialty Engineer in the applicable class of work. Support all design changes that result from the CSIP with prints of drawings and computations signed and sealed by the Contractor's Specialty Engineer. Written documentation or drawings shall be provided that clearly delineate the responsibility of the Contractor's Specialty Engineer.
5. the date by which CFX must approve the CSIP to obtain the total estimated cost reduction during the remainder of the Contract, noting any effect on the Contract completion time or delivery schedule.
6. a revised Project schedule that would be followed upon approval of the CSIP. The schedule shall include submittal dates and review time for CFX review.

2.3.6.3 Processing Procedures: The Contractor shall submit five (5) copies of the CSIP to CFX. CFX will process the CSIP expeditiously; however, CFX is not liable for any delay in acting upon a CSIP submitted pursuant to this subarticle. The Contractor may withdraw, in whole or in part, a CSIP not accepted by CFX within the period specified in the CSIP. CFX is not liable for any CSIP development cost in the case where CFX rejects, or the Contractor withdraws, a CSIP.

CFX is the sole judge of the acceptability of a CSIP and of the estimated net savings in construction costs from the adoption of all or any part of the CSIP. In determining the estimated net savings, CFX reserves the right to disregard the Contract bid prices if, in the judgment of CFX, such prices do not represent a fair measure of the value of the Work to be performed or to be deleted.

Prior to approval, CFX may modify a CSIP, with the concurrence of the Contractor, to make it acceptable. If any modification increases or decreases the net savings resulting from the CSIP, CFX will determine the Contractor's fair share upon the basis of the CSIP as modified and upon final quantities. CFX will compute the net savings by subtracting the revised total cost of all bid items affected by the CSIP from the total cost of the same bid items as represented in the Contract, provided that in the sole judgment of CFX that such bid item prices represent fair measure of the value of the associated work.

Prior to approval of the CSIP that initiates the supplemental agreement, provide acceptable Contract-quality plan sheets revised to show all details consistent with the CSIP design.

2.3.6.4 Computation for Change in Contract Cost Performance: If the CSIP is adopted, the Contractor's share of the net savings as defined hereinafter represents full compensation to the Contractor for the CSIP.

CFX will include its cost to process and implement a CSIP in the estimate.

2.3.6.5 Conditions of Acceptance for Major Design Modifications of Category 2 Bridges: A CSIP that proposes major design modifications of a category 2 bridge, as determined by CFX, shall have the following conditions of acceptance:

1. All bridge plans relating to the CSIP shall undergo an independent peer review conducted by a single independent engineering firm referred to for the purpose of this requirement as the Independent Review Engineer (IRE). The IRE shall not be the originator of the CSIP design and shall be pre-qualified by FDOT in accordance with Rule 14-75, Florida Administrative Code. The independent peer review is intended to be a comprehensive and thorough verification of the original Work, giving assurance that the design is in compliance with all CFX

requirements. The IRE's comments, along with the resolution of each comment, shall be submitted to CFX. The IRE shall sign and seal the submittal cover letter stating that all comments have been adequately addressed and the design is in compliance with CFX's requirements. If there are any unresolved comments, the IRE shall specifically list all unresolved issues in the signed and sealed cover letter.

2. CFX reserves the right to require the Contractor's Specialty Engineer to assume responsibility for the design of the entire structure.

3. New designs and independent peer reviews shall be in compliance with all applicable CFX, FDOT and AASHTO criteria requirements including bridge loading ratings.

2.3.6.6 Sharing Arrangements: If CFX approves a CSIP, the Contractor will receive 50% of the net reduction in the cost of performance of the Contract as determined by the final negotiated agreement between the Contractor and CFX. The net reduction will be determined by subtracting from the savings of the construction costs the reasonable documented engineering costs incurred by the Contractor to design and develop a CSIP and CFX's direct costs for reviewing the CSIP. Contractor's engineering costs will be based on the Specialty Engineer's certified invoice and may include the costs of the IRE. The Contractor's total engineering costs to be subtracted from the savings to determine the net reduction will be limited to 25% of the construction savings and will not include any markup by the Contractor for the costs for engineering services performed by the Contractor.

2.3.6.7 Notice of Intellectual Property Interests and CFX's Future Rights to a CSIP: The Contractor's CSIP submittal shall identify with specificity any and all forms of intellectual property rights that either the Contractor or any officer, shareholder, employee, consultant, or affiliate, of the Contractor, or any other entity who contributed in any measure to the substance of the Contractor's CSIP development, have or may have that are in whole or in part implicated in the CSIP. Such required intellectual property rights notice includes, but is not limited to, disclosure of any: issued patents, copyrights, or licenses; pending patent, copyright or license applications; and any intellectual property right that though not yet issued, applied for or intended to be pursued, could nevertheless otherwise be subsequently the subject of patent, copyright or license protection by the Contractor or others in the future. The notice requirement does not extend to intellectual property rights as to stand-alone or integral components of the CSIP that are already on the FDOT's APL or design standard indexes or are otherwise generally known in the industry as being subject to patent or copyright protection.

Notwithstanding Article 5.3 of the General Specifications nor any provisions of the Standard Specifications, upon acceptance of the CSIP, the Contractor grants to CFX and its contractors (such grant being expressly limited solely to any and all existing or future CFX construction projects and any other CFX projects that are partially or wholly funded by or for CFX) a royalty-free and perpetual license under all forms of intellectual property rights to manufacture, to use, to design, to construct, to disclose, to reproduce, to prepare and fully utilize derivative works, to distribute, display and publish, in whole or in part, and to permit others to do any of the above, and to otherwise in any manner and for any purpose whatsoever do anything reasonably necessary to fully utilize any and all aspects of such CSIP on any and all existing and future construction projects and any other CFX projects.

The Contractor shall hold harmless and indemnify CFX and its contractors and others in privity therewith from and against any and all claims, liabilities, other obligations or losses, and reasonable expenses related thereto (including reasonable attorney's fees) which are incurred or are suffered by any breach of the foregoing grants, and regardless of whether such intellectual property rights were or were not disclosed by the Contractor pursuant to the language herein, unless CFX has by express written exception in the CSIP acceptance process specifically released the Contractor from such obligation to hold harmless and indemnify as to one or more disclosed intellectual property rights.

2.4 Claims by Contractor

2.4.1 General: When the Contractor deems that extra compensation, or a time extension is due beyond that agreed to by CFX, whether due to delay, additional Work, altered Work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

2.4.2 Notice of Claim:

2.4.2.1 Claims For Extra Work: Where the Contractor deems that additional compensation or a time extension is due for Work or Materials not expressly provided for in the Contract or which is by written directive expressly ordered by CFX pursuant to 2.3, the Contractor shall notify CFX in writing, including the words "NOTICE OF CLAIM" in the document heading of the intention to make a claim for additional compensation before beginning the Work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 6.7.3 within ten (10) calendar days after commencement of a delay. If such notification is not given and CFX is not afforded the opportunity for keeping strict account of actual labor, Materials, Equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such

notice by the Contractor, and the fact that CFX has kept account of the labor, Materials and Equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless CFX allows additional time for the Contractor to submit additional or more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed covers all known amounts to which the Contractor is entitled as a result of said occurrence or event. For any claim or part of a claim that pertains solely to final estimate quantity disputes the Contractor shall submit full and complete claim documentation as described in 2.4.3, as to such final estimate claim dispute issues, within 30 calendar days of the Contractor's receipt of CFX's Offer of Final Payment. Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any arbitration or other formal claims resolution proceeding against CFX for the items and for the sums or time set forth in the Contractor's written claim, and the failure to provide such notice of intent, preliminary time extension request, time extension request, claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

2.4.2.2 Claims For Delay: Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for Work or Materials not expressly provided for in the Contract (Extra Work) or which is by written directive of CFX expressly ordered by CFX pursuant to 2.3, the Contractor shall submit a written notice of intent to CFX within 48 hours after commencement of a delay to a Work item on the critical path expressly notifying CFX that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 6.7.3 within 48 hours after commencement of a delay to a Work item on the critical path, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's Work by such delay. The timely providing of a written notice of intent or preliminary time extension request to CFX are each a condition precedent to any right on behalf of the Contractor to request additional compensation or an extension of Contract Time for that delay, and the failure of the Contractor to provide such written notice of intent or preliminary time extension request within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for that delay. Notice of the amount of the claim with supporting data shall be delivered within sixty days after the start of such occurrence or event (unless

CFX allows additional time for the Contractor to submit additional or more accurate data in support of the claim) and shall be accompanied by the Contractor's written statement that the adjustment claimed covers all known amounts to which the Contractor is entitled as a result of said occurrence or event. There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not related to a Work item on the critical path, and then as to any such delay to such item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 2.3 or 2.4, except that in the instance of delay to an item of Work not on the critical path the Contractor may be compensated for the direct costs of idle labor or Equipment only, at the rates set forth in 2.3, and then only to the extent the Contractor could not reasonably mitigate such idleness. The existence of an accepted schedule, including any required update(s), as stated in Article 6.3.3, is a condition precedent to the Contractor having any right to the granting of an extension of Contract Time arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable update(s) do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to CFX's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, CFX's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the CFX's determination was without any reasonable factual basis.

2.4.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract for any claim, the Contractor shall submit a written claim to CFX which will include for each individual claim, at a minimum, the following information:

- (a) A detailed factual statement of the claim providing all relevant dates, locations, and items of Work affected and included in each claim;
- (b) The date or dates on which actions or events resulting in the claim occurred or conditions resulting in the claim became evident;
- (c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
- (d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

- (e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - (1) documented additional job site labor expenses;
 - (2) documented additional cost of Materials and supplies;
 - (3) a list of additional Equipment costs claimed, including each piece of Equipment and the rental rate claimed for each;
 - (4) any other additional direct costs or damages and the documents in support thereof;
 - (5) any additional indirect costs or damages and all documentation in support thereof;

- (f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the basis of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any arbitration or other formal claims resolution proceeding shall be limited solely to the basis of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude the Contractor from withdrawing or reducing any of the basis of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

2.4.4 Action on Claim: CFX will respond within 30 calendar days of receipt of a complete claim submitted by Contractor in compliance with 2.4.3. Failure by CFX to respond to a claim within 30 calendar days after receipt of a complete claim in compliance with 2.4.3 constitutes a denial of the claim by CFX. If CFX finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract.

2.4.5 Compensation for Extra Work or Delay:

2.4.5.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 2.3.2.

2.4.5.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 2.4.5.3 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by CFX unless the delay shall have been caused by acts constituting willful or intentional interference by CFX with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to CFX of such interference. The parties anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the CEI pursuant to Article 6.6 of the General Specifications, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

2.4.5.3 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall only be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 2.3.2.1(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

2.4.6 Mandatory Claim Records: After giving CFX notice of intent to file a claim for Extra Work or delay, the Contractor shall keep daily records of all labor, Materials and Equipment costs incurred for operations affected by the Extra Work or delay. These daily records shall identify each operation affected by the Extra Work or delay and the specific locations where Work is affected by the Extra Work or delay, as nearly as possible. CFX may also keep records of all labor, Materials and Equipment used on the operations affected by the Extra Work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide CFX with a copy of the Contractor's daily records and be likewise entitled to receive a copy of CFX's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

2.4.7 Claims For Acceleration: CFX shall have no liability for any constructive acceleration of the Work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If CFX gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to CFX's approval of the documents.

2.4.8 Certificate of Claim: When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be CFX's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

2.4.9 Non-Recoverable Items: The parties agree that for any claim CFX will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives, or bonuses;
- b. Any claim for other than Extra Work or delay;
- c. Consequential damages including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where CFX has expressly and specifically directed the Contractor in writing "to accelerate at CFX's expense";
- e. Attorney fees except in accordance with 3.12, claims preparation expenses and costs of litigation.

2.4.10 Exclusive Remedies: Notwithstanding any other provision of the Contract, the parties agree that CFX shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 2.4. In the event of any formal claims resolution process for additional compensation, whether on account of delay, acceleration, breach of Contract, or otherwise, the Contractor agrees that CFX's liability will be limited to those items which are specifically identified as payable in 2.4.

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2.4.11 Settlement Discussions: The content of any discussions or meetings held between CFX and the Contractor to settle or resolve any claims submitted by the Contractor against CFX shall be inadmissible in any legal, equitable, arbitration or administrative proceedings, including the Disputes Review Board, brought by the Contractor against CFX for payment of such claim. Dispute Review Board proceedings are not settlement discussions, for purposes of this provision.

2.4.12 Personal Liability of Public Officials: In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Central Florida Expressway Authority, its employees, members, officers, agents, consultants and successors, there shall be no liability of any employee, officer, official agent or consultant of CFX either personally or as officials or representatives of CFX. It is understood that in all such matters such individuals act solely as agents and representatives of CFX.

2.4.13 Auditing of Claims: All claims filed against CFX shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of the State of Florida. The audit may be performed at CFX's sole discretion by employees of CFX or by any independent auditor appointed by CFX, or both. The audit may begin after ten days written notice to the Contractor, subcontractor, or supplier. The Contractor, subcontractor, or supplier shall make a good faith effort to cooperate with the auditors. As a condition precedent to recovery on any claim, the Contractor, subcontractor, or supplier must retain sufficient records, and provide full and reasonable access to such records to allow the CFX auditors to verify the claim. Failure to retain sufficient records of the claim or failure to provide full and reasonable access to such records shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery thereunder. Further, and in addition to such audit access, upon the Contractor submitting a written claim, CFX shall have the right to request and receive, and the Contractor shall have the affirmative obligation to provide to CFX, copies of any and all documents in the possession of the Contractor or its subcontractors, materialmen or suppliers as may be deemed relevant by CFX in its review of the basis, validity or value of the Contractor's claim.

Without limiting the generality of the foregoing, the Contractor shall upon written request of CFX make available to CFX auditors, or upon CFX's written request for copies, provide copies at CFX's expense, any or all of the following documents:

1. Daily time sheets and superintendent's daily reports and diaries;
2. Insurance, welfare and benefits records;
3. Payroll registers;
4. Earnings records;
5. Payroll tax returns;
6. Materials invoices, purchase orders, and all Materials and supply acquisition contracts;
7. Materials cost distribution worksheets;

8. Equipment records (list of company owned, rented or other Equipment used)
9. Vendor rental agreements and subcontractor invoices;
10. Subcontractor payment certificates;
11. Canceled checks for the project, including payroll and vendors;
12. Job cost reports;
13. Job payroll ledgers;
14. General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals;
15. Cash disbursements journal;
16. Financial statements for all years reflecting the operations on the Project;
17. Income tax returns for all years reflecting the operations on the Project;
18. All documents which reflect the Contractor's actual profit and overhead during the years the Contract was being performed and for each of the five years prior to the commencement of the Contract;
19. All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based;
20. All documents that relate to each and every claim together with all documents which support the amount of damages as to each claim;
21. Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, Materials, Equipment, subcontractors, and all documents that establish which time periods and individuals were involved, and the hours and rates for such individuals.
22. Electronic Payment Transfers and like records

2.5 Unforeseeable Work

When Work is required which is not covered by a price in the Contract and such Work does not constitute a "significant change" as defined in 2.3.1, and such Work is found essential to the satisfactory completion of the Contract within its intended scope, an adjustment will be made to the Contract. The basis of payment for such adjustment will be in an amount as CFX may determine to be fair and equitable.

2.6 Right To and Use of Materials Found at the Site of the Work

- 2.6.1 Ownership and Disposal of Existing Materials: Except as might be stipulated or implied otherwise on the Plans or in the Specifications, all Materials which are not the property of other parties (in both roadway and structures) found on the right of way and all material in structures removed by the Contractor, shall become the property of the Contractor and shall be properly disposed of by the Contractor. Such Materials shall not include earth or other excavated material required for the construction of the Project. Materials from existing structures required to be removed and which are designated to remain the property of CFX may generally be

used by the Contractor during construction. Such material shall not be cut or otherwise damaged during removal unless permission is given and shall subsequently be stored in an accessible location if so directed by CFX.

2.6.2 Ornamental Trees and Shrubs: Any ornamental trees or shrubs existing in the right-of-way (which are required to be removed for the construction operations and which are not specifically designated on the Plans to be reset or to be removed by others prior to the construction operations) shall remain the property of CFX and shall be relocated by the Contractor as directed. The Contractor shall be fully responsible for maintaining in good condition all grass plots, trees and shrubs outside the limits of construction as shown on the Plans. Tree limbs that interfere with Equipment operation and are approved for pruning shall be neatly trimmed and the tree cut coated with tree paint.

2.7 Restoration of Right of Way

Areas outside the Project limits within CFX right of way used as a plant site be shaped and dressed so as not to present an objectionable appearance and grassed. The Work of grassing will not be paid for separately but will be considered incidental to the other items of Work for which payment is made. Property outside CFX's right of way that is damaged due to the activities of the Contractor shall be immediately restored, at Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done by the Contractor.

Upon completion of the Work and before final acceptance and final payment will be made, the Contractor shall remove from the right of way and adjacent property all falsework, Equipment, surplus and discarded Materials, rubbish and temporary structures; shall restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the Work, and shall leave the roadway in a neat and presentable condition throughout the entire length of the Work under the Contract. The placing of Materials of any character, rubbish or Equipment, on abutting property, with or without the consent of the property owners, shall not constitute satisfactory disposal. However, the Contractor will be allowed to temporarily store Equipment, surplus Materials, usable forms, etc., on a well-kept site owned or leased by the Contractor, adjacent to the Project, but no discarded Equipment or Materials or rubbish shall be placed on such site.

END OF SECTION 2

SECTION 3 - CONTROL OF WORK

3.1 Plans and Working Drawings

3.1.1 Plans and Contract Documents: The Contractor will be supplied, without charge, one (1) set of Plans and Contract Documents on electronic media and one (1) hard copy set of "Approved for Construction" documents including the Plans, General Specifications, Technical Specifications and Special Provisions and addenda, if any. Copies of the FDOT Standard Specifications and Design Standards are available from the FDOT.

3.1.2 CFX Plans: The Plans furnished by CFX consist of general drawings showing such details as are necessary to give a comprehensive idea of the construction contemplated. Roadway plans will show in general, alignment, profile grades, typical cross sections and general cross sections. Structure plans, in general, will show in detail all dimensions of the Work contemplated. When the structure plans do not show the dimensions in detail, they will show general features and such details as are necessary to give a comprehensive idea of the structure.

Grades shown are finished grades and B.M. Datum is National Geodetic Vertical Datum of 1929 (NGVD-1929), North American Vertical Datum 1988 (NAVD-1988), or other datum as noted in the Plans.

3.1.3 Alterations in the Plans: All authorized alterations affecting the requirements and information given on the approved Plans shall be in writing. No changes shall be made on any plan or drawing after its approval by CFX, except by direction of CFX.

3.1.4 Shop Drawings

3.1.4.1. Definitions:

(a) Shop Drawings include all working, shop and erection drawings, associated trade literature, calculations, schedules, manuals or similar documents submitted by the Contractor to define some portion of the Work. The type of Work includes both permanent and temporary Work.

(b) Permanent Work is the term deemed to include all the permanent structure and parts thereof required of the completed Contract.

(c) Temporary Work is the term deemed to include any temporary construction work necessary for the construction of the permanent Work. This includes falsework, formwork, scaffolding, shoring, temporary earthworks, sheeting, cofferdams, special erection Equipment and the like.

3.1.4.2. Work Items Requiring Shop Drawings: The requirement for submittals for certain items may be waived by other provisions of these specifications; i.e. items constructed from standard drawings or those complying with alternate details for pre-stressed members under Section 450. Precast components that are not detailed in the Plans or Standard Drawings will require approved shop drawings. The Contractor shall review the Plans and Specifications to determine the submittals required. The CEI may request a submittal for any item the CEI considers necessary.

3.1.4.3 Schedule of Submittals: The Contractor shall prepare and submit to the CEI a schedule of submittals identifying the Work for which Contractor intends to submit shop drawings, the type, approximate number of drawings or other documents and approximate dates of anticipated submittals with due regard to processing requirements herein. The schedule of submittals shall be submitted to the CEI within 15 days of the start of the date of the Notice to Proceed, and prior to the submission of any shop drawings.

Subsequent submittals shall be coordinated with construction schedules to allow sufficient time for review, approval and re-submittal as necessary.

3.1.4.4 Style, Numbering and Material of Submittals:

3.1.4.4.1 Drawings: The Contractor shall furnish such shop drawings as may be required to complete the structure in compliance with the design shown on the Plans. Drawings shall be prepared or reproduced on permanent material made for the purpose, such as tracing cloth, plastic, mylar or xerographic bond paper, hereafter referred to as masters. The size of the sheets shall be no larger than 24 by 36 inches. Each sheet shall be numbered consecutively for the series and the sheet number shall indicate the total number in the series (e.g., 1 of 12, 2 of 12, ...12 of 12). Each shop drawing shall contain the following items as a minimum requirement: the CFX Project Number, drawing title and number, a title block showing the names of the fabricator or producer and the Contractor for which the Work is being done, the initials of the person(s) responsible for the drawing, the date on which the Work was performed, the location of the item(s) within the Project, the Contractor's approval stamp and initials and when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer. The absence of any of this minimum information may be cause for a request for a re-submittal.

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3.1.4.4.2 Other Documents: Documents other than drawings, such as trade literature, catalogue information, calculations and manuals shall be original copies or clearly legible photographic or xerographic copies. The size shall be no larger than 11 by 17 inches. Such information shall be clearly labeled and numbered and the sheet numbers shall indicate the total number of sheets in the series (e.g., 1 of 12, 2 of 12, 12 of 12).

All documents shall be bound and submitted with a Table of Contents cover sheet. The cover sheet shall list the total number of pages and appendices and shall also include the CFX Project Number, a title to reference the item(s) for which it is submitted, the name of the firm and person(s) responsible for the preparation of the document, the Contractor's approval stamp and initials and, when applicable, the signature and embossed seal of the Contractor's Florida registered Specialty Engineer.

The calculations or manuals shall clearly outline the design criteria and shall be appropriately prepared and checked. The internal sheets shall include the complete CFX Project Number and initials of the persons responsible for preparing and checking the document.

Trade literature and catalogue information shall be clearly labeled with the title, CFX Project Number, date and name of the firm and person responsible for that document displayed on the front cover.

Documents other than drawings may be on xerographic paper or glossy paper material as appropriate. For the purpose of this specification, the term "shop drawings" shall be deemed to include these other documents.

3.1.4.5 Submittal Paths and Copies:

The Contractor shall submit one (1) set of prints along with one (1) set of reproducible copies of each series of shop drawings to the CEI with a copy of the letter of transmittal sent to the Consultant. For Work requiring other documentation (e.g. catalog data, material certifications, material tests, procedure manuals, fabrication / welding procedures, and maintenance and operating manuals) a minimum of eight (8) copies of each document shall be submitted with the prints. The mailing address of the Consultant will be furnished by CFX.

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For other miscellaneous design and/or structural details furnished by the Contractor in compliance with the contract: The Contractor shall submit to the CEI one (1) set of prints along with one (1) reproducible copy of each series of shop drawings and four (4) copies of applicable calculations. Each print and the cover sheet of each copy of applicable calculations shall be signed and sealed by the Contractor's Specialty Engineer.

3.1.4.6 Processing of Shop Drawings:

3.1.4.6.1 Contractor Responsibility for Accuracy and Coordination of Shop Drawings: The Contractor shall coordinate, schedule and control all submittals including those of its various subcontractors, suppliers and engineers to provide for an orderly and balanced distribution of the Work.

All shop drawings prepared by the Contractor or its agents (subcontractor, fabricator, supplier and etc.) shall be coordinated, reviewed, dated, stamped, approved and signed by the Contractor prior to submission to the CEI for review. The Contractor's signed approval of drawings submitted shall confirm the Contractor has verified the Work requirements, field measurements, construction criteria, sequence of assembly and erection, access and clearances, catalog numbers and other similar data. Each series of drawings shall indicate the specification section and page or drawing number of the Contract plans to which the submission applies. The Contractor shall indicate on the shop drawings all deviations from the Contract drawings and shall itemize all deviations in the letter of transmittal. Likewise, whenever a submittal does not deviate from the Contract plans, the Contractor shall also clearly state so in the transmittal letter.

The Contractor shall schedule the submission of shop drawings to allow for a 15-calendar day review period by the CEI. The review period commences upon receipt of the Contractor's submittal by the CEI and terminates upon transmittal of the submittal back to the Contractor by the CEI. The Contractor shall adjust its schedules so that a 10-calendar day period is provided for each re-submittal.

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It is incumbent upon the Contractor to submit shop drawings to facilitate expeditious review. Voluminous submittals of shop drawings at one time are discouraged and may result in increased review time. The submittal/re-submittal clock will start upon receipt of a valid submittal. A valid submittal shall include all the minimum requirements outlined in 3.1.4.4. CFX will not be liable to the Contractor for resulting delays, added costs and/or related damages when the actual time required for approval extends beyond the 45- and 30-day review periods shown above.

Only CEI approvals of miscellaneous submittals and red ink stamps on shop drawings are valid and any Work performed in advance of approval will be at the Contractor's risk.

3.1.4.6.2 Scope of Review by CEI: The review of the shop drawings by the CEI shall be for conformity to the Contract requirements and intent of design and not for the adequacy of the means, methods, techniques, sequences and procedures proposed for construction. Review by the CEI does not relieve the Contractor of responsibility for dimensional accuracy to assure field fit and for conformity of the various components and details.

3.2 Coordination of Plans and Specifications

The Plans, Specifications and all supplementary documents are integral parts of the Contract and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In addition to the Work and Materials specifically identified as being included in any specific pay item, additional incidental Work not specifically mentioned will be included in such pay item when shown in the Plans or if indicated or obvious and apparent as being necessary for proper completion of the Work.

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In case of discrepancy, the governing order of the documents shall be as follows:

1. The Contract,
2. The Memorandum of Agreement,
3. The Addenda (if any), modifying the General Specifications, Technical Specifications, Special Provisions, Technical Special Provisions (if any), Plans or other Contract Documents,
4. The Plans,
5. The Special Provisions,
6. The Technical Special Provisions (if any),
7. The Technical Specifications,
8. The General Specifications,
9. The Standard Specifications,
10. The Design Standards, and
11. The Proposal.

Computed dimensions shall govern over scaled dimensions.

3.3 Conformity of Work with Plans

All Work performed, and all Materials furnished shall be in reasonably close conformity with the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the Plans or indicated in the Specifications.

In the event CFX finds that the Materials or the finished product in which the Materials are used are not within reasonable close conformity with the Plans and Specifications, but that reasonably acceptable Work has been produced, CFX will make a determination if the Work will be accepted and remain in place. In this event, CFX will document the basis of acceptance by Contract modification which will provide for an appropriate adjustment in the Contract price for such Work or Materials as CFX deems necessary to conform to CFX's determination based on engineering judgment.

In the event CFX finds that the Materials or the finished product in which the Materials are used, or the Work performed are not in reasonable close conformity with the Plans and Specifications and have resulted in an inferior or unsatisfactory product, the Work or Materials shall be removed and replaced or otherwise corrected by and at the expense of the Contractor.

For base and surface courses, the finished grade may vary as much as 0.1 foot from the grade shown on the Plans, provided that all template and straightedge requirements are met and that suitable transitions are affected.

3.3.1 Record Drawings: During the entire construction operation, the Contractor shall maintain records of all deviations from the plans and specifications including Request for Information (RFI), field directives, sketches, etc., and shall submit those deviations to the CEI. The submittal shall also include cross-sections, prepared by a registered surveyor, of all retention ponds in the Project limits. A minimum submittal would be full-sized prints in good condition with all changes in red, accurately plotted. The print shall be in good condition as determined by the CEI. The marked up prints shall be submitted within 15 days of the Project acceptance or termination of Work. Preparation of the record drawings shall be the responsibility of CFX. Retainage will not be released by CFX until the marked up prints and records have been submitted and accepted by CFX.

3.4 Pre-Award Meeting

The Plans and Specifications will be reviewed in a joint pre-award meeting between the Contractor's key personnel and CFX representatives. The purpose of the meeting will be to address all questions or differences in interpretations of the documents and to provide clarifications. The meeting will also provide the opportunity for the Contractor to disclose advantages that may have been gained through a strict and literal interpretation of the bid documents. If the Contractor suspects or believes, based on its prior experience, or on the overall specifications, that a literal interpretation of one or more specifications may not reflect CFX's intentions or desires, the Contractor shall disclose such belief at this meeting. CFX will make a determination as to whether or not any adjustments to the Plans, Specifications and/or bid price are appropriate and desired and will make such corrections and interpretations as CFX deems necessary to reflect the intent of the Plans and Specifications.

A Memorandum of Agreement will be prepared by CFX summarizing the results of the meeting. Except as noted in the Memorandum of Agreement, the Contractor shall certify there are no known errors or omissions in the Plans, Specifications and other Contract Documents before the Contract is executed. The memorandum will be signed by CFX and a representative of the Contractor authorized to act on behalf of the Contractor and will be made a part of the Contract Documents.

Notwithstanding that the pre-award meeting is mandatory as to the Contractor, and notwithstanding that the items to be agreed upon at the pre-award meeting shall become terms of the ultimate Contract, the Contractor expressly acknowledges and agrees that all of the essential terms of the ultimate Contract are contained in the Bid and Bidding Documents, and all issues addressed at the pre-award meeting are deemed non-essential to the existence of the Contract, unless (i) it is discovered that the Contractor misrepresented any item of the Bid, or (ii) CFX determines that the Bid does not conform to the specifications of the Bidding Documents.

3.5 Orders and Instructions

The supervision of the execution of the Contract is vested wholly in the Contractor. The orders, instructions, directions or requests of CFX may come directly from CFX or may be given through CFX's designated representative. The Contractor shall designate a representative to receive such instructions, directions or requests and failing to do so, will be held responsible for the execution of them.

CFX will have the right to suspend the Work wholly or in part for such period or periods as may be deemed necessary due to failure on the part of the Contractor to carry out orders given to perform any or all provisions of the Contract. The Contractor shall not suspend the Work and shall not remove any Equipment, tools, lumber or other Materials without the written permission of CFX.

3.5.1 Observation of the Work: CFX will have free access to the Materials and the Work at all times for measuring or observing the same, and the Contractor shall afford either or both all necessary facilities and assistance for so doing.

After written authorization to proceed with the Work, CFX or its designated representative will:

3.5.1.1 Make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine in general if the Work is proceeding in accordance with the Plans and Specifications. CFX will not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work, will not be responsible for the construction means, methods, procedures, techniques and will not be responsible for the Contractor's failure to perform the construction Work in accordance with the Plans and Specifications. CFX will not be responsible for safety precautions and procedures concerning the Work. During such visits and based on on-site observations, CFX may disapprove Work as failing to conform to the Plans and Specifications.

3.5.1.2 Check and approve samples, catalog data, schedules, shop drawings, laboratory, shop and mill tests of Materials and Equipment and other data which the Contractor is required to submit, only for conformance with the design concept of the Project and compliance with the information given by the Plans and Specifications.

3.5.1.3 Conduct, in company with the Contractor, a final inspection of the Project for conformance with the design concept of the Project and compliance with the information given by the Plans and Specifications.

3.5.1.4 Prepare final record drawings.

- 3.5.2 Examination of the Work: The authority and duties of the CEI, if one is so designated by CFX, are limited to examining the material furnished, observing the Work done and reporting its findings to CFX. Neither CFX nor the CEI underwrites, guarantees or ensures the Work done by the Contractor. It is the Contractor's responsibility to perform the Work in all details in accordance with the Plans and Specifications. Failure by any representative of CFX engaged in on-the-site observation to discover defects or deficiencies in the Work of the Contractor shall never, under any circumstances, relieve the Contractor from the Contractor's liability therefore.

The CEI will have no authority to permit deviation from or to modify any of the provisions of the Plans or Specifications without the written permission or instruction of CFX or to delay the Contractor by failure to observe the Materials and Work with reasonable promptness.

The CEI will not have authority to supervise, direct, expedite or otherwise control the Contractor's means, methods, techniques or sequences of construction. The CEI may only advise the Contractor when it appears that the Work and/or Materials do not conform to the requirements of the Contract Documents.

The payment of any compensation, irrespective of its character or form or the giving of any gratuity, or the granting of any valuable favor, directly or indirectly, by the Contractor to any project representative is strictly prohibited, and any such act on the part of the Contractor will constitute a violation of the Contract.

If the Plans, Specifications, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested or approved by someone other than the Contractor, the Contractor shall give CFX timely notice of readiness therefore. The Contractor shall furnish CFX the required certificates of inspection, testing or approval. All such tests will be in accordance with the methods prescribed by the American Society for Testing and Materials, and/or the American Association of State Highway and Transportation Officials, such other applicable organizations as may be required by law, or the Plans and Specifications. If any such Work required so to be inspected, tested or approved is covered without written approval of CFX, it must, if requested by CFX, be uncovered for observation at the Contractor's expense. The cost of all such inspections, tests and approvals shall be borne by the Contractor unless otherwise provided.

3.5.3 Communications: Prior to the start of the Work, CFX will advise the Contractor as to how communications between CFX and Contractor will be handled. Thereafter, whenever reference is made to required communication between the Contractor and CFX, such communication, to be given consideration, must be addressed in accordance with the approved procedure.

3.6 Engineering and Layout

3.6.1 Control Points Furnished by CFX

CFX will provide control points and benchmarks as identified in the Plans along the line of the Project to facilitate the proper layout of the Work. A walk-through of the Project by the Consultant's surveyor will be provided to the Contractor to facilitate field location of these points. The Contractor shall preserve all reference points and benchmarks furnished by CFX.

As an exception to the above, if the Plans do not show a centerline or other survey control line for construction of the Work (e.g., resurfacing, safety modifications, etc.) CFX will provide only points marking the beginning and ending of the Project and all exceptions.

3.6.2 Furnishing of Stake Material

The Contractor shall furnish all stakes, templates and other Materials necessary to establish and maintain the lines and grades necessary for control and construction of the Work.

3.6.3 Layout of Work

Using the control points furnished by CFX in accordance with 3.6.1 above, the Contractor shall establish all horizontal and vertical controls necessary to construct the Work in conformance with the Plans and Specifications. The horizontal and vertical controls shall include performing all calculations required and setting all stakes needed such as grade stakes, offset stakes, reference point stakes, slope stakes and other reference points or marks necessary to provide lines and grades for construction of all roadway, bridge and miscellaneous items. The Contractor shall also establish all horizontal and vertical controls necessary to perform utility construction required to be performed by the Contractor. The Contractor shall maintain and protect the required station identification stakes in their correct and appropriate locations. Failure to comply with this provision will result in the withholding of the Contractor's partial payments.

The Contractor shall provide CFX with survey assistance for subsoil excavation quantities and other Project quantities as required by CFX.

3.6.4 Specific Staking Requirements

In circumstances involving new base construction, the Contractor shall set stakes to establish lines and grades for subgrade base, curb and related items at intervals along the line of Work no greater than 50 feet on tangents and 25 feet on curves. Grade stakes shall be set at locations directed by the CEI to facilitate checking of subgrade, base and pavement elevations in crossovers, intersections and irregular shaped areas. If Automated Machine Guidance (AMG) is utilized, set stakes as needed to document quantities. Use of AMG will require an approved Work Plan that describes portions of Work performed with AMG, system components including software, prior experience using this AMG system, site calibration procedures, and quality control procedures. Provide a man rover and a digital model for CEI verification.

For bridge construction stakes and other controls, the Contractor shall set references at intervals sufficient to assure that all components of the structure are constructed in accordance with the lines and grades shown on the Plans.

If the Plans do not show a centerline or other survey control line for construction of the Work (e.g., resurfacing, safety modifications, etc.), only such stakes as are necessary for horizontal and vertical control of Work items will be required.

For resurfacing and resurfacing/widening Work, the Contractor shall establish horizontal controls adequate to assure that the asphalt mix added coincides with the existing pavement. In tangent sections, horizontal control points shall be set at 100-foot intervals by an instrument survey. In curve sections, horizontal control points shall be set at 25-foot intervals by locating and referencing the centerline of the existing pavement.

The Contractor shall establish, by an instrument survey, and mark on the surface of the finished pavement at 25-foot intervals, points necessary for striping of the finished roadway. For resurfacing and resurfacing/widening Work these points shall be established in the same manner as for horizontal control of paving operations. Marks shall be made in white paint. If striping is included in the Work to be done by the Contractor an alternate method of layout of striping may be approved by the CEI provided that the alignment achieved is equal to or better than that which would be achieved using an instrument survey.

A station identification stake shall be set at each right of way line at 100-foot intervals and at all locations where a change in right of way width occurs. Each stake shall be marked with painted numerals of sufficient size to be readable from the roadway and corresponding to the Project station at which it is located. Where Plans do not show right of way lines, station identification stakes shall be set at locations and intervals appropriate to the type of Work being done. For resurfacing and resurfacing/widening Work, station identification stakes shall be set at 200-foot intervals.

3.6.5 Personnel, Equipment, and Record Requirements

The Contractor shall employ only competent personnel and use only suitable equipment in performing layout Work. The Contractor shall not engage the services of any person or persons in the employ of CFX for performance of layout Work.

Adequate field notes and records shall be kept as layout Work is accomplished. These field notes and records shall be available for review by the CEI as the Work progresses and copies shall be furnished to the CEI at the time of completion of the Project. Any review of the Contractor's field notes or layout Work by CFX and the acceptance of all or any part thereof, shall not relieve the Contractor of responsibility to achieve the lines, grades, and dimensions shown in the plans and indicated in the specifications.

Prior to final acceptance of the Project, the Contractor shall mark in a permanent manner on the surface of the completed Work all horizontal control points originally furnished by CFX.

3.6.6 Payment

The cost of performing the layout Work as described above shall be included in the Contract unit prices for the various items of Work to which it is incidental.

3.7 Contractor's Supervision

3.7.1 Prosecution of Work

The Contractor shall give the Work the attention necessary to assure the scheduled progress is maintained. The Contractor shall cooperate with CFX and other contractors at Work in the vicinity of the Project.

3.7.2 Contractor's Superintendent

The Contractor shall have a competent superintendent on the Project at all times with the ability to speak and understand the English language. The superintendent shall be thoroughly experienced in the type of Work being performed and shall have full authority to execute the orders or directions of the CEI and to promptly supply or have supplied, any Materials, tools, equipment, labor and incidentals which may be required. The superintendent shall be provided regardless of the amount of Work sublet.

Prior to commencement of Work on the Project, the Contractor shall provide CFX with a written list of supervisory personnel that will be assigned to the Project. The Contractor shall not replace any of the listed personnel without written notice to CFX except under extraordinary circumstances. The Contractor shall not assign any supervisory personnel to the Project, whether initially or as a substitute, against whom CFX may have reasonable objection. CFX's acceptance of any supervisory personnel may be revoked based on reasonable objection after due investigation, in which case the Contractor shall submit an acceptable substitute. No acceptance by CFX of any such supervisory personnel shall constitute a waiver of any right of CFX to reject defective Work. The foregoing requirement shall also extend to Subcontractor's supervisory personnel.

3.7.3 Supervision for Emergencies

The Contractor shall have a responsible person available at or reasonably near the Work site on a 24-hour basis, 7 days per week. This individual shall be designated as the Contractor's contact in emergencies and in cases where immediate action must be taken to maintain traffic or to handle any other problem that might arise. The contact person shall have the ability to speak and understand the English language.

The Contractor shall submit by certified mail to the Florida Highway Patrol and other local law enforcement agencies, a description of the Project location and the name(s) and telephone number(s) of individual(s) designated to be contacted in cases of emergencies. A copy of these submittals shall also be provided to the CEI as part of the Contractor's Maintenance of Traffic Plan. Approval of the Maintenance of Traffic Plan will be withheld until these submittals are provided.

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3.7.4 Worksite Traffic Supervisor

The Contractor shall have a Worksite Traffic Supervisor who shall be responsible for initiating, installing and maintaining all traffic control devices required for maintenance of traffic. The Worksite Traffic Supervisor shall have at least 1 year of experience directly related to worksite traffic control in a supervisory or responsible capacity and shall be certified by the American Traffic Safety Services Association under its Worksite Traffic Supervisor Certification Program, or an FDOT-approved advanced training Provider. Approved advanced training Providers will be posted on the FDOT's web site at the following URL address: <http://www.dot.state.fl.us/rddesign/MOT/MOT.shtm>.

The Worksite Traffic Supervisor shall be available on a 24-hour per day basis and shall be present to direct the initial setup of the traffic control plan. The Worksite Traffic Supervisor shall review the Project daily, be involved in all changes to traffic control and have access to all equipment and Materials needed to maintain traffic control and handle traffic related situations.

The Worksite Traffic Supervisor shall ensure that safety deficiencies are corrected immediately. In no case shall minor deficiencies, which are not immediate safety hazards, remain uncorrected for more than 24 hours. The Worksite Traffic Supervisor shall be available on the site within 45 minutes after notification of an emergency and be prepared to positively respond to repair the Work zone traffic control or to provide alternate traffic arrangements.

Failure by the Contractor to maintain a designated Worksite Traffic Supervisor may result in temporary suspension by CFX of all activities except traffic and erosion control and such other activities deemed necessary for Project maintenance and safety.

3.8 General Inspection Requirements

3.8.1 Cooperation by Contractor

The Contractor shall provide CFX with every reasonable facility for ascertaining whether the Work performed and Materials used are in accordance with the requirements and intent of the Plans and Specifications. If CFX so requests, the Contractor shall, at any time before final acceptance of the Work, remove or uncover such portions of the finished Work as may be directed. After examination, the Contractor shall restore the uncovered portions of the Work to the standard required by the Specifications. If the exposed or examined Work is determined to be unacceptable, the cost of uncovering and/or removal and replacement of the covering

or making good of the parts removed, shall be at the Contractor's expense. The Contractor shall revise and upgrade both construction and testing procedures to prevent a recurrence of the conditions that contributed to the unacceptable Work. If the exposed or examined Work is determined to be acceptable, the cost of uncovering and/or removal and replacement of the covering or making good of the parts removed, shall be paid for as unforeseeable Work.

The Contractor shall give the CEI 24 hours advance notice whenever the Contractor intends to perform Work during other than normal daylight hours. On such occasions, the Contractor's supervisor and sufficient workmen shall be present to undertake the Work in a satisfactory manner. No additional compensation will be made to the Contractor for Work performed during such off periods.

The Contractor shall notify the CEI in writing prior to beginning pumping or dewatering activity in any new location on the project or the resumption of pumping after an interruption in any location. Pumping and discharge activities shall be discussed at each weekly progress meeting. Contractor will satisfy permit requirements at any pumping or dewatering activity.

3.8.2 Failure of CFX to Reject Work During Construction

If CFX should fail to reject defective Work or Materials, whether from lack of discovery of such defect or for any other reason, such failure to reject will not prevent CFX from subsequently rejecting defective Work when such defective Work is discovered or obligate CFX to final acceptance of the defective Work. The Contractor shall make no claim for losses suffered due to any necessary removals or repairs of such defects.

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3.8.3 Failure to Remove and Renew Defective Materials and Work

If, within the time frame indicated in writing from CFX, the Contractor fails or refuses to remove and renew any defective Materials used or Work performed or fails or refuses to make necessary repairs in an acceptable manner, CFX shall have the right to repair or replace or have repaired or replaced, the unacceptable or defective Materials or Work. All costs incurred by CFX for repairs or replacements shall be paid for from moneys due, or which may become due, the Contractor, or may be charged against the Contractor's Public Construction Bond.

Continued failure or refusal by the Contractor to make necessary repairs promptly, fully and in an acceptable manner shall be sufficient cause for CFX, at its sole discretion and option, to perform the Work with its own forces or to contract with any individual, firm or corporation to perform the Work. Costs incurred by CFX shall be paid for from moneys due or which may become due the Contractor or may be charged against the Contractor's Public Construction Bond.

3.9 Final Inspection and Acceptance

3.9.1 Maintenance Until Final Acceptance

Until final acceptance by CFX, the Work shall be under the charge and custody of the Contractor. The Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work including extensive or catastrophic damages.

The Contractor shall provide, at Contractor's expense, all temporary electrical power and lighting necessary for Contractor's operations under the Contract.

On new alignments, the Contractor shall be responsible for all electric bills until Final Acceptance of the project or until such time as CFX takes beneficial use of the alignment or portion thereof, whichever occurs first. Once installed, the roadway lighting shall remain in use and be maintained by the Contractor until Final Acceptance. The Contractor shall be responsible for payment of the electric bills until Final Acceptance at which time payment will be the responsibility of CFX.

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3.9.2 Inspection for Substantial Completion

The CEI will make a semi-final inspection within 7 days after written notice from the Contractor of completion of the Project in its entirety. If, at the semi-final inspection, it is determined that all pay item work has been installed and other conditions as defined in Section 1.3, the project will be deemed Substantially Complete. Further, if all construction provided for and contemplated by the Contract is complete and acceptable to the CEI, such inspection shall constitute the final inspection as described below.

If any Work is determined to be unsatisfactory by the CEI, in whole or in part, the CEI will give the Contractor the necessary instructions as to repair and/or replacement of material and the prerequisites to final completion and acceptance. Upon satisfactory completion of repairs and/or replacements, the Contractor shall notify the CEI and request another inspection for Substantial Completion. Such inspection will constitute the final inspection if the required material has been repaired and/or replaced and the Work is acceptable to the CEI.

Prior to the inspection for Substantial Completion, the CEI may provide the Contractor with various deficiency lists. These lists are intended to assist the Contractor in preparing for Substantial Completion and are not to be considered as punch lists.

3.9.3 Final Inspection

When, in the opinion of the Contractor, all Materials have been furnished, all Work has been performed and the construction contemplated by the Contract has been satisfactorily completed, the Contractor shall request that the CEI make the final inspection.

3.9.4 Final Acceptance

When the entire Work of the Project contemplated by the Contract has been completed acceptably, as determined by the CEI, the Contractor will be given a written notice of final acceptance.

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3.9.5 Recovery Rights Subsequent to Final Payment

CFX reserves the right for a period of 60 months following Final Acceptance, if CFX or its agents discovers and error in the partial or final estimates, or discovers that the Contractor performed defective Work or used defective materials, after the final payment has been made, to claim and recover from the Contractor or Contractor's surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the Work and materials.

3.10 Audit and Examination of Contract Records and Bid Records

CFX 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 Bid Records (as herein defined) of the Contractor or any subcontractor. By submitting a Bid, the Contractor or any first or second tier subcontractor submits to and agrees to comply with the provisions of this Article. In addition, the Contractor shall be entitled to enter into subcontracts with proper CFX approval provided that all subcontracts shall include the same or similar terms as are in this Contract with respect to subcontractors, providing CFX with equal or greater protections than herein.

If CFX requests access to (or review and copy of) any Contract Records or Bid Records and the Contractor refuses such access or review, the Contractor shall be in default under its Contract with CFX. Such refusal shall, without any other or additional actions, constitute grounds for disqualification of the Contractor. This provision shall not be limited in any manner by the existence of any Contractor claims or pending disputes resolution or arbitration 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 CFX during the period of disqualification.

Disqualification shall mean the Contractor is not eligible for and shall be precluded from continuing current Work or doing future work for CFX until reinstated by CFX.

The Contractor shall preserve all Bid Records and Contract Records for the entire term of the Contract and for a period of three years after the later of: (i) final acceptance of the Project by CFX or (ii) until all claims (if any) regarding the Contract are resolved.

Contract Records shall include but not be limited to, all information, letters, 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, agreements, supporting documents, any other papers or preserved data related to the Contract or the Contractor's

performance of the Contract determined necessary by CFX for any purpose. Bid 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 the Contractor in determining labor, unit price, or any other component of a bid submitted to CFX. Bid Records shall also 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, truckers or material suppliers, profit contingencies and any manuals standard in the industry that may be used by the Contractor in determining its bid. These manuals shall be included in the Bid Records by reference and shall show the name and date of the publication and the publisher.

As a condition precedent to Contractor initially filing (and thereafter processing) any claim with CFX for additional compensation, damages, costs, time extensions or other matters in the nature of a Supplemental Agreement or which will have monetary consequences to CFX, Contractor shall (before and after filing a claim) fully comply with CFX's request to audit or examine the Contractor's Contract Records or Bid Records. Non-compliance shall be the basis for and result in dispute resolution being abated or the claim being dismissed until compliance occurs. Re-filing of the claim (and removal of disqualification) shall not occur unless the Contractor also reimburses CFX for costs and attorney's fees incurred in connection with the audit request and disqualification.

The purpose of this provision and requirement is to assure that CFX has full information with respect to any Contractor claims so as to expedite dispute resolution, processing and satisfying bona fide claims.

3.11 Escrow of Bid Records

Prior to the Contract becoming binding on CFX, the following procedure shall have been timely implemented to secure the Contractor's Bid Records to the satisfaction of CFX:

1. The Contractor, in the company of the CEI, shall rent a safe deposit box, at a bank in Orange or Seminole County, of adequate size to hold the original or a legible copy of the Bid Records used by the Contractor and all subcontractors to prepare its bid. The Bid Records, enclosed in a separate sealed container or containers, shall be deposited in the box at that time. The container(s) shall be clearly marked "Bid Records" with the face of the container(s) showing the Contractor's name, address, date of submittal and Project number.

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2. Only the Contractor's representative(s) shall sign the signature card required by the bank to allow subsequent access to the box. The Contractor shall request a maximum of two keys to the box which shall be given to the CEI. The CEI will tag the keys, in the presence of the Contractor, with the name of the Contractor, the Project number, the name and location of the bank and the box number.
3. At the time the Bid Records are secured in the safe deposit box, the Contractor shall submit to the CEI an affidavit, signed under oath by the Contractor, listing each Bid Record submitted by author, date, nature and subject matter. By executing this affidavit, the Contractor waives the right to use, directly or indirectly, any Bid Record, other than the Bid Records placed in escrow in the sealed container(s), in any dispute arising out of the Contract. Failure by the Contractor to provide the affidavit will be sufficient cause for CFX to nullify the award of the Contract to the Contractor. The Contractor's Proposal Bond shall be forfeited, and the full amount of the bond shall be paid to CFX as stipulated for liquidated damages.
4. The CEI will transport the keys to CFX's office where the Director of Construction or his authorized representative will sign a receipt acknowledging acceptance of the keys on behalf of CFX. A copy of the receipt will be transmitted to the Contractor.

The keys will be stored in a secure location in CFX's office until such time as any of the following occurs: (i) the Contractor requests that the Bid Records be released to CFX in support of a claim by the Contractor for an adjustment in time or money under Article 2.4 of these General Specifications; (ii) the Contractor requests that the Bid Records be released to CFX as a result of the Contractor initiating arbitration against CFX; (iii) the Contractor requests that the Bid Records be released to CFX for any other reason; or (iv) the Contract has been satisfactorily completed and the Project accepted by CFX, in writing, and the Contractor has executed a binding release of all claims and potential causes of action related to the Contract. Under any of these circumstances, the CEI will obtain the keys from CFX's office and, in the company of the Contractor's representative authorized by the bank signature card to access the safe deposit box, retrieve the Bid Records. The records will be transmitted by the CEI to the party requesting the release.

If the records are being returned as a result of acceptance of the Project by CFX, the Contractor shall sign a receipt acknowledging that the sealed container(s) has/have been returned to the Contractor unopened.

If the Bid Records are opened for any reason, CFX reserves the right to reveal the contents of the records to consultants, experts and legal counsel retained by CFX to assist with claims evaluation and arbitration preparation. Confidentiality of the Bid Records will be protected by CFX insofar as such protection does not conflict with the requirements of the Florida Public Records Act and Florida Sunshine laws.

All costs and fees associated with the rental and maintenance of the safe deposit box shall be paid by the Contractor.

3.12 Prevailing Party Attorney's Fees

If any dispute regarding Contractor claims arising hereunder or relating to the Contract (and the Contractor's Work hereunder) results in binding arbitration, the prevailing party in such arbitration shall be entitled to recover reasonable attorney's fees and costs including costs and expenses of expert witnesses.

In order for the Contractor to be the prevailing party, the Contractor must receive an adjusted judgment or adjusted award equal to at least eighty percent (80%) of its contested claims filed with CFX, failing which CFX will be deemed the prevailing party in such arbitration proceedings.

For purposes of determining whether the judgment or 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 the Contractor for its claims (exclusive of interest, cost or expenses), less: (i) any amount awarded to CFX (exclusive of interest, costs or expenses) on claims asserted by CFX against the Contractor in connection with the Contract, and (ii) any amount offered in settlement prior to initiation of Contractor arbitration claims (exclusive of interest, cost or expenses).

The term "contested claim" or "claims" shall mean the initial written claim(s) submitted to CFX by the Contractor (disputed by CFX) which have not otherwise been resolved prior to the initiation of binding arbitration. Contractor claims or portions thereof which CFX agreed to pay or offered to pay, in writing, prior to initiation of arbitration shall not be deemed contested claims for purposes of this provision. If the 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 the Contractor's claim(s).

Attorney's 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 through and including the arbitration hearing, 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 such original claim amount is ultimately used in determining if the judgment or award is at least eighty percent (80%) of the cumulative claims.

The term "costs" shall include any and all costs incurred, including without limitation consultant fees, expert witness fees, court reporter costs, photocopy costs, telephone charges and travel expenses, whether or not such costs are provided by statute or contained in the State-Wide Guidelines.

The purpose of this provision is to discourage frivolous or overstated claims and, as a result thereof, CFX and the 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 is being served by this provision.

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

END OF SECTION 3

SECTION 4 - CONTROL OF MATERIALS

4.1 Acceptance Criteria

4.1.1 General: Acceptance of materials is based on the following criteria. All requirements may not apply to all materials. Use only materials in the work that meet the requirements of these Specifications. The CEI may inspect and test any material, at points of production, distribution and use.

4.1.2 Sampling and Testing: Use the CFX current sample identification and tracking system to provide related information and attach the information to each sample.

Restore immediately any site from which material has been removed for sampling purposes to the pre-sampled condition with materials and construction methods used in the initial construction, at no additional cost to CFX.

Ensure when a material is delivered to the location as described in the Contract Documents, there is enough material delivered to take samples, at no expense to CFX.

4.1.2.1 Pretest by Manufacturers: Submit certified manufacturer's test results to the CEI for qualification and use on CFX projects. Testing will be as specified in the Contract Documents. CFX may require that manufacturers submit samples of materials for independent verification purposes.

4.1.2.2 Point of Production Test: Test the material during production as specified in the Contract Documents.

4.1.2.3 Point of Distribution Test: Test the material at distribution facilities as specified in the Contract Documents.

4.1.2.4 Point of Use Test: Test the material immediately following placement as specified in the Specifications. After delivery to the project, CFX may require the retesting of materials that have been tested and accepted at the source of supply, or may require the testing of materials that are to be accepted by Producer Certification. CFX may reject all materials that, when retested, do not meet the requirements of these Specifications.

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4.1.3 Certification:

4.1.3.1 Approved Products List: An Approved Products List (APL) is published and maintained by the FDOT and may be referenced in the Plans and Specifications. The items on the list have basic approval and are generally acceptable to CFX. However, the Contractor is advised that products on the APL are still subject to final approval and acceptance by CFX. The Contractor shall make no claim for additional compensation or extension of Contract time to replace an item on the APL that is rejected by CFX subsequent to execution of the Contract.

4.1.3.2 Contractor Installation Certification: Provide installation certifications as required by the Contract Documents.

4.1.4 Warranty and Guaranty: CFX may require the Contractor to warrant and guaranty that certain Materials used in the construction of the Project meet all specification requirements for a specified time period. Warranty and guaranty requirements are specified in the appropriate Specifications sections governing the Materials.

4.2 Designation of a Specific Product as a Criterion (“Or Equal” Clause)

Reference in the Plans or Specifications to any proprietary article, device, product, material or fixture or any form or type of construction, by name, make or catalog number, with or without the words “or equal”, shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may use any article, device, product, material or fixture or any form or type of construction, which in the sole opinion of CFX (expressed in writing) is equal, for the purpose intended, to that named and compatible with existing equipment.

4.3 Source of Supply and Quality Requirements

4.3.1 Only Approved Materials to be Used: Only Materials conforming to the requirements of the Specifications, holding a current approval for manufacturing and/or fabrication by the FDOT and approved by CFX shall be used in the Work. Any Materials proposed for use by the Contractor may be inspected or tested by CFX at any time during preparation or use. No material shall be used in the Work that becomes unfit after approval. Materials containing asbestos will not be allowed.

4.3.2 Notification of Placing Order: The Contractor shall notify the CEI at least 15 days prior to ordering Materials to allow CFX time for sampling and testing.

4.3.2.1 Notification of Quality Assurance Inspection Arrangements for Fabrication of Critical Items: To facilitate quality assurance inspection of critical items, the Contractor shall submit a fabrication schedule for all items requiring commercial inspection. The fabrication schedule shall be submitted to the CEI before or at the pre-construction conference. Fabrication of critical items include, but is not limited to, steel bridge components, overhead cantilevered sign supports with cantilevered arms exceeding 45 feet, movable bridge components or any other item identified as a critical item in the Plans or Specifications.

4.3.3 Approval of Source of Supply: The source of supply for material proposed for use shall be submitted by the Contractor to the CEI for approval. Delivery of material shall not begin until approval of the CEI is received.

Representative preliminary samples of the character and quantity prescribed shall be submitted by the Contractor for examination and testing. If, after trial, the source of supply does not furnish a uniform product or if the product from any source proves unacceptable at any time, the Contractor shall furnish material from other approved sources.

The production of mineral aggregates shall be under a Producer Quality Control Program approved by the FDOT. Proof of such approval shall be submitted to the CEI. The program shall be in accordance with FDOT requirements and procedures for obtaining and maintaining FDOT approval of developed and operational mineral aggregate sources (mines and redistribution terminals) and the FDOT Mineral Aggregate Manual. Individual certification shall be furnished with each haul unit load of Materials shipped attesting that those specific Materials were produced under an FDOT-approved Producer Quality Control Program. Any haul unit load of mineral aggregates received by the Contractor without an individual certification being made available to the CEI will be considered defective.

4.4 Inspection and Tests at Source of Supply

4.4.1 General: If the volume, progress of Work and other considerations warrant, CFX may elect to inspect Materials at the source of supply. However, CFX assumes no obligation to inspect Materials at the source of supply. The responsibility for assuring that Materials are satisfactory rests entirely with the Contractor.

4.4.2 Cooperation by Contractor: The Contractor shall ensure that CFX has free entry and access at all times to the areas of the plant engaged in the manufacture or production of the Materials ordered. Contractor shall bear all costs incurred to provide all reasonable facilities to assist in determining whether the material furnished complies with the requirements of the Specifications.

4.4.3 Retest of Materials: CFX may retest or may require retesting of any Materials which have been tested and accepted at the source of supply after the same have been delivered to the job site. All Materials, which, when retested, do not comply with the requirements of the Specifications, will be rejected; in which case the cost of such retesting shall be at the expense of the Contractor.

4.5 Storage of Materials and Samples

4.5.1 Method of Storage: Store materials in such a manner as to preserve their quality and fitness for the work, to facilitate prompt inspection, and to minimize noise impacts on sensitive receivers. More detailed specifications concerning the storage of specific materials are prescribed under the applicable Specifications. CFX may reject improperly stored materials.

4.5.2 Use of Right-of-Way for Storage: If the CEI allows, the Contractor may use a portion of the right-of-way for storage purposes and for placing the Contractor's plant and equipment. Use only the portion of the right-of-way that is outside the clear zone, which is the portion not required for public vehicular or pedestrian travel. When used, restore the right-of-way to pre-construction condition at no additional cost to CFX or as specified in the Contract Documents. Provide any additional space required at no expense to CFX.

4.5.3 Responsibility for Stored Materials: Accept responsibility for the protection of stored materials. CFX is not liable for any loss of materials, by theft or otherwise, or for any damage to the stored materials.

4.5.4 Storage Facilities for Samples: Provide facilities for storage of samples as described in the Contract Documents and warranted by the test methods and Specifications.

4.6 Defective Materials

Materials not meeting the requirements of these Specifications will be considered defective. The CEI will reject all such materials, whether in place or not. Remove all rejected material immediately from the site of the work and from storage areas, at no expense to CFX.

Do not use material that has been rejected and the defects corrected, until the CEI has approved the material's use. Upon failure to comply promptly with any order of the CEI made under the provisions of this Article, the CEI will remove and replace defective material and deduct the cost of removal and replacement from any moneys due or to become due the Contractor.

As an exception to the above, the Contractor may submit, upon approval of the CEI, an engineering and/or laboratory analysis to evaluate the effect of defective in place materials. A Specialty Engineer, who is an independent consultant or the Contractor's Engineer of Record as stated within each individual Section, shall perform any such analysis. The CEI will determine the final disposition of the material after review of the information submitted by the Contractor. No additional monetary compensation or time extension will be granted for the impact of any such analysis or review.

END OF SECTION 4

SECTION 5 - LEGAL REQUIREMENTS AND RESPONSIBILITY TO THE PUBLIC

5.1 Laws to be Observed

5.1.1 **General:** The Contractor shall comply with all Federal, State, county and city laws, by-laws, ordinances and regulations which control the action or operation of those engaged or employed in the Work or which affect Materials used. CFX will acquire environmental permits required by federal, State, County, and local regulatory agencies for all final improvements. CFX will not provide permits for construction means and methods (burning, dewatering, etc.). The Contractor shall be responsible for these.

The Contractor shall indemnify and hold harmless CFX and all its officers, agents, consultants and employees, in the amount of the Contract, against any claims or liability arising from or based on the violation of any such laws, by-laws, ordinances, regulations, orders or degrees by the Contractor or its subcontractors and suppliers.

5.1.2 **Plant Quarantine Regulations:** The Contractor shall contact the local or other available representatives of the U.S. Department of Agriculture Animal and Plant Health Inspection Service and the Florida Department of Agriculture and Consumer Services to ascertain any current restrictions regarding plant pests which may be imposed by those agencies. Contractor shall remain current with regard to the latest quarantine boundary lines during the construction period. Any restrictions imposed by authorized agencies may affect Contractor's operations involving items such as clearing and grubbing, earthwork, grassing and mulching, sodding, landscaping and other items that may involve the movement of Materials containing plant pests across quarantine lines. Any infringement, damages, remedial activities and/or costs thereof associated with imposed agency restrictions will be borne by the Contractor.

5.1.3 **Introduction or Release of Prohibited Aquatic Plants, Plant Pests or Noxious Weeds:** The Contractor shall not introduce, or release prohibited aquatic plants, plant pests or noxious weeds into the Project limits for any reason. The Contractor shall immediately notify the CEI upon discovery of any prohibited aquatic plants, plant pests or noxious weeds within the Project limits. The Contractor shall not move prohibited aquatic plants, plant pests or noxious weeds and their reproductive parts without a permit from the respective State and/or Federal agency. Prohibited aquatic plants, plant pests and noxious weeds are defined in Rule 16C-52 and Rule 5B-57, Florida Administrative Code. Furnish the CEI, prior to incorporation into the project, with a certification from the Florida Department of Agriculture and Consumer Services, Division of Plant Industry, stating that the sod, hay, straw, and mulch materials are free of noxious weeds, including Tropical Soda Apple.

- 5.1.4 Compliance with Federal Endangered Species Act: Prior to establishing any off-project activity in conjunction with the Project (e.g., borrow pits, concrete or asphalt plant sites, material or Equipment storage sites), the Contractor shall certify to CFX that the Contractor has made, through the use of a qualified environmental scientist, such investigations as may be necessary to comply with the Federal Endangered Species Act. The Contractor shall immediately notify CFX if the Contractor's investigation reveals the need for a biological assessment to determine what measures, if any, are necessary to mitigate the impact on endangered species. The cost for any required biological assessment or subsequent measures required to mitigate the impact on endangered species shall be solely at the Contractor's expense.

No Work shall be performed on site preparation for any off-project activity until CFX receives the Contractor's certification.

- 5.1.5 Occupational Safety and Health Requirements: The Contractor shall take precautions necessary for the protection of life, health and general occupational welfare of all persons (including employees of both the Contractor, CFX and all of its officers, agents and consultants) until the Work has been completed and accepted by CFX.

The Contractor and all Subcontractors shall not allow any person employed in performance of the Work to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health or safety, as determined under the safety and health standards, set forth in Title 29, Code of Federal Regulations, Part 1518 published in the Federal Register on April 17, 1971, as promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96) including any subsequent revisions and updates.

- 5.1.6 Discovery of Unmarked Human Burial Site: The Contractor shall notify the CEI within two hours of the Contractor's or subcontractor's discovery of an unmarked human burial site. All Contractor or subcontractor activity that may disturb the site shall cease immediately upon discovery of the site. The Contractor shall not resume activity at the burial site until written authorization is received from the CEI.

- 5.1.7 Insecticides and Herbicides: Contractor shall contact the Local County Extension Office for a list of approved Insecticides or Herbicides. Contractor shall: adhere to all labeling instructions; exercise extreme caution to prevent damage to vegetation adjacent to the treated area; and replace any damage as the result of these Materials being applied outside the designated treatment area at no expense to CFX.

5.2 Permits and Licenses

- 5.2.1 General: Except as specifically provided for elsewhere in the Specifications, the Contractor shall secure all permits and licenses and give all notices necessary and incidental to the due and lawful prosecution of the Work. The Contractor shall pay all charges and fees for any required licenses and permits.
- 5.2.2 Whenever the Work under or incidental to the Project requires structures and/or dredge/fill/construction activities within the Project limits in waters of the State, CFX will obtain the necessary permits. Any modifications or revisions to an original permit will also be obtained by CFX provided that it is shown that such modifications or revisions are required to complete the construction operations specifically called for in the Plans or Specifications and within the right-of-way limits.

The Contractor shall be responsible to obtain any permits that may be required for Work performed by the Contractor outside the right-of-way or easements for the Project.

In performing the Work, when under the jurisdiction of any environmental regulatory agency, the Contractor shall comply with all regulations issued by such agencies and with all general, special and particular conditions relating to construction activities of any kind and all permits issued to CFX as though such conditions were issued to the Contractor. The Contractor will be responsible for posting any permit placards in a protected location at the worksite.

In case of any discrepancy between any permit condition and a requirement of the Plans or Specifications, the permit condition shall prevail.

If the permit conditions require Work or the furnishing of Materials not specifically provided for in the basis of payment clause for a pay item, such Work or furnishing of Materials will be considered unforeseeable Work by CFX and the Contractor will be compensated in accordance with Article 2.5 of these General Specifications. Special sequencing or scheduling of operations that may be required by permit conditions will not be considered unforeseeable Work by CFX and no additional compensation will be made to the Contractor.

5.3 Patented Devices, Materials and Processes

Payments to the Contractor are understood to include all royalties and costs arising from patents, trademarks and copyrights in any way involved with the Work. Whenever the Contractor is required or desires to use any design, device, material or process covered by letters of patent, trademark, trade secret or copyright, CFX's and the Contractor's right for

such use shall be provided by suitable legal agreement with the patentee or owner of the copyright. A copy of such agreement shall be submitted to CFX; however, whether or not such agreement is made or filed, the Contractor and its surety, in all cases, shall indemnify and hold harmless CFX and all of its officers, agents, consultants and employees, from any and all claims for infringement by reason of the use of any such patented design, device, material or process, on the Work and shall indemnify CFX and all of its officers, agents, consultants and employees for any costs, expenses and damages which CFX may be obligated to pay by reason of any such infringement, at any time during the Work and for a period of three years after completion and acceptance of the Project by CFX.

5.4 Right-of-Way Furnished by CFX

Except as may be otherwise stipulated in the Specifications or as may be shown on the Plans, all right-of-way necessary for completion of the Project will be furnished by CFX without cost to the Contractor. If borrow material areas furnished by CFX contain limerock, such material shall not be removed from the pit without specific written approval from CFX.

5.5 Sanitary Provisions

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of Contractor's employees as are necessary to comply with the requirements and regulations of the State and local boards of health. The Contractor shall not create any public nuisance.

5.6 Control of the Contractor's Equipment

5.6.1 Traffic Interference: Contractor shall not permit Equipment to unreasonably interfere with traffic while the Equipment is on or traversing a road or street.

5.6.2 Overloaded Equipment: Any hauling unit or Equipment loaded in excess of the maximum weights set out in the Florida Uniform Traffic Control Law (or lower weights that may be legally established for any section of road or bridge by the FDOT or local authorities) shall not be operated on any road or street except as provided in subarticle 5.6.3 below for crossings or as provided by a special permit issued by the governmental unit having jurisdiction over a particular road or bridge. This restriction applies to all roads and bridges inside and outside the Project limits as long as these roads and bridges are open for public use. Roads and bridges, which are to be demolished, may be overloaded after they are permanently closed to the public. All liability for loss or damages resulting from Equipment operated on a structure permanently closed to the public shall be the responsibility of the Contractor.

- 5.6.3 Crossings: Where it is necessary to cross an existing road, including specifically the existing travel lanes of a divided highway within the limits of the Project, the Contractor shall obtain the necessary permits from the governmental unit having jurisdiction. The Contractor shall comply with all permit conditions at no additional cost to CFX. The Contractor will be required to provide flagging and watchman service or approved signal devices, for the protection of traffic at all such crossings, in accordance with an approved written plan for that activity.
- 5.6.4 Protection from Damage by Tractor-Type Equipment: Positive measures shall be taken by the Contractor to assure that tractor-type Equipment does not cause damage to roads. If any such damage occurs, the Contractor shall immediately repair the damage to the satisfaction of the governmental unit having jurisdiction over the road and at no cost to CFX.
- 5.6.5 Contractor's Equipment on Bridge Structures: The Contractor, through its Specialty Engineer, shall analyze the effect of imposed loads on bridge structures, within the limits of the Project, resulting from the following operations:
- 1) Overloaded Equipment as defined in subarticle 5.6.2 above:
 - a) Operating on or crossing over completed bridge structures.
 - b) Operating on or crossing over partially completed bridge structures.
 - 2) Equipment within legal load limits:
 - a) Operating on or crossing over partially completed bridge structures.
 - 3) Construction cranes:
 - a) Operating on completed bridge structures.
 - b) Operating on partially completed bridge structures.

Any pipe culvert or box culvert qualifying as a bridge, as defined under subarticle 1.3.3 of these General Specifications is excluded from the above requirements.

A completed bridge structure is a structure in which all elemental components comprising the load carrying assembly have been completed, assembled and connected in their final position. The components to be considered shall also include any related mediums transferring load to any bridge structure.

The Contractor shall determine the effect the Equipment loads have on the bridge structure and the procedures by which the loaded Equipment can be used without exceeding the load capacity for which the structure was designed.

The Contractor shall submit to the CEI for approval eight (8) copies of design calculations, layout drawings and erection drawings showing how the Contractor's Equipment will be used so that the bridge structure will not be overstressed. One (1) of the eight (8) copies of the drawings and the cover sheet of one (1) of the eight (8) copies of the calculations shall be signed and sealed by the Contractor's Specialty Engineer as the CFX record set.

5.6.6 Posting of the Legal Gross Vehicular Weight: The maximum legal gross weight, as set out in the Florida Uniform Traffic Code, shall be displayed in a permanent manner on each side of any dump truck or any dump type tractor-trailer unit hauling embankment material, construction aggregates, road base material or hot bituminous mixture to the Project over any public road. The weight shall be displayed in a location clearly visible to the scale operator, in numbers that contrast in color with the background and are readily visible and readable from a distance of 50 feet.

5.7 Structures Over Navigable Waters

5.7.1 Compliance with Jurisdictional Regulations: Where structures are erected in, adjacent to or over navigable waters, the Contractor shall observe all regulations and instructions of jurisdictions having control over such waters. The Contractor shall not obstruct navigation channels without permission from the proper authority and shall provide and maintain navigation lights and signals in accordance with jurisdictional requirements.

5.8 Use of Explosives

The use of explosives will not be allowed.

5.9 Preservation of Property

5.9.1 General: The Contractor shall preserve from damage all property along the line of Work or which is in the vicinity of or is any way affected by the Work, the removal or destruction of which is not called for by the Plans. This requirement shall apply to public and private property, public and private utilities (except as modified by subarticle 5.9.6 below), trees, shrubs, crops, signs, monuments, fences, guardrail, pipe, underground structures, public highways (except natural wear and tear of highway resulting from legitimate use thereof by the Contractor) and the like. Property damaged due to the activities of the Contractor shall be immediately restored, at Contractor's expense, to a condition similar or equal to that existing before such damage or injury was done by the Contractor.

The Contractor shall protect existing bridges from damage caused by Contractor's operations during the entire construction period. The Contractor will not be required to provide routine repairs or maintenance for such structures but will be required, at Contractor's expense, to make immediate repairs of any damage caused by the Contractor's operations.

The Contractor shall protect all geodetic monuments, horizontal or vertical, located within the limits of construction.

5.9.2 Failure to Restore Damaged Property: If the Contractor fails to restore such property, bridge or road CFX may, at its sole option and with 48 hours notice to the Contractor, proceed to repair, rebuild or otherwise restore the damaged property, bridge or road at Contractor's cost or expense. The cost of such repairs will be deducted by CFX from any monies due or which may become due the Contractor.

5.9.3 Contractor's Use of Streets and Roads

5.9.3.1 On Systems Other than the CFX System: Where the Contractor hauls material or Equipment to the Project over roads and bridges on the state park road system, state highway system, county road system or city street system and such hauling causes damage, the Contractor, at Contractor's cost and expense, shall immediately repair such roads or bridges to as good a condition as existed before the hauling began.

5.9.3.2 On the CFX System: The Contractor shall also be responsible for repairing damage caused by hauling Materials to the Project along roads and bridges outside the limits of the Project which are on the CFX system (roads under the jurisdiction of CFX) or are specifically designated in the Plans as haul roads from CFX furnished Materials pits.

5.9.3.3 Within the Limits of the Project: The Contractor shall not operate Equipment or hauling units of such weight as to cause damage to previously constructed elements of the Project including but not necessarily limited to, bridges, drainage structures, base course and pavement. Equipment or hauling units loaded in excess of the maximum weights set out in subarticle 5.6.2 above shall not be operated on existing pavements that are to remain in place (including pavement being resurfaced), cement-treated subgrades and bases, concrete pavement, any course of asphalt pavement and bridges. Exceptions to these weight restrictions may be allowed for movement of necessary Equipment to and from its work site, for hauling of offsite fabricated components to be incorporated into the Project and for crossings as detailed in subarticle 5.6.3 above.

5.9.3.4 Cleaning and Maintenance of Streets and Roads: Whenever the Contractor utilizes any streets or roads, whether on the CFX system or otherwise, for cyclical material hauling operations, for example embankment, excavation, etc., the condition of all affected streets or roads will be assessed by the Contractor through an initial video survey with the CEI prior to hauling operations. Throughout the hauling operations or when changes to haul routes occur, the Contractor shall provide updated video surveys performed every two weeks to monitor the current street, road and/or facility conditions. The video survey will be submitted in duplicate to the CEI and narrated to identify the respective street, road or facility, with detail of specific features, condition, etc. Any deterioration, whatsoever, to the condition of the streets or roads from this initial video survey and subsequent two-week updates will be viewed as being a result of the Contractor's operations and shall be repaired to equal or better condition, at the Contractor's expense, within two weeks after notification by the CEI. The Contractor will be responsible to prevent, clean and replace areas of the travel ways and appurtenances (including but not limited to bridge decks, drainage, roadway surface, striping) utilized by the Contractor where tracking and/or spillage of materials have occurred. Cleaning and preventive measures that will not deteriorate the existing facility conditions will be utilized and may include pressure washing, sanding etc.

5.9.4 Traffic Signs, Signal Equipment, Highway Lighting, and Guardrail: Contractor shall protect all existing roadside signs, signal equipment, highway lighting and guardrail, for which permanent removal is not indicated, against damage or displacement. Whenever such signs, signal equipment, highway lighting or guardrail lie within the limits of construction, or wherever so directed by the CEI due to urgency of construction operations, take up and properly store the existing roadside signs, signal equipment, highway lighting and guardrail and subsequently reset them at their original locations or, in the case of widened pavement or roadbed, at locations designated by the CEI.

If CFX determines that damage to such existing or permanent installations of traffic signs, signal equipment, highway lighting or guardrail is caused by a third party(ies), and is not otherwise due to any fault or activities of the Contractor, CFX will, except for any damage resulting from vandalism, compensate the Contractor for the costs associated with the repairs. Contractor shall repair damage caused by vandalism at no expense to CFX.

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5.9.5 Operations Within Railroad Right of Way

5.9.5.1 Notification to the Railroad Company: The Contractor shall notify the CEI and the railroad company's division engineer or superintendent a minimum of 72 hours in advance of beginning any operations within the limits of the railroad right of way, any operations requiring movement of employees, trucks or other Equipment across the tracks of the railroad company at other than established public crossings, and any other Work which may affect railroad operations or property.

5.9.5.2 Contractor's Responsibilities: The Contractor shall comply with the requirements that the railroad company's division engineer or superintendent considers necessary to safeguard the railroad's property and operations. Any damage, delay or injury and any suits, actions or claims made because of damages or injuries resulting from the Contractor's operations within or adjacent to railroad right of way shall be the Contractor's responsibility.

5.9.5.3 Watchman or Flagging Services: When protective services are necessary during certain periods of the Project to provide safety for railroad operations, the railroad company will provide such services (watchman or flagging) and CFX will reimburse the railroad company for the cost thereof. The Contractor shall schedule Work that affects railroad operations to minimize the need for protective services by the railroad company.

5.9.6 Utilities

5.9.6.1 Arrangements for Protection or Adjustment: Work shall not commence at points where the Contractor's operations adjacent to utility facilities may result in expense, loss or disruption of service to the public or owners of the utilities until the Contractor has made all arrangements necessary for the protection of the utilities. The Contractor shall be solely and directly responsible to the owners and operators of such utilities for any damage, injury, expense, loss, inconvenience, or delay caused by the Contractor's operations.

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CFX will make the necessary arrangements with the utilities owners for removal or adjustment of utilities where such removal or adjustment is determined by CFX to be essential to the performance of the Work. Relocations or adjustments requested by the Contractor based on the Contractor's proposed use of a particular method of construction or type of Equipment will not be considered as being essential to the Work if other commonly used methods and Equipment could be used without the necessity of relocating or adjusting the utility. CFX will determine the responsibility for any such required adjustments of utilities. Relocations or adjustments requested because of delivery to the Project of Materials furnished by the Contractor shall be the responsibility and expense of the Contractor.

Circumstance under which CFX will consider utility relocations or adjustments essential include, but are not necessarily limited to, the following:

- 1) Utilities lying within the vertical and horizontal construction limits plus the reasonably required working room necessary for operation of Equipment normally used for the particular type of construction except as provide in subparagraph 4 below. In the case of overhead electrical conductors which carry more than 400 volts, a minimum of 10 feet clearance between the conductor and the nearest possible approach of any part of the Equipment will be required, except where the utility owner effects safeguards approved by the Florida Department of Labor and Employment Security.
- 2) Utilities lying within the horizontal limits of the Project and within 12 inches below the ground surface or the excavation surface on which the construction Equipment is to be operated or within 12 inches below the bottom of any stabilizing course called for on the Plans.
- 3) Utilities lying within the normal limits of excavation for underground drainage facilities or other structures (except as provided in subparagraph 4 below). Such normal limits shall extend to side slopes along the angle of repose as established by sound engineering practice, unless the Plans or Specifications require the sides of the excavation to be supported by sheeting or the Contractor elects to sheet such excavation for the Contractor's convenience.

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4) Where utilities cross pipe trenches transversely within the excavation area but not within positions from which relocation or removal is necessary, the utility owner will be responsible for providing and effecting all reasonable measures for their support and protection during construction operations. The Contractor shall cooperate with the utility owner in the owner's effecting such support and protective measures. The Contractor shall be responsible for any damage to the utility that is caused by neglect or failure on the Contractor's part to cooperate and to use proper precaution in performing the Work.

In the event that a temporary relocation of a utility or a particular sequence of timing in the relocation of a utility is necessary, such relocation shall be done only as directed by CFX. CFX will not be responsible for utility adjustments or temporary relocation work or for the conditions resulting therefrom, where such adjustments are: not necessitated by the construction of the Project; or done solely for the benefit or convenience of the utility owner or its contractor (or the Contractor where Contractor's construction procedures are considered by CFX to be other than normal); or not shown on the approved Plans for the utilities relocation or the construction.

5.9.6.2 Cooperation with Utility Owners: The Contractor shall cooperate with the utility owners in the removal and/or rearrangement of utilities. If utility service is interrupted due to construction operations, the Contractor shall immediately notify the owner of the utility and the CEI and cooperate in the prompt restoration of service. If water service is interrupted, the Contractor's repair work shall be continuous until the service is restored. No Work shall be undertaken around fire hydrants until the local fire authority has approved provisions for continued service.

5.9.6.3 Utility Adjustments: Utility adjustments and reconstruction Work may be underway during the Work. The Contractor shall effectively cooperate, coordinate, and schedule utility adjustments with utility construction crews in maintaining utility service. The Contractor shall use caution when working adjacent to utilities that have been relocated. The Contractor shall repair, at Contractor's expense, damages to relocated utilities resulting from Contractor's operations.

5.9.6.4 Weekly Meetings: Contractor shall conduct weekly meetings on the job site with all the affected utility companies and the CEI in attendance to coordinate Project construction and utility relocation, and shall submit a list of all attendees one week in advance to the CEI for approval.

Provide the approved Work Progress Schedule and Work Plan for the project to document the schedule and plan for road construction and utility adjustments. When utility relocations no longer affect construction activities, the Contractor may discontinue the meetings with the CEI's approval.

5.10 Responsibility for Damages, Claims, etc.

5.10.1 Contractor to Provide Defense Against Claims and Suits: To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless CFX (its officers, agents and employees) from and against claims, damages, losses and expenses (including but not limited to attorneys' fees), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom. However, the indemnification herein provided is only to the extent caused in whole or in part by any act, omission or default of the Contractor, subcontractor, sub-subcontractor, materialman, agents of any tier, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described herein. The monetary limit on the indemnification provided herein to CFX or its officers, agents and employees shall be the total amount of the Agreement in aggregate or the insurance policy amount as required in article 5.11 herein, whichever is greater. The total amount of the Agreement in aggregate will be determined by the date the notice of claim was received by CFX.

In claims against any person or entity indemnified under this subarticle by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this subarticle shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

The obligations of the Contractor under this subarticle shall not extend to the liability of the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, designs or specification, or (2) the giving of or the failure to give direction or instructions by the Engineer of Record, the Engineer of Record's consultants and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

The Contractor's obligation to indemnify and pay for the defense or, at CFX's option, to participate and associate with CFX in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the Contractor of the CFX notice of claim for indemnification to the Contractor. The notice of claim for indemnification will be served by certified mail. The Contractor's obligation to indemnify within seven (7) days of receipt of such notice will not be excused because of the Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines the Contractor is not liable or determines CFX is solely negligent. The Contractor will pay all costs and fees related to this obligation and its enforcement by CFX.

This Contract shall not create in the public or any member thereof, a third party beneficiary hereunder or to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

5.10.2 Guaranty of Payment for Claims: The Contractor guarantees the payment of all just claims for Materials, Equipment, supplies, tools or labor and other just claims against the Contractor or any subcontractor in connection with the Contract. Final acceptance and payment by CFX will not release the Contractor's bond until all such claims are paid or released.

5.11 Insurance

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined in subarticles 5.11.1 through 5.11.9 below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company. 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 CFX. Such Certificates shall provide that in the event of cancellation, non-renewal or material reduction in coverage (including any material reduction of limits of Liability), the insurer will provide thirty (30) days prior notice of such cancellation, non-renewal or material reduction by certified mail to CFX. In addition, certified true copies of all policies shall be provided to CFX upon specific written request. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe will result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX.

All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

Excluding Professional and Pollution liability insurance, no liability insurance required herein shall be written under a "claims made" form.

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX 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 CFX of any certificate of insurance and endorsement evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance and endorsements are in compliance with the requirements.

Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

5.11.1 Schedule of Required Limits for Workers' Compensation, General Liability and Automobile Liability:

Contract Amount	Workers' Comp/ Employer's Liability	General Liability (per occurrence/ aggregate)	Automobile Liability
Up to \$3 million	Statutory / \$500,000	\$1,000,000 / \$2,000,000	\$1,000,000
\$3 million and Up	Statutory / \$1,000,000	\$5,000,000 / \$10,000,000	\$5,000,000

5.11.2 Worker's Compensation and Employer's Liability Insurance: The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by the Contractor, its employees, agents and subcontractors.

5.11.3 Comprehensive General Liability Insurance: Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than the limits of insurance as required in Section 5.11.1.

The policy shall contain an endorsement providing for Aggregate Limits of Liability to be on a per Project basis. This endorsement shall state that Aggregate Limits as specified herein apply separately and specifically to this Project.

Products and Completed Operations coverage, evidenced by a Certificate of Insurance, shall be maintained for a period of not less than two (2) years following completion of the Work to which the Contract applies.

If watercrafts are to be used in the performance of any Work under the Contract, watercraft operations shall be covered under the Comprehensive General Liability policy providing limits in accordance with the General Liability requirements.

If the Project involves Work or operations by the Contractor within the limits of the railroad right-of-way, including any encroachments thereon from Work or operations in the vicinity of the railroad right-of-way, the railroad shall be named as an Additional Insured under this policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy. Insurance Services Office endorsement CG 20 10 (11 85 edition date) or both CG 20 10 and CG 20 37(10 01 edition dates) forms (if later edition dates are used), shall be used to meet these requirements and a photocopy of same shall be provided with the Certificate.

- 5.11.4 Comprehensive Automobile Liability Insurance: The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage shall not be less than the limits of insurance as required in subarticle 5.11.1.

This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

- 5.11.5 Umbrella/Excess Liability Insurance: If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by subarticle 5.11.1

The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Article 5.11. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

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- 5.11.6 **Builder's Risk:** If this Contract includes: (1) construction of a new above-ground structure or structures, (2) any addition, improvement, alteration, or repair to an existing structure or structures, or (3) the installation of machinery or equipment into an existing structure or structures, the Contractor shall maintain builders' risk insurance providing coverage to equally protect the interests of CFX, the Contractor and subcontractors of any tier.

Coverage shall be written on a completed value form in an amount at least equal to 100% of the estimated completed value of the project plus any subsequent modifications of that sum. The coverage shall be written on an "all-risk" basis and shall, at a minimum, cover the perils insured under the Insurance Services Office CP 10 30 Special Causes of Loss Form and shall include property in transit and property stored on or off premises that shall become part of the project.

The Contractor agrees not to maintain a wind or flood sub-limit less than 25% of the estimated completed value of the project. The Contractor agrees any flat deductible(s) shall not exceed \$25,000, and any windstorm percentage deductible (when applicable) shall not exceed five-percent (5%).

The coverage shall not be subject to automatic termination of coverage in the event the project/building is occupied in whole or in part, or put to its intended use, or partially accepted by CFX. If such restriction exists the Contractor shall request that the carrier endorse the policy to amend the automatic termination clause to only terminate coverage if the policy expires, is cancelled, CFX's interest in the project ceases, or the project is accepted and insured by CFX.

- 5.11.7 **Railroad Insurance:** When the Contractor performs Work on, adjacent to, over or under a railroad, railroad property or railroad right-of-way, the Contractor shall furnish CFX (for transmittal to the railroad company) an insurance certificate with the railroad named as the insured which (with respect to the operations the Contractor or any of its subcontractors perform) will provide for Railroad Protective Liability insurance providing coverage for bodily injury, death and property damage of a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence, with an aggregate limit of Ten Million Dollars (\$10,000,000.00) for the term of the policy. The policy shall be written on the ISO/RIMA (CG 00 3S 11 85) with Pollution Exclusions Amendment (CG 28 31 11 85) endorsement deleting Common Policy Conditions (CG 99 01) if Common Policy Conditions are included in the policy and Broad Form Nuclear Exclusion (IC 00 21). CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

5.11.8 Pollution Legal/Environmental Legal Liability Insurance (CPL) - The Contractor agrees to maintain Contractor's Pollution Legal/Environmental Legal Liability Insurance on a per-project basis. Coverage shall be for pollution losses arising from all services performed to comply with this contract. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants, or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage.

If policy is written on a Claims Made form, a retroactive date prior to or equal to the effective date of the Contract is required, and coverage must be maintained for 3 years after completion of contract or "tail coverage" must be purchased. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Contractor agrees to purchase the SERP with a minimum reporting period of not less than three years. Purchase of the SERP shall not relieve the Contractor of the obligation to provide replacement coverage.

Coverage should include and be for the at least the minimum limits listed below:

- 1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- 2) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
- 3) Cost of Cleanup/Remediation.

Limits

Each Occurrence - \$ 2,000,000

General Aggregate - \$ 4,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined.

If the CGL and CPL policy is issued by the same issuer, a total pollution exclusion shall be attached to the Contractor's CGL policy and an appropriate premium credit provided from the issuer to the Contractor.

CFX, its employees, members, officers, agents, consultants and successors shall be named as Additional Insured under this policy.

5.11.9 Professional Liability- If the construction method is "design-build" the Contractor agrees to maintain Professional Liability on a per-project basis. The Contractor agrees that the policy shall include a minimum three-year extended reporting period. The Contractor agrees that the Retroactive Date equals or precedes the execution date of this Contract or the performance of services specified hereunder. The Contractor agrees to provide coverage with limits and deductibles as prescribed below.

Contract Amount	Minimum Limit	Maximum Deductible
Up to \$1 million	50% of project cost, minimum of \$100,000 per occurrence	10% of project cost or \$25,000, whichever is smaller
\$1 million and Up	\$1,000,000	\$100,000

5.12 Contract Bond (Public Construction Bond) Required

5.12.1 General Requirements of the Bond: The Contractor shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the amount of the Contract. This bond shall remain in effect until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. Such bond shall be executed on the form furnished by CFX. The surety shall meet all requirements of the laws of Florida and shall be approved and at all times acceptable to CFX. The name, address and telephone number of the surety agent shall be clearly stated on the face of the Public Construction Bond.

5.12.2 Continued Acceptability of Surety: In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the Contractor immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the Contractor from its payment of premium on the defaulting bond, will be borne by CFX.

5.13 Contractor's Responsibility for Work

Until final acceptance by CFX, the Work shall be under the charge and custody of the Contractor. The Contractor shall take every necessary precaution against injury or damage to the Work by the action of the elements or from any other cause whatsoever arising either from the execution or non-execution of the Work and shall rebuild, repair, restore and make good, without additional compensation, all injury or damage to any portion of the Work including extensive or catastrophic damages.

The Contractor will not be held responsible for damage to any landscape items caused by an officially declared hurricane that occurs after the final acceptance of the entire Work but during any remaining portion of the 90-day establishment period.

5.14 Opening Section of Highway to Traffic

When any bridge or section of roadway is, in the opinion of CFX, acceptable for travel, CFX may direct that the bridge or roadway be opened to traffic. Such opening shall not be considered, in any way, to be an acceptance of the bridge or roadway or any part thereof or as a waiver of any provision of the Contract. The Contractor shall make all repairs or renewals due to defective Work or Materials (or for any cause other than ordinary wear and tear) on such opened sections without additional compensation.

5.15 Scales for Weighing Materials

5.15.1 **Applicable Regulations:** Prior to the use of any scales, the Contractor shall submit to the CEI a copy of a certificate of accuracy for the scales that is not more than 1 year old. All scales which are used for the determination of the weight of Materials upon which compensation will be made by CFX shall conform to the requirements of Chapter 531, Florida Statutes, pertaining to specifications, tolerances and regulations as administered by the Bureau of Weights and Measures of the Florida Department of Agriculture. CFX reserves the right to perform scale checks/inspections at its sole discretion.

5.15.2 **Base for Scales:** Such scales shall be placed on a substantial horizontal base that will assure proper support, rigidity and maintenance of level of the scales.

5.15.3 **Protection and Maintenance:** All scale parts shall be in proper condition as to level and vertical alignment and shall be fully protected against contamination by dust, dirt and other matter which might affect operation of the parts.

5.16 Source of Forest Products

As required by Section 255.20, Florida Statutes, all timber, timber piling or other forest products which are used in the construction of the Project shall be produced and manufactured in the State of Florida, price and quality being equal and provided such Materials produced and manufactured in Florida are available.

5.17 Regulations of Air Pollution

5.17.1 General: All Work shall be done in accordance with all Federal, State and local laws and regulations regarding air pollution and burning.

5.17.2 Dust Control: The Contractor shall ensure that excessive dust is not transported beyond the limits of construction in populated areas. Dust control for embankment or other cleared or unsurfaced areas may be by application of water or calcium chloride, as directed by CFX. Any use of calcium chloride shall be in accordance with Section 102 of the Technical Specifications. When included in the Plans, mulch, seed, sod or temporary paving shall be installed as early as practical. Dust control for storage and handling of dusty materials may be made by wetting, covering or other means as approved by the CEI.

5.17.3 Asphalt Material: Any asphalt used shall be emulsified asphalt unless otherwise stated in the Plans and allowed by Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. Asphalt materials and components shall be stored and handled to minimize unnecessary release of hydrocarbon vapors.

5.17.4 Asphalt Plants: The operation and maintenance of asphalt plants shall be in accordance with Chapter 17-2 of the Rules and Regulations of the Florida Department of Environmental Protection. A valid permit as required under Chapter 17-2 shall be available at the plant site prior to the start of Work.

5.18 Dredging and Filling

If required by the Work, the Contractor shall comply with Section 370.033, Florida Statutes, regarding obtaining a certificate of registration from the Florida Department of Environmental Protection and keeping accurate records and logs of all dredge and fill activities.

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5.19 Erosion Control

This Project will be constructed on properties that may be subject to environmental permits and regulation promulgated by city, county, state, federal, and regional authorities. Requirements for erosion control are included in the Technical Specifications.

5.20 Contractor's Motor Vehicle Registration

The Contractor shall provide proof to CFX that all motor vehicles operated or caused to be operated by the Contractor are registered in compliance with Chapter 320, Florida Statutes. Such proof of registration shall be submitted in the form of a notarized affidavit to CFX. No payment will be made to the Contractor until the required proof of registration is on file with CFX.

5.21 Internal Revenue Service Form W-9

The Contractor shall complete and return with the executed Contract, Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.

5.22 Tolls and Access

The Contractor shall pay all tolls incurred from using CFX's Expressway System to transport personnel, equipment, or materials to and from the site of Work. Any costs incurred by the Contractor in payment of tolls shall be considered incidental and included in associated items. The term "equipment" in this context includes loaders, graders and similar self-propelled equipment, operating under their own power, passing through a toll plaza.

Contractor shall access the Project by existing expressway ramps. No access will be allowed through the right-of-way fence.

5.23 Requests for References or Performance Evaluations

In the event CFX at any time receives any direct or third party inquiry or request concerning the Contractor, its employees or sub-contractors, or the performance of the Contractor, its employees or sub-contractors under this Contract, CFX, at any time and in all cases, may, but shall not be obligated to respond to any such inquiry or request, with or without notice to the Contractor, its employees, or subcontractors, as the case may be, but, in all cases, such response shall be limited to: (1) acknowledging that the Contractor has, or in the past has had, a contract with CFX; (2) the date, term and type of such contract; (3) whether a specified employee or subcontractor worked on the Contract, and if so, in what capacity; (4) whether such contract was terminated early for any reason other than the convenience of CFX; (5) whether such contract was eligible for renewal or extension; and, (6) if such contract was

eligible for renewal or extension, whether in fact such contract was renewed or extended. Should the Contractor, its employees, its agents or subcontractors request that any further information be provided in response to such an inquiry or request, such additional information may be provided by CFX, in its sole discretion. Contractor for itself, its employees, its agents and sub-contractors, hereby expressly waives any and all claims of whatever kind or nature that the Contractor, its employees, its agents or sub-contractors may have, or may hereafter acquire, against CFX relating to, or arising out of CFX's response to any and all requests or inquiries concerning the Contractor, its employees or subcontractors under this Contract, or the performance of the Contractor, its employees or subcontractors under this Contract.

5.24 Unauthorized Aliens

Contractor warrants that all persons performing work for CFX under this Contract, regardless of the nature or duration of such work, shall be United States citizens or properly authorized and documented aliens. Contractor shall comply with all federal, state and local laws and regulations pertaining to the employment of unauthorized or undocumented aliens at all times during the performance of this Contract and shall indemnify and hold CFX harmless for any violations of the same. Furthermore, if CFX determines that Contractor has knowingly employed any unauthorized alien in the performance of the Contract, CFX may immediately and unilaterally terminate the Contract for cause.

5.25 Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407-690-5000, publicrecords@CFXWay.com, and 4974 ORL Tower Road, Orlando, FL. 32807).

CONTRACTOR acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the CONTRACTOR is in the possession of documents fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, CONTRACTOR agrees to comply with Section 119.0701, Florida Statutes, and to:

1. Keep and maintain public records required by the public agency to perform the service.

2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.

3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the public agency.

4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If the CONTRACTOR transfers all public records to the public agency upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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 CFX. In the event the CONTRACTOR has public records in its possession, CONTRACTOR shall comply with the Public Records Act.

5.26 Inspector General

It is the duty of every CONTRACTOR and subcontractor to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to section 20.055, Florida Statutes. The corporation, partnership, or person entering into an Agreement with the Central Florida Expressway Authority understands and will comply with subsection. 20.055(5), Florida Statutes.

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5.27 Convicted Vendor List

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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

5.28 Discriminatory Vendor List

An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.

5.29 Severability

If any section of the Contract Documents that are incorporated into this Contract be judged void, unenforceable or illegal, then the illegal provision will 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 will remain in full force and effect and will be enforced and interpreted as closely as possible to the parties' intention for the whole of the Contract.

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5.30 Companies Pursuant to Florida Statute Section 287.135

Pursuant to Section 287.135(3)(a)4, if the company is found to have submitted a false certification as provided under subsection (5); been placed on the Scrutinized Companies with Activities in Sudan List; or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or been engaged in business operations in Cuba or Syria, the contract may be terminated for cause at the option of CFX.

Pursuant to Section 287.135(3)(b), if the company is found to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, the contract may be terminated for cause at the option of CFX.

Submitting a false certification shall be deemed a material breach of contract or renewal. CFX shall provide notice, in writing, to the Contractor of CFX's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If the Contractor does not demonstrate that the CFX's determination of false certification was made in error then CFX shall have the right to terminate the contract and seek civil remedies pursuant to Section 287.135, Florida Statutes and as allowed by law.

5.31 E-VERIFY

CONTRACTOR 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 CONTRACTOR during the term of the contract. CONTRACTOR shall require all of its subcontractors to verify the employment eligibility of all new employees hired by the subcontractors during the term of the Agreement.

END OF SECTION 5

SECTION 6 - PROSECUTION AND PROGRESS OF THE WORK

6.1 Subletting or Assigning of Contract

6.1.1 The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of Contractor's right, title or interest therein, without written consent of CFX. With CFX written consent, the Contractor will be permitted to sublet a portion of the Work but shall perform, with its own organization, Work amounting to not less than 50% of the total Contract amount less the total amount for those Contract items specifically designated as "Specialty Work" below or as otherwise designated as Specialty Work by CFX. The granting or denying of consent under this provision is at CFX's sole discretion.

The total Contract amount shall include the cost of Materials, manufactured component products and their transportation to the Project site. Off-site commercial production of Materials and manufactured component products purchased by the Contractor and their transportation to the Project will not be considered subcontracted Work.

If a part of a Contract item is sublet, only its proportional cost will be used in determining the percentage of subcontracted normal Work.

All subcontracts entered into by the Contractor shall be in writing and shall contain all pertinent provisions and applicable requirements of the Contract. All subcontracts shall require subcontractor to indemnify and hold harmless CFX on the same terms as contained in the General Specifications and the Contract. The Contractor shall furnish CFX with a copy of any subcontract requested by CFX. Subletting of Work shall not relieve the Contractor or surety of their respective liabilities.

The Contractor shall ensure that all Subcontractors are competent, careful and reliable. The Contractor shall submit the names and qualifications of all first and second tier subcontractors to CFX for approval prior to their beginning Work on the Project. All first and second tier subcontractors shall have the skills and experience necessary to properly perform the Work assigned and as required by the plans and specifications.

If, in the opinion of CFX, any Subcontractor employed by the Contractor is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such first or second tier subcontractor shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such subcontractor shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such subcontractor, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the subcontractor is removed. The

Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Subcontractor based on the direction of CFX. All subcontracts shall expressly include an acknowledgment of CFX's right to remove any Subcontractor in accordance with this paragraph.

A Subcontractor shall be recognized only in the capacity of an employee or agent of the Contractor.

If the aggregate total of the dollar amount of Work performed by a subcontractor, including equipment rental agreements, equals or exceeds \$20,000, a formal subcontract agreement shall be entered into between the Contractor and the Subcontractor.

6.1.2 Specialty Work: The following Work is designated as Specialty Work:

- Auxiliary Power Unit
- Cleaning, Coating, Injection, Grouting, Grinding, Grooving or Sealing Concrete Surfaces
- Deep Well Installation
- Electrical Work
- Fencing
- Highway Lighting
- Installing Pipe or Pipe Liner by Jacking and Boring
- Installing Structural Plate Pipe Structure
- Landscaping
- Painting
- Plugging Water Wells
- Pressure Grouting
- Pumping Equipment
- Roadway Signing and Pavement Marking
- Riprap
- Removal of Buildings
- Rumble Strips
- Sealing Wells by Injection
- Septic Tank and Disposal System
- Signalization
- Utility Works
- Vehicular Impact Attenuator
- Water and Sewage Treatment Systems

6.2 Work Performed by Equipment Rental Agreement

The limitations set forth in 6.1, regarding the amount of Work that may be subcontracted, do not apply to Work performed by Equipment rental agreements. The Contractor shall notify CFX, in writing, if the Contractor intends to perform any Work through an Equipment rental agreement. The notification shall be submitted to CFX before any rental Equipment is used on the Project. The notification shall include a list of the Equipment being rented, the Work to be performed by the Equipment and whether the rental includes an Equipment operator. Notification to CFX will not be required for Equipment being rented (without operators) from an Equipment dealer or from a firm whose principle business is renting or leasing Equipment.

6.3 Prosecution of Work

6.3.1 Sufficient Labor, Materials and Equipment: The Contractor shall provide sufficient labor, Materials and Equipment to ensure the completion of the Work no later than the Contract completion date.

6.3.2 Impacts by Adjacent Projects: When there is a potential impact between two or more projects due to close proximity or due to logistics in moving labor, Materials, and Equipment between projects, all authorized representatives of the parties performing the projects have a responsibility to communicate and coordinate their work so that impacts to either party are eliminated or mitigated and do not endanger, delay, or create additional work or costs to either party. The Contractor shall not be compensated for any additional costs or delays so incurred by either party.

6.3.3 Submission of Working Schedule: Within 21 calendar days after award of the Contract, or at the preconstruction conference, whichever is earlier, the Contractor shall submit a work progress schedule to CFX. The schedule shall show the various activities of work in sufficient detail to demonstrate that the Contractor has a reasonable and workable plan to complete the project within the Contract time allowed. The schedule shall show the order and interdependence of activities and the sequence in which the work will be accomplished as planned by the Contractor. All activities shall be described so that the work is readily identifiable and the progress on each activity can be readily measured. Each activity shall show a beginning work date, a duration, and a monetary value. Activities shall include procurement time for materials, plant and equipment, and review time for shop drawings where they are appropriate and essential to the timely completion of the project. The list of activities shall include milestones when required by the plans or specifications. If the project has more than 1 phase, each phase and its completion date shall be adequately identified and no activity shall span more than one phase.

A working plan shall be submitted with the schedule. The working plan shall be a concise written description of the Contractor's construction plan.

If, in the opinion of CFX, the schedule submitted by the Contractor is inadequate, it will be returned to the Contractor for revision. The Contractor shall resubmit a revised schedule within 15 calendar days from the date of the transmittal returning the original schedule. The approved schedule will be used as the baseline against which Contractor's progress is measured.

The Contractor shall submit an updated work progress schedule when requested by CFX. If revisions are required to the working schedule, the Contractor shall submit revised charts and analyses within 21 calendar days after being notified by CFX.

Failure to finalize either the initial or a revised schedule in the time specified may result in CFX withholding payments to the Contractor until the schedule is approved.

6.3.4 Beginning Work: See Article 6.7 below.

6.3.5 Provisions for Convenience of the Public: The Contractor shall schedule operations to minimize any inconvenience to adjacent businesses, vehicular or pedestrian traffic or residences. CFX reserves the right to direct the Contractor as to the performance and scheduling of Work in any areas along the Project where restrictions caused by construction operations present significant hazards to the health and safety of the general public.

When working adjacent to or over travel lanes, the Contractor shall ensure that dust, mud and other debris from Contractor's operation does not interfere with normal traffic operations or adjacent properties. All debris shall be removed from the Work area and clear zone of the Project before Work ends for the day. Trash shall be picked up and removed daily from the job by the Contractor.

6.3.6 Pre-Construction Conference: Prior to Contractor's commencement of Work on the Project, the CEI will schedule a pre-construction conference with the Contractor, utility companies and other affected parties to review the proposed Work activities and schedule of events.

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6.4 Limitations of Operations

6.4.1 **Night Work:** In all areas where Work is being performed during the hours of dusk or darkness, the Contractor shall furnish, place and maintain lighting facilities capable of providing light of sufficient intensity (5 foot-candles minimum) to permit good workmanship and proper inspection at all times. The lighting shall be arranged so as not to interfere with or impede traffic approaching the Work site(s) from either direction or produce undue glare to property owners and traveling public.

Lighting of Work site(s) may be accomplished using any combination of portable floodlights, standard Equipment lights, existing street lights, temporary street lights, etc., that will provide the proper illumination. The Contractor shall provide a light meter to demonstrate that the minimum light intensity is being maintained. The Contractor shall provide sufficient fuel, spare lamps, generator, etc., to maintain lighting of the Work site.

The Contractor's lighting plan shall provide for and show the location of all lights necessary for every aspect of Work to be done at night. The plan shall be presented on standard size roadway plan sheets (no larger than 24" x 36") and on a scale of either 100' or 50' to the inch. The Contractor's lighting plan shall be submitted to the CEI for review and approval at least 10 days prior to beginning any night Work. The CEI may require that modifications be made to the lighting setup to fit field conditions.

The Contractor shall furnish and place variable message signs to alert approaching motorists of lighted construction area(s) ahead.

The Contractor's pickups and automobiles used on the Project shall be provided with amber flashing lights or flashing white strobe lights. These lights shall be in operation at all times while in the Project limits and/or Work area.

The Contractor's Equipment shall be provided with a minimum of four square feet of reflective sheeting or flashing lights that will be visible to approaching motorists.

The Contractor shall provide its personnel with reflective safety vests. The Contractor shall ensure that all Subcontractors are also provided with reflective safety vests. Vests shall be worn at all times while workers are within the Work area.

The Contractor shall use padding, shielding or locate mechanical and electrical Equipment to minimize noise as directed by the CEI. Noise generated by portable generators shall comply with all applicable Federal, State and local environmental regulations.

The Contractor shall have a superintendent present to control all operations involved during night Work. The superintendent shall maintain contact with the CEI and ensure that all required actions are taken to correct any problem noted.

All required traffic control devices such as signs, stripes, etc., shall be in place before the Contractor commences Work for the night and before the Contractor leaves the Work site the next morning.

Work operations that result in traffic delays more than five minutes may be temporarily suspended by the CEI to minimize the impact on the traveling public.

No private vehicles shall be parked within the limited access right of way.

The Contractor's Worksite Traffic Supervisor shall continually and adequately review traffic control devices to ensure proper installation and working order, including monitoring of lights.

Compensation for lighting for night Work shall be included in the Contract prices for the various items of the Contract. All lighting Equipment for night work shall remain the property of the Contractor.

6.4.2 Sequence of Operations: The Contractor shall not start new Work that will adversely impact Work in progress. Under such circumstances, CFX reserves the right to require the Contractor to finish a section on which Work is in progress before Work is started on any new section.

6.4.3 Interference with Traffic: The Contractor shall at all times conduct the Work in such a manner and such sequence as to ensure the least practicable interference with traffic. The Contractor's vehicles and other Equipment shall be operated in such a manner that they will not be a hazard or hindrance to the traveling public. Materials stored along the roadway shall be placed to minimize obstruction to the traveling public.

Where existing pavement is to be widened and stabilizing is not required, the Contractor shall schedule operations such that at the end of each workday the full thickness of the base for widening will be in place. Construction of the widening strips will not be permitted simultaneously on both sides of the road except where separated by a distance of at least one-fourth of a mile along the road, where either the Work of excavation has not been started or the base has been completed.

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6.4.4 Coordination with Other Contractors: The right is reserved by CFX to have other work performed by other contractors and to permit public utility companies and others to do work during the construction of and within the limits of or adjacent to the Project. The Contractor shall arrange the Work and dispose of Materials so as not to interfere with the operations of other contractors engaged upon adjacent work and shall perform the Work in the proper sequence in relation to that of other contractors and shall join with and connect to the work of others as required by the Plans and Specifications all as may be directed by the CEI.

Contractor shall be responsible for any damage done by Contractor's operations to the work performed by other contractors. Similarly, other contractors will be held responsible for damage caused their operations to the Contractor's Work. The Contractor agrees to make no claims against CFX for additional compensation due to delays or other conditions created by the operations of such other parties. Should a difference of opinion arise as to the rights of the Contractor and others working

within the limits of, or adjacent to, the Project, CFX will decide as to the relative priority of all concerned.

6.4.5 Drainage: The Contractor shall conduct operations and maintain the Work in such condition that adequate drainage will be in effect at all times. Existing functioning storm sewers, gutters, ditches and other runoff facilities shall not be obstructed.

6.4.6 Fire Hydrants: Fire hydrants on or adjacent to the roadway shall be kept accessible to fire apparatus at all times and no material or obstruction shall be placed within 15 feet of any such hydrant.

6.4.7 Protection of Structures: Heavy Equipment shall not be operated close enough to pipe headwalls or other structures to cause their displacement.

6.4.8 Fencing: The Contractor shall expedite the installation of fencing at those locations where, in the opinion of the CEI, such installation is necessary for the protection, health, and safety of the public. All fencing shall be maintained by the Contractor at all times. Fence cuts shall be immediately replaced. All fence removed during any one working day shall be replaced during that same day. While the fence is down, continuous security shall be provided by the Contractor to ensure that no pedestrians or vehicles enter or exit the roadway from the temporarily unfenced area. Specific attention shall be given to prevent any persons, animals, or vehicles moving from adjacent private property onto the roadway right-of-way.

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6.4.9 Hazardous or Toxic Waste: When the Contractor's operations encounter or expose any abnormal condition which may indicate the presence of a hazardous substance, toxic waste or pollutants such operations shall be discontinued in the vicinity of the abnormal condition and the CEI shall be notified immediately. The presence of tanks or barrels; discolored earth, metal, wood, groundwater, etc.; visible fumes; abnormal odors; excessively hot earth; smoke; or other conditions which appear abnormal may be indicators of hazardous or toxic wastes or pollutants and shall be treated with extraordinary caution.

Every effort shall be made by the Contractor to minimize the spread of any hazardous substance, toxic waste or pollutant into uncontaminated areas.

The Contractor's operations in the affected area shall not resume until so directed by the CEI.

Disposition of the hazardous substance, toxic waste or pollutant shall be made in accordance with the laws, requirements and regulations of any local, state, or federal agency having jurisdiction. Where the Contractor performs Work necessary to dispose of hazardous substance, toxic waste or pollutant and the Contract does not include pay items for disposal, payment will be made, when approved in writing by a Supplemental Agreement, prior to the Work being performed.

6.4.10 Milling: The Contractor shall provide positive drainage of the remaining pavement after milling. This operation shall be done prior to opening to traffic.

The Contractor shall provide suitable transitions between milled areas of varying thickness in order to create a reasonably smooth longitudinal riding surface. In addition, the Contractor shall provide suitable transitions approaching all bridge ends at all times.

Wedges for Longitudinal and Transverse Joints: Asphalt Wedges for longitudinal and traverse joints shall be one foot wide or long, respectively, for each 1/4 inch of depth. The wedge must be installed prior to opening the lane to traffic.

The Contractor shall plan milling operations so that any lane milled will be repaved prior to opening to traffic.

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6.5 Qualifications of Contractor's Personnel

The Contractor shall ensure that all of its employees are competent, careful, and reliable. All workers shall have the skills and experience necessary to properly perform the Work assigned and as required by the Plans and Specifications.

If, in the opinion of CFX, any person employed by the Contractor, or any Subcontractor, is not qualified to perform the Work or is insubordinate, disorderly, disrupts or is detrimental to the progress of the Work, such person shall be immediately removed from the Project by the Contractor upon written direction from CFX. Such person shall not be employed again on the Project without the written permission of CFX. If the Contractor fails to immediately remove such person, CFX may, at its sole discretion, withhold payments due or which may become due, or may suspend the Work until the person is removed. The Contractor shall indemnify and hold harmless CFX, its agents, consultants, officials and employees from any and all claims, actions or suits arising from such removal, discharge or suspension of a Contractor employee based on the direction of CFX.

6.6 Temporary Suspension of Contractor's Operations

6.6.1 Authority to Suspend Contractor's Operations: CFX, at its sole discretion, may suspend the Contractor's operations, wholly or in part, for such period(s) as CFX deems necessary. These periods of suspension may include adverse weather conditions, catastrophic occurrences and heavy traffic congestion caused by special events. Written notice, giving the particulars of the suspension, will be transmitted to the Contractor by CFX.

6.6.2 Prolonged Suspensions: If the suspension of operations is for an indefinite period of time, the Contractor shall store all Materials in such a manner that they will not become damaged or obstruct or impede the traveling public unnecessarily. The Contractor shall take reasonable precautions to prevent damage to or deterioration of the Work performed, shall provide suitable drainage of the roadway by opening ditches, shoulder drains, etc., and shall provide all temporary structures necessary for public travel and convenience.

6.6.3 Permission to Suspend Operations: The Contractor shall not suspend operations or remove Equipment or Materials necessary for the completion of the Work without the permission of CFX. All requests for suspension of the Contract time shall be in writing to CFX and shall identify specific dates to begin and end.

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6.6.4 Suspension of Contractor's Operations - Holidays: Unless the Contractor submits a written request to work on a holiday at least ten days in advance of the requested date and receives written approval from the CEI, the Contractor shall not work on the following days: Martin Luther King, Jr. Day; Memorial Day; the Saturday and Sunday immediately preceding Memorial Day; Independence Day; Labor Day; the Friday, Saturday, and Sunday immediately preceding Labor Day; Veterans Day; Thanksgiving Day; the Friday, Saturday and Sunday immediately following Thanksgiving Day; and December 24 through January 2, inclusive. Contract Time will be charged during these holiday periods regardless of whether or not the Contractor's operations have been suspended. The Contractor is not entitled to any additional compensation for suspension of operations during such holiday periods.

During such suspensions, the Contractor shall remove all Equipment and Materials from the clear zone, except those required for the safety of the traveling public and retain sufficient personnel at the job site to properly meet the requirements of Sections 102 and 104 of the Technical Specifications. The Contractor is not entitled to any additional compensation for removal of Equipment from clear zones or for compliance with Section 102 and Section 104 during such holiday periods.

Any special events known to CFX that may impact Contractor operations are shown on the Plans.

6.7 Contract Time

6.7.1 General: The Contractor shall complete the Work in accordance with the Plans and Specifications and within the Contract Time specified in the Special Provisions including approved extensions.

For scheduling purposes, the Contractor shall take into consideration holidays and all weather conditions (except those listed in subarticle 6.7.3) that may be encountered during the performance of the Work.

The effect on job progress of utility relocations and adjustments and scheduling of construction operations to maintain traffic shall also be considered by the Contractor in the scheduling of Contract time.

6.7.2 Date of Beginning of Contract Time: The date on which Contract time will begin shall be the date of notice to begin Work or as specified in the Notice to Proceed.

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6.7.3 Adjusting Contract Time:

6.7.3.1 Contract Time Extension: CFX has established an allowable Contract duration, in terms of calendar days, sufficient to complete the Work covered by the Contract. By execution of the Contract, the Contractor agrees that the calendar days are sufficient to perform the Work and it has priced its bid considering the Contract duration. If the Contractor's Work (which Work is actually on the critical path) is impacted by one or more of the following events, CFX may (but is not obligated to) consider approving an extension of time:

1. War or other act of public enemies.
2. Riot that would endanger the well-being of Contractor's employees.
3. Earthquake.
4. Unpredictable acts of jurisdictional governmental authorities acting outside the scope of current laws and ordinances.
5. Hurricane (or other weather event) but only if the weather event results in the declaration of an emergency by the Governor of the State of Florida within the geographical area which includes the Work area.
6. Utility relocation and adjustment Work only if all the following criteria are met:
 - a. Utility work actually affected progress toward completion of Work on the critical path.
 - b. The Contractor took all reasonable measures to minimize the effect of utility work on critical path activities including cooperative scheduling of his operations with the scheduled utility work.
7. Temperature restrictions that prohibit placement of friction course (FC-5 only) provided all other Work is completed.
8. Epidemics, quarantine restrictions, strikes (unless caused or provoked by actions of the Contractor, or its subcontractors, or its materialmen, or its suppliers or its agents), freight embargoes.
9. Impacts to the critical path caused by other contractors.

Time will not be granted for inclement weather other than as provided for in this section. In submitting a request for time extension, the Contractor shall comply with the following requirements:

1. Notify CFX in writing of the occurrence of a delay event within 48 hours of the beginning of the event.
2. Furnish a detailed written explanation of the impact of the delaying event on the scheduled Work with supporting documentation in the form of job records.
3. Provide proof that the Contractor has taken all necessary steps to protect the Work, the Contractor's employees, Materials and Equipment from the effects of the event.

CFX will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment.

CFX will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that the Contractor placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

6.7.3.2 An extension of time (rather than monetary compensation) will be the Contractor's sole and exclusive remedy in the event that an extension of time is justified under subarticle 6.7.3.1. The Contractor shall not be entitled to damages when an extension of time is permitted or granted under said sub article.

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6.8 Failure of Contractor to Maintain Satisfactory Progress

6.8.1 General: Time is of the essence of the Contract. Unsatisfactory progress will be deemed to have occurred when:

1. The allowed Contract time for performing the Work has expired and the Contract Work is not complete; or
2. The specified time or date for performing a special milestone stage of the Work (as may be set forth in the Special Provisions) has expired and the Work for that milestone stage is not complete; or
3. The allowed Contract time has not expired and the net dollar value of completed Work (gross earnings less payment for stockpiled Materials) is 15 percentage points or more below the dollar value of Work that should have been completed according to the accepted working schedule for the Project. The dollar value of Work, which should have been completed, is defined as the average between the early start and late start scheduled earnings according to the approved working schedule. After falling 15 percent behind, the delinquency continues until the dollar value of Work is within 5 percentage points of the dollar value of Work that should be completed according to the accepted working schedule for the Project.

In addition to the retainage specified in Article 7.6 of these General Specifications, retainage may also be withheld on partial payments at any time throughout the duration of the Contract due to unsatisfactory progress. The amount of retainage withheld will be one (1) percent of the gross amount earned for the month for every one (1) percent the project is below the dollar value of the Work that should have been completed according to the accepted working schedule for the Project. Retainage held due to unsatisfactory progress will be returned once the delinquency has been cured.

6.9 Default and Termination of Contract

6.9.1 Determination of Default: CFX will give notice in writing to the Contractor and Contractor's surety of such delay, neglect, or default for the following:

- a. If the Contractor fails to begin the Work under the Contract within the time specified in the Notice to Proceed or;
- b. fails to perform the Work with sufficient workmen and Equipment or with sufficient Materials to assure the prompt completion of the Contract as related to the schedule or;
- c. performs the Work unsuitably or neglects or refuses to remove Materials or;
- d. to perform anew such Work as may be rejected as unacceptable and unsuitable or;
- e. discontinues the prosecution of the Work or;

- f. fails to resume Work which has been discontinued within a reasonable time after notice to do so or;
- g. fails to pay timely its subcontractors, suppliers or laborers or;
- h. submits a false or fraudulent Certificate of Disbursement of Previous Payments form or;
- i. becomes insolvent or is declared bankrupt or;
- j. files for reorganization under the bankruptcy code or;
- k. commits any act of bankruptcy or insolvency, either voluntarily or involuntarily or;
- l. allows any final judgment to stand against it unsatisfied for a period of ten calendar days or;
- m. makes an assignment for the benefit of creditors or;
- n. for any other cause whatsoever, fails to carry on the Work in an acceptable manner or;
- o. if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of CFX.
- p. Failure to ensure that D/M/WBE firms have the maximum opportunity to participate in performance of the Contract shall constitute failing to prosecute the Work in an acceptable manner.

If the Contractor, within a period of 10 calendar days after the notice described above, does not proceed to correct the default, CFX may give notice of default in writing to the Contractor and the surety stating the nature of the default and providing the amount of time which will be allowed to correct the default.

If the Contractor (within the curative period described in the notice of default) does not correct the default, CFX will have full power and authority to remove the Work from the Contractor and to declare the Contract in default and terminated.

If the Contract is declared in default, CFX may require the Contractor's surety to take over and complete the Contract performance. Upon the failure or refusal of the surety to assume the Contract within the time demanded, CFX may take over the Work covered by the Contract.

CFX shall have no liability for profits related to unfinished Work on a Contract terminated for default.

- 6.9.2 Public Interest Termination of Contract: CFX may, by written notice, terminate the Contract or a portion thereof after determining that, for reasons beyond either CFX or Contractor control, the Contractor is prevented from proceeding with or completing the Work as originally contracted for, and that termination would therefore be in the public interest. Such reasons for termination may include but need not be necessarily limited to, executive orders of the President relating to prosecution of war or national defense, national emergency which creates a serious shortage of Materials, orders from duly constituted authorities relating to energy conservation and restraining order

or injunctions obtained by third-party citizen action resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the Contractor.

When the Contract or any portion thereof, is terminated (as aforesaid) before completion of all items of Work in the Contract, payment will be made for the actual number of units or items of Work completed, at the Contract unit price or as mutually agreed for items of Work partially completed. No claims for loss of anticipated profits will be considered.

Reimbursement for mobilization expenses (when not otherwise included in the Contract), including moving Equipment to the job, will be considered where the volume of Work completed is too small to compensate the Contractor for these expenses under the Contract unit prices; the intent being that an equitable settlement will be made with the Contractor.

Acceptable Materials procured by the Contractor for the Work, that have been inspected, tested, and approved by CFX and that are not incorporated in the Work, may be purchased from the Contractor at actual cost, as shown by receipted bills and actual cost records, at such points of delivery as may be designated by CFX.

Termination of the Contract or a portion thereof, under the provisions of this subarticle, shall not relieve the Contractor of Contractor's responsibilities for the completed portion nor shall it relieve Contractor's surety of its obligation for, and concerning any just claims arising out of, the Work performed.

CFX may also, upon seven days written notice to the Contractor, without cause and without prejudice to any other right or remedy of CFX, elect to terminate the Contract. In such case, the Contractor will be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, in accordance with existing pay items;
2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, Materials or Equipment as required by the Contract Documents in connection with uncompleted Work, plus mutually agreeable sums for overhead and profit on such expenses.

The Contractor shall not be paid because loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

6.9.3 Completion of Work by CFX: Upon declaration of default and termination of the Contract, CFX will have the right to appropriate or use any or all Materials and Equipment on the sites where Work is or was occurring which are suitable and acceptable and may enter into agreements with others for the completion of the Work under the Contract or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX 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 and the surety shall be jointly and severally liable and shall pay CFX the amount of the excess.

6.10 Liquidated Damages for Failure to Complete the Work

6.10.1 Liquidated Damages for Failure to Complete the Work: The Contractor shall pay to CFX liquidated damages in the amount specified in the Special Provisions per calendar day for failure of the Contractor to complete the Work within the Contract time stipulated or within such additional time as may have been granted by CFX.

6.10.2 Determination of Number of Days of Default: Default days shall be counted in calendar days.

6.10.3 Conditions Under Which Liquidated Damages are Imposed: If the Contractor (or in circumstance of the Contractor default, the surety) fails to complete the Work within the Contract time stipulated or within such extra time as may have been granted by CFX, the Contractor (or the surety) shall pay to CFX, not as a penalty but as liquidated damages, the amount due.

6.10.4 Right of Collection: CFX reserves the right, at its sole option, to apply as payment on liquidated damages due any money which is due the Contractor by CFX.

6.10.5 Allowing the Contractor to Finish Work: Allowing the Contractor to continue and to finish the Work or any part of it, after the expiration of the Contract time allowed, including time extensions, shall in no way act as a waiver on the part of CFX of the liquidated damages due under the Contract.

6.10.6 Liability for Liquidated Damages: In the event of default of the Contract and the completion of the Work by CFX, the Contractor and the Contractor's surety shall be liable for the liquidated damages under the Contract. No liquidated damages shall be chargeable for any delay in the final completion of the Work due to any unreasonable action or delay on the part of CFX.

6.11 Release of Contractor's Responsibility

The Contract will be considered completed when all Work has been finally accepted, in writing, by CFX. The Contractor will then be released from further obligation except as set forth in the Public Construction Bond and as provided in subarticle 3.9.5, Recovery Rights Subsequent to Final Payment.

6.12 Recovery of Damages Suffered by Third Parties

In addition to liquidated damages, CFX may recover from the Contractor amounts paid by CFX for damages suffered by third parties unless the failure to timely complete the Work was caused by CFX acts or omissions.

6.13 Express Warranty

The Contractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, the Contractor shall, at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the Work discovered within one (1) year from the date of final acceptance of the Project, expressed in writing, by CFX. The Contractor also warrants that all materials furnished hereunder meet the requirements of the Contract Documents and expressly warrants that they are both merchantable and fit for the purpose for which they are to be used under the Contract Documents.

Should any subcontractor or material supplier of Contractor provide an express warranty for its work or materials to the Contractor which is thereafter assigned to CFX or provide a warranty for its work or materials directly to CFX, such warranty shall not preclude CFX from the exercise of any alternative means of relief against Contractor, whether contractual, extra-contractual, statutory, legal or equitable.

END OF SECTION 6

SECTION 7 - MEASUREMENT AND PAYMENT

7.1 Measurement of Quantities

7.1.1 Measurement Standards: Unless otherwise stipulated, all Work completed under the Contract shall be measured by CFX according to United States Standard Measures.

7.1.2 Method of Measurements: All measurements shall be taken horizontally or vertically unless otherwise stipulated in the Specifications.

7.1.3 Determination of Pay Areas:

7.1.3.1 Final Calculation: In measurement of items paid for on the basis of area of finished Work, where the pay quantity is determined by calculation, the lengths and/or widths used in the calculations shall be either 1) the station to station dimensions shown on the Plans, 2) the station to station dimensions actually constructed within the limits designated by CFX or 3) the final dimensions measured along the surface of the completed Work within the neat lines shown on the Plans or designated by CFX. The method or combination of methods of measurement shall be those that reflect, with reasonable accuracy, the actual plane surface area, irrespective of surface and texture details of the finished Work as determined by CFX.

7.1.3.2 Plan Quantity: In measurement of items paid for on the basis of area of finished Work, where the pay quantity is designated to be the plan quantity, the final pay quantity shall be the plan quantity subject to the provisions of subarticle 7.3.2. In general, the plan quantity shall be calculated using lengths based on station to station dimensions and widths based on neat lines shown on the Plans.

7.1.4 Construction Outside Authorized Limits: Except where such Work is performed upon written instruction of CFX, no payment will be made for surfaces constructed over a greater area than authorized or for material moved from outside of slope stakes and lines shown on the Plans.

7.1.5 Truck Requirements:

The Contractor shall certify that all trucks used have a manufacturer's certification or permanent decal showing the truck capacity rounded to the nearest tenth of a cubic yard placed on both sides of the truck. The capacity shall include the truck body only and any side boards added shall not be included in the certified truck body capacity.

7.1.6 Ladders and Instrument Stands for Bridge Construction: To facilitate necessary measurements, the Contractor shall provide substantial ladders to the tops of piers and bents and shall place and move ladders as required by the CEI. For bridges crossing water or marshy areas, the Contractor shall provide fixed stands for instrument mounting and measurements.

7.2 Scope of Payments.

7.2.1 Items Included in Payment:

Accept the compensation as provided in the Contract as full payment for furnishing all materials and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the work or from the action of the elements, or from any unforeseen difficulties or obstructions which may arise or be encountered in the prosecution of the work until its final acceptance; also for all other costs incurred under the provisions of the General Specifications.

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools, and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

7.2.2 Non-Duplication of Payment: In cases where the basis of payment clause in these Specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or material essential to the item, CFX will not measure or pay for this same work or material under any other pay item that may appear elsewhere in these Specifications.

7.3 Compensation for Altered Quantities

7.3.1 General: When a change or combination of changes in the Plans results in an increase or decrease in the original Contract quantities and the Work added or deleted is of the same general character as that shown on the original Plans, the Contractor shall accept payment in full at the original Contract unit prices for the actual quantities of Work done. No allowance will be made for any loss of anticipated profits because of increase or decreases in quantities provided, however, that increased or decreased Work covered by a Supplemental Agreement will be paid for as stipulated in the Supplemental Agreement.

Compensation for alterations in Plans or quantities of Work requiring Supplemental Agreements shall be stipulated in such agreement, except when the Contractor proceeds with the Work without change of price being agreed upon. The Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of Work. If no Contract unit price is provided in the Contract, the Contractor agrees to do the Work in accordance with Subarticle 2.3.2 of these General Specifications.

7.3.2 Payment Based on Plan Quantity:

7.3.2.1 Error in Plan Quantity: When the pay quantity for an item is designated to be the original plan quantity, such quantity will be revised only in the event that the quantity increases or decreases by more than 5% of the original plan quantity or the amount due for the item increases or decreases by more than \$5,000, whichever is smaller. In general, such revisions will be determined by final measurement or plan calculations (or both) as additions to or deductions from plan quantities. Changes resulting in pay quantity increase or decrease in excess of 25% will be in accordance with the criteria for significant changes as defined in subarticle 2.3.1 of these General Specifications.

If the Contractor determines that the plan quantity for any item is in error and additional or less compensation is due, the Contractor shall submit evidence of such error to CFX in the form of acceptable and verifiable measurements and calculations. Similarly, if CFX determines an error or errors exist, it will make its measurements and calculations available to the Contractor. The plan quantity will not be revised solely on the basis of the Contractor's method of construction.

For earthwork items, the claimant must note any differences in the original ground surfaces from that shown in the original plan cross-sections that would result in a substantial error to the plan quantity, and must be properly documented by appropriate verifiable level notes, acceptable to both the Contractor and CFX, and provide sufficient opportunity to verify the data prior to disturbance of the original ground surface by construction operations. The claimant shall support any claim based upon a substantial error for differences in the original ground surface by documentation as provided above.

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7.3.2.2 Authorized Changes in Limits of Work: When the pay quantity for an item is designated to be the original plan quantity and a plan change is authorized resulting in an increase or decrease in the quantity of an item, the plan quantity will be revised accordingly provided that such change will increase or decrease the amount due for more than \$100. In general, such revisions will be determined by final measurement or plan calculations or both, subject to the provisions of Subarticle 2.3.2 of these General Specifications.

7.3.2.3 Specified Adjustments to Pay Quantities: The limitations detailed in Subarticles 7.3.2.1 and 7.3.2.2 do not apply when 1) the Specifications provide that the pay quantity for an item to be paid for on the basis of area of finished Work is to be adjusted according to the ratio of measured thickness to nominal thickness, 2) the Specifications provide for a deduction due to test results falling outside of the allowable specification tolerance or 3) paying for extra length fence posts as detailed in the Standard Specifications Section 550, Fencing, sub article 550-6.3, Payment Rates for Extra-Length Posts.

7.3.3 Lump Sum Quantities:

7.3.3.1 Error in Plan Quantity: When the pay quantity for an item is designated to be a lump sum and the Plans show an estimated quantity, the lump sum compensation will be adjusted only in the event that either the Contractor submits satisfactory evidence or CFX determines and furnishes satisfactory evidence that the plan quantity shown is substantially in error as defined in 7.3.2.1.

7.3.3.2 Authorized Changes in the Work: When the pay quantity for an item is designated to be a lump sum and the Plans show an estimated plan quantity, compensation for that item will be adjusted proportionately when a plan change results in a significant increase or decrease in the quantity from the estimated plan quantity. When the Plans do not show an estimated plan quantity or the Specifications do not provide adjustments for contingencies, any authorized plan changes resulting in a significant increase or decrease in the cost of acceptably completing the item will be compensated for by establishing a new unit price through a Supplemental Agreement as provided in Subarticle 2.3.2. of these General Specifications.

7.3.4 Deviation from Plan Dimensions: If the Contractor fails to construct any item to plan or to authorized dimensions within the specified tolerances, the CEI, at his discretion will: require the Contractor to reconstruct the work to acceptable tolerances at no additional cost to CFX; accept the work and provide the Contractor no pay; or accept the work and provide the Contractor a reduced final pay quantity or reduced unit price. CFX will not make reductions to final pay quantities for those items designated

to be paid on the basis of original plan quantity or a lump sum quantity under the provisions of this Article unless such reduction results in an aggregate monetary change per item of more than \$100, except that for earthwork items, the aggregate change must exceed \$5,000 or 5% of the original plan quantity, whichever is smaller. If, in the opinion of the CEI, the Contractor has made a deliberate attempt to take advantage of the construction tolerances as defined in Article 120-12.1 of the Standard Specifications to increase borrow excavation in fill sections or to decrease the required volume of roadway or lateral ditch excavation or embankment, CFX will take appropriate measurements and will apply reductions in pay quantities. CFX will not use the construction tolerance, as defined in Article 120-12.1, as a pay tolerance. The construction tolerance is not to be construed as defining a revised authorized template.

7.4 Force Account Work: Work performed in addition to that set forth in the original Contract and which is paid for on the basis of actual cost of the Materials and labor, plus a fixed percentage of such costs, and at agreed rental rates for major Equipment used.

7.4.1 Method of Payment: All Work done on a force account basis performed by such labor, tools and Equipment as necessary to accomplish the Work, and authorized by CFX, will be paid for in the following manner:

(a) Labor:

Payment for labor and burden shall be based on actual costs of alteration, change, additional or unforeseen Work, plus a markup of 25%, agreed upon in writing before starting such Work, for every hour that the labor is actually engaged in such Work. Such amount shall be considered as full compensation for general supervision and the furnishing and repairing of small tools used on the Work. Agreed wage rates shall not be in excess of the rates paid for comparable Work on the Project.

(b) Materials and Supplies:

Payment for Materials and supplies, directly related to the alteration, change, additional or unforeseen Work, accepted by CFX and used on the Project shall be based on actual costs of such Materials incorporated into the Work, including Contractor paid transportation charges (exclusive of Equipment as hereinafter set forth), plus a markup of 17.5%. Material is defined as any item used in the Work that remains a part of the Project. The cost of supplies may be the pro-rata portion caused by the alteration, change, additional or unforeseen Work.

(c) Equipment:

The use of each piece of such machinery or Equipment and rental rates must be agreed upon in writing before the force account Work is begun.

Payment for Contractor owned machinery or Equipment (other than small tools) shall be determined as described below, plus a markup of 7.5%. Payment for rented Equipment shall be based on invoice cost plus 7.5%.

The portion of the cost for machinery or Equipment shall be based on the lesser of actual cost or "Rental Rate Blue Book for Construction Equipment" (RRBB) or "Rental Rate Blue Book for Older Construction Equipment" (RRBBOCE) as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at time of bid) using all instructions and adjustments contained therein and as modified below.

On all projects, CFX will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the RRBB and/or RRBBOCE. Allowable Machinery and Equipment Rates will be established as set out below:

- 1.) Reimbursement for the Equipment being operated shall be at a rate of 100% of the RRBB and/or RRBBOE ownership cost plus 100% of the RRBB and/or RRBBOE operating costs.
- 2.) Reimbursement for Equipment directed to standby and remain on the project site shall be at 50% of the lesser of the actual rental rate or RRBB and/or RRBBOE ownership cost only. No more than 8 hours of standby will be paid in a single day.
- 3.) Costs shall be provided on an hourly basis. Hourly rates, for Equipment being operated or on standby, shall be established by dividing the lesser of actual monthly rental rate or the RRBB and/or RRBBOE monthly rates by 176. The columns, itemizing rates, labeled "Weekly", "Daily" and "Hourly" shall not be used.

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4.) No additional overhead will be allowed on Equipment costs.

Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors
x 100%

Allowable Hourly Operating Cost = Hourly Operating Cost x 100%

Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable
Hourly Operating Cost

Standby Rate = Allowable Hourly Equipment Rate x 50%

The Monthly Rate is the Basic Machine Rate plus any Attachments. Standby rates will apply when machinery or Equipment is not in operation and is directed by CFX to stand by at the Project site when needed again to complete work and the cost of moving the Equipment will exceed the accumulated standby cost. Standby rates will not apply to any day the Equipment operates for eight or more hours. Standby payment will be limited to only the number of hours which, when added to the operating time for that day, equals eight hours. Standby payment will not be made on days that are not normally considered workdays on the project.

Transportation to and from the location at which the Equipment will be used will be allowed. If the Equipment requires assembly or disassembly for transport, the time for this will be paid at the rate for standby Equipment.

The markups in 1) through 4) above include all direct and indirect costs, including but not limited to increased jobsite support costs, etc., and expenses of the Contractor, including but not limited to overhead of any kind and reasonable profit.

(d) Subcontractor Work

The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the alteration, change, additional or unforeseen Work. A subcontractor mark-up will be allowed only by the prime Contractor and a first-tier subcontractor.

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(e) Insurance, Bond and Taxes:

A markup of 1.5% will be allowed on the overall total cost of the alteration, change, additional or unforeseen Work for insurance and bond on the prime Contractor's bond. The markup includes all direct and indirect costs, including but not limited to increased jobsite support costs, etc., and expenses of the Contractor, including but not limited to overhead of any kind and reasonable profit.

Subcontractors who actually perform the alterations, changes, additional or unforeseen Work will be allowed all markups specified herein.

- 7.4.2 Records: The compensation as herein provided shall be accepted by the Contractor as payment in full for extra Work done on a force account basis. The Contractor and CFX shall compare records of extra Work done on a force account basis at the end of each day. Copies of these records shall be duplicated by CFX and signed by both CFX and the Contractor.

All claims for extra Work done on a force account basis shall be submitted by the Contractor upon certified statements, to which shall be attached original receipted bills covering the costs of the transportation charges on all Materials used in such Work. However, if Materials used on the force account Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such Materials were taken from Contractor's stock, that the quantity claimed was actually used and that the price and transportation claimed represent actual cost to the Contractor.

- 7.4.3 Preliminary Order-of-Magnitude Estimate: As a condition precedent to beginning work designated as Force Account, the CEI in coordination with the Contractor will prepare a Preliminary Order-of-Magnitude Estimate of the contemplated work. The purpose of this Preliminary Order-of-Magnitude Estimate is to establish the scope of work, the approach, applicable rates, the estimated duration, and the required documentation necessary to monitor the work for final payment.

7.5 Deleted Work

CFX shall have the right to cancel the portions of the Contract relating to the construction of any acceptable item therein by payment to the Contractor of a fair and equitable amount covering all items of cost incurred prior to the date of cancellation or suspension of the Work by CFX.

7.6 Partial Payments

7.6.1 General: The Contractor will receive partial payments on monthly estimates, based on the amount of Work done or completed (including delivery of certain Materials as specified below) and reflected in the Application for Payment. The monthly payments shall be approximate only and all partial estimates and payments will be subject to correction in the subsequent estimates and the final estimate and payment.

The amount of such payments shall be the total value of the Work done to the date of the estimate based on the quantities and the Contract unit prices less an amount retained and less payments previously made. In addition to other retainage held as may be described elsewhere, the amount retained shall be determined in accordance with the following schedule:

<u>% Contract Amount Completed</u>	<u>Amount Retained</u>
0 to 75	None
75 to 100	10% of value of Work completed exceeding 75% of Contract amount

Contract amount is defined as the original Contract amount as adjusted by approved Supplemental Agreements.

Direct deposit of payments to the Contractor is available. If the Contractor elects to receive direct deposit of payments from CFX, CFX will provide the Contractor with the necessary Automatic Deposit Authorization Agreement form.

7.6.2 Unsatisfactory Payment Record: CFX reserves the right to disqualify the Contractor from bidding on future contracts by CFX if the Contractor's payment record relating to the Work becomes unsatisfactory. The Contractor's surety may also be disqualified from issuing bonds for future contracts by CFX should the surety similarly fail to perform under the terms of the bond.

7.6.3 Withholding Payment for Defective Work: Should any defective Work or Materials be discovered prior to final acceptance or should a reasonable doubt arise prior to final acceptance as to the integrity of any part of the completed Work, payment for such defective or questioned Work will not be allowed until the defect has been remedied and causes of doubt removed.

7.6.4 Partial Payments for Delivery of Certain Materials:

7.6.4.1 General: Partial payments will be allowed for certain Materials stockpiled in approved locations in the vicinity of the Project. For structural steel, precast drainage structures and precast/prestressed concrete elements, where off-site fabrication is required, the term "in the vicinity of the Project" will be interpreted to include a site remote from the Project provided that condition 1) listed below is satisfied.

The following conditions shall apply to all payments for stockpiled Materials:

- 1) There must be reasonable assurance that the stockpiled material will be incorporated into the specific project on which partial payment is made.
- 2) The stockpiled material must be approved as meeting applicable specifications.
- 3) The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project.
- 4) The Contractor shall furnish the CEI with copies of certified invoices to document the value of the materials received. The amount of the partial payment will be determined from invoices for the material up to the unit price in the Contract.
- 5) Delivery charges for materials delivered to the jobsite will be included in partial payments if properly documented.
- 6) Partial payments will not be made for materials which were stockpiled prior to award of the Contract for a project.

7.6.4.2 Partial Payment Amounts: The following partial payment restrictions apply:

- 1) Partial payments less than \$5,000 for any one month will not be processed.
- 2) Partial payments for structural steel and precast/prestressed items will not exceed 85% of the bid price for the item. Partial payments for all other items will not exceed 75% of the bid price of the item in which the material is to be used.
- 3) Partial payment will not be made for aggregate and base course material received after paving or base construction operations begin except when a construction sequence designated by the CEI requires suspension of paving and base construction after the initial paving operations, partial payments will be reinstated until the paving and base construction resumes.

7.6.4.3 Off Site Storage: If the conditions of subarticle 7.6.4.1 are satisfied, partial payments will be allowed for materials stockpiled in approved in-state locations. Additionally, partial payments for materials stockpiled in approved out-of-state locations will be allowed if the conditions of subarticle 7.6.4.1 and the following conditions are met:

- 1) Furnish CFX a Materials Bond stating the supplier guarantees to furnish the material described in the Contract to the Contractor and CFX. Under this bond, the Obligor shall be the material supplier and the Obligees shall be the Contractor and the Central Florida Expressway Authority. The bond shall be in the full dollar amount of the bid price for the materials described in the Contract Documents.
- 2) The following clauses shall be added to the contract between the Contractor and the supplier of the stockpiled materials:

“Notwithstanding anything to the contrary, <supplier> will be liable to the Contractor and the Central Florida Expressway Authority should <supplier> default in the performance of this agreement.”

“Notwithstanding anything to the contrary, this agreement, and the performance bond issued pursuant to this agreement, does not alter, modify, or otherwise change the Contractor’s obligation to furnish the materials described in this agreement to the Central Florida Expressway Authority.”

- 3) The agreement between the Contractor and the supplier of the stockpiled materials shall include provisions that the supplier will store the materials and that such materials are the property of the Contractor.

7.6.5 Certification of Payment to Subcontractors: Prior to receipt of any progress (partial) payment, the Contractor shall certify that all subcontractors having an interest in the Contract have received their pro rata share of previous progress payments from the Contractor for all work completed and Materials furnished the previous period. This certification shall be in the form designated by CFX. The term “subcontractor”, as used herein, shall also include persons or firms furnishing Materials or Equipment incorporated into the Work or stockpiled in the vicinity of the Project for which partial payment has been made by CFX and Work done under Equipment-rental agreements.

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On initial payment, the Contractor shall assure that all subcontractors and Materials suppliers having an interest in the Contract receive their share of the payments due. CFX will not make any progress payments after the initial partial payment until the Contractor certifies pro rata shares of the payment out of previous progress payments received by the Contractor have been disbursed to all subcontractors and suppliers having an interest in the Contract, unless the Contractor demonstrates good cause for not making any required payment and furnishes written notification of any such good cause to both CFX and the affected subcontractors and suppliers. Contractor shall execute and submit a Certification of Disbursement of Previous Payments form, supplied by CFX, with each payment request after the initial request. Submitting a false or fraudulent certification will result in a determination of default by the Contractor in accordance with Article 6.9.1 of these General Specifications.

7.6.6 Reduction of Payment for Unsatisfactory Services or Products

If any defined action, duty or service, part or product required by the Contract is not performed by the Contractor, the value of such action, duty or service or part thereof will be determined by CFX and deducted from any invoice or monthly billing period claiming such items for payment.

If the action, duty or service, part or product thereof has been completed and is determined to be unsatisfactory by CFX, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the unsatisfactory Work) will be withheld by CFX from any invoice or monthly billing period until the Work is determined to be acceptable.

7.7 Record of Construction Materials

7.7.1 General: For all construction Materials used in the construction of the Project (except Materials exempted by Subarticle 7.7.2), the Contractor shall preserve for inspection by CFX all invoices and records of the Materials for a period of 3 years from the date of completion of the Project. This requirement shall also apply to Materials purchased by subcontractors. The Contractor shall obtain the invoices and other Materials records from the subcontractors.

Not later than 30 days after the date of final completion of the Project, the Contractor shall furnish to CFX a certification of construction Materials procured for the Project by the Contractor and all subcontractors. The certification shall consist of an affidavit completed on a form furnished by CFX.

7.7.2 Non-Commercial Materials: The requirement to preserve invoices and records of Materials shall not apply to Materials generally classed as non-commercial such as fill Materials local sand, sand-clay or local Materials used as stabilizer.

7.8 Disputed Amounts Due Contractor

CFX reserves the right to withhold from the final estimate any disputed amounts between the Contractor and CFX. Release of all other amounts due shall be made as provided in Article 7.9.

7.9 Acceptance and Final Payment

When the Work of the Contract has been completed by the Contractor and the final inspection and final acceptance have been given by CFX, a tentative final estimate showing the value of the Work will be prepared by CFX as soon as the necessary measurements and computations can be made, usually within 30 days of final acceptance. All prior estimates and payments will be subject to correction in the final estimate and payment. The Contractor and CFX will have 30 days from the date of the tentative final estimate to resolve any outstanding issues. At the end of the 30 days, CFX will make a written Offer of Final Payment. Provided that the requirements of A) through J) of this Article have been met, the amount of the Offer of Final Payment, less any sums that may have been deducted or retained under the provisions of the Contract will be paid to the Contractor as soon as practicable.

A) The Contractor has submitted written acceptance of the balance due, as determined by CFX, as full settlement of the Contractor's account under the Contract and of all claims in connection therewith.

Or, the Contractor shall accept the balance due with the stipulation that acceptance of such payment will not constitute any bar, admission or estoppel or have any effect as to those payments in dispute or the subject of a pending claim between the Contractor and CFX. The Contractor shall define the dispute or pending claim in writing in the form of a qualified acceptance letter with full particulars of all items/issues in dispute including itemized amounts claimed. Failure by the Contractor to provide either a written acceptance letter or qualified acceptance letter within 60 calendar days of the Offer of Final Payment shall constitute full acceptance of the balance due without qualification.

If the Contractor provides a qualified acceptance letter, then the Contractor agrees that a complete claim package in accordance with Article 2.4 of the General Specifications, and limited to the particulars in the qualified

acceptance letter, will be provided within 120 calendar days of the Offer of Final Payment. Additionally, the Contractor agrees that any pending or future arbitration must be limited to the particulars in the qualified acceptance letter and must begin within 210 calendar days from the date of the Offer of Final Payment.

- B) The Contractor has properly maintained the Project as specified hereinbefore.
- C) The Contractor has furnished a sworn affidavit to the effect that all bills are paid and no suits are pending (other than those exceptions listed if any) in connection with the Work of the Contract and that the Contractor has not offered or made any gift or gratuity to or made any financial transaction of any nature with, any employee of CFX. Tort liability exceptions, if any, shall be accompanied by evidence of adequate insurance as required in Article 5.11 of these General Specifications.
- D) The surety on the Public Construction Bond has consented (by completion of its portion of the affidavit and surety release) to final payment to the Contractor and agrees that the making of such payment shall not relieve the surety of any of its obligations under the bond.
- E) The Contractor has submitted all mill tests and analysis reports to CFX.
- F) The Contractor has submitted insurance certificates for extended coverage as required by Article 5.11 of these General Specifications.
- G) The Contractor has previously submitted Record Drawings as required by Article 3.3.1 of these General Specifications.
- H) The Contractor has submitted the completed density log book as required by Article 120-10.4.2 of the Technical Specifications.
- I) The Contractor has submitted the final material testing certification as required by Article 105-6 of the Technical Specifications.
- J) The Contractor has submitted all warranties and operation and maintenance manuals required by various Articles and Subarticles of Specifications.

If the Contractor fails to furnish all required Contract Documents listed in B) through J) of this Article within 90 calendar days of the Offer of Final Payment, CFX may deduct from the retainage due the Contractor, \$1,000 for each calendar day beyond the 90 calendar days that the Contractor fails to provide the required Contract Documents.

7.10 Offsetting Payments

If payment of any amount due CFX after settlement or arbitration is not made by the Contractor within 60 days, CFX may, at its sole discretion, offset such amount from payments due the Contractor for Work performed under any other contract with CFX, excluding amounts owed to subcontractors, suppliers and laborers. Offsetting any amount in this manner shall not be considered a breach of the Contract by CFX.

END OF SECTION 7

SECTION 8 – DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISE
(D/M/WBE) PARTICIPATION

- 8.1 General: The Contractor is encouraged to continue to meet or demonstrate the participation objectives could not be met. At any time, CFX's Executive Director may grant a partial or complete waiver of the D/M/WBE objective for the Project due to consideration of property, public safety, and health, including financial impact to CFX.

CFX has provided an exception for the Contractor's failure to meet the participation objective established for this project. The exception requires that the Contractor provide CFX with documentation supporting the Contractor's Good Faith Effort to meet the stated objective. CFX will have the sole and final determination of whether the support documentation provided by the Contractor does, in fact, meet CFX's standard for a Good Faith Effort as detailed in this Section 8. The Contractor shall demonstrate, through documentation, that every reasonable effort has been made to achieve CFX's participation objective. The Contractor shall be responsible for securing proof of the D/M/WBE certification(s) for the proposed subcontractors/suppliers and be able to provide copies of the certification(s) to the CFX's Supplier Diversity Office.

The Contractor shall meet or exceed the commitment stated in the Contractor's D/M/WBE Utilization Summary (page P-6 of the Proposal). Should the Contractor's D/M/WBE participation fall below the approved level for any reason whatsoever, or should the Contractor substitute or self-perform work identified for a D/M/WBE subcontractor/supplier without prior written approval of CFX, the Contractor will be considered by CFX to be in material breach of the Contract. If found in breach of the Contract, the Contractor may be suspended from bidding on and/or participating in any further CFX projects for up to one (1) year as provided in Section 15 of CFX's Supplier Diversity Policy.

Any change in the D/M/WBE Utilization Summary will require prior approval by the CFX Director of Supplier Diversity. Should the Contractor determine that a subcontractor/supplier named in the Utilization Summary is unavailable or cannot perform the work, the Contractor shall request approval of a revised D/M/WBE Utilization Summary. The revised summary shall be submitted, in writing, to the CFX Supplier Diversity Office at 4974 ORL Tower Road, Orlando, Florida 32807, or by facsimile to (407) 690-5011.

The Contractor will not be allowed to perform Work with its forces that has been identified on the Utilization Form to be performed by D/M/WBE firms. If a D/M/WBE subcontractor is unable to successfully perform the Work, the Contractor shall make a Good Faith Effort to replace that firm with another D/M/WBE firm. In evaluating a Contractor's Good Faith Efforts, CFX will consider:

- (1) Whether the Contractor, provided written notice to certified D/M/WBEs performing the type of Work that the Contractor intends to subcontract, advising the D/M/WBEs (a) of the specific Work the Contractor intends to subcontract; and (b) that their interest in the Contract is being solicited;
- (2) Whether the Contractor provided interested D/M/WBEs assistance in reviewing the Contract Plans and Specifications;
- (3) Whether the Contractor assisted interested D/M/WBEs in obtaining any required bonding, lines of credit, or insurance;
- (4) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient D/M/WBE participation to meet the objective.

The above list is not intended to be exclusive or exhaustive and CFX will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

8.2 Disadvantaged, Minority and Women Owned Businesses - Participation Objective

8.2.1 General: The Contractor shall ensure that D/M/WBE as defined herein will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps to accomplish that result.

8.2.2 Definitions: The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:

- (1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Black Americans, Hispanic American, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans. Individuals in the following groups are presumed to be socially and economically disadvantaged:
 - (a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;
 - (b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

- (c) “Asian-Pacific Americans”, which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;
 - (d) “Native Americans”, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (e) “Asian-Indian Americans”, which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 - (f) “Women”.
- (2) “Joint Venture” means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.
 - (3) “Certified” means a finding by Orange County, Florida, the City of Orlando, Florida, and Florida Department of Transportation that the business is a bona fide Minority, Women or Disadvantaged owned and operated business.
 - (4) “Independently Owned and Operated” means a business that is not affiliated or associated with the general contractor or prime contractor providing work or services on CFX project(s) or procurement in which the D/M/WBE seeks to participate. Affiliated status may be determined through common ownership, management, employees, facilities, inventory or any other factors, which would prevent or inhibit independent status
 - (5) “Women Business Enterprise” comprises all women. All women business owners will be classified as a Women Business Enterprise.

8.2.3 Specific Requirements: The Contractor shall, among other things, implement techniques to facilitate D/M/WBE participation in contracting activities including, but not limited to:

- 1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations;
- 2. Providing assistance to D/M/WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance;

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate;
4. Contacting Minority Contractor Associations, city, and county agencies with programs for disadvantaged individuals for assistance in recruiting and encouraging eligible D/M/WBE contractors to apply for certification.
5. Meeting with appropriate officials of CFX, including its Supplier Diversity Office, to assist with the Contractor's efforts to locate D/M/WBEs and assist with developing joint ventures, partnering, and mentorship.

8.2.4 Qualified Participation: CFX will count D/M/WBE participation toward meeting D/M/WBE objective as follows:

1. The total dollar value of the contract to be awarded to the certified D/M/WBE will not be counted toward the applicable D/M/WBE objective unless approved by CFX.
2. A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the D/M/WBE partner in the joint venture may be counted toward the D/M/WBE objective.
3. Only expenditures to D/M/WBEs that perform a commercially useful function may be counted toward the D/M/WBE objective. A D/M/WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a D/M/WBE is performing a commercially useful function, CFX will evaluate all relevant factors such as the amount of Work subcontracted and industry practices.
4. Consistent with normal industry practices, a D/M/WBE may enter into subcontracts. If a D/M/WBE subcontracts 50 percent or more of the Work assigned to it, the D/M/WBE shall be presumed not to be performing a commercially useful function.
5. Expenditures for materials and supplies obtained from D/M/WBE suppliers and manufacturers may be counted toward the D/M/WBE objective, provided that the D/M/WBEs assume the actual and contractual responsibility for the provision of the materials and supplies. The percentage allowed toward the D/M/WBE objective is as follows:

- (a) All expenditures to a D/M/WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the D/M/WBE objective.

- (b)
 - 1. A Contractor may count toward its D/M/WBE objective 60 percent of its expenditures for materials and supplies required under a contract and obtained from a D/M/WBE regular dealer, and 100 percent of such expenditures to a D/M/WBE manufacturer.

 - 2. A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

 - 3. A regular dealer is a firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Section.

- (c) A Contractor may count toward the D/M/WBE objective for the following expenditures to D/M/WBE firm(s) that are not manufacturers or regular dealers:
 - 1. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

2. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
3. The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.
4. Those sums that, subsequent to the receipt of bids, CFX elects, under the provisions of the Direct Materials Purchase Option, to purchase materials originally proposed by the Contractor to CFX to have been an element of the Work of a certified D/M/WBE contractor/subcontractor/vendor.

8.2.5 Records and Reports: The Contractor shall develop a record keeping system to monitor its D/M/WBE participation and shall maintain the following records:

1. the procedures adopted to comply with these special provisions;
2. The number of subordinated contracts on CFX projects awarded to D/M/WBEs;
3. the dollar value of the contracts awarded to D/M/WBEs;
4. the percentage of the dollar value of all subordinate contracts awarded to D/M/WBEs as a percentage of the total contract amount;
5. a description of the general categories of contracts awarded to D/M/WBEs;
6. the specific efforts employed to identify and award contracts to D/M/WBEs;
7. maintenance of records of payments and monthly reports to CFX;
8. Subcontract Agreement between Contractor and D/M/WBE subcontractors;
and

9. any other records required by CFX's Project Manager or Executive Director.

The records maintained by the Contractor in accordance with this Section shall be provided to CFX for review within 48 hours of the CFX request. The Contractor shall submit a properly executed D/M/WBE Payment Certification monthly during the life of the D/M/WBE subcontract whether payment is made or not.

8.3 Subletting of Contracts - Participation Objective

No request to sublet Work will be approved unless it is in compliance with the Contractor's approved D/M/WBE Utilization Form "Certification of Subcontract Amount to D/M/WBE Contractor", shall be completed and submitted with the Request For Authorization To Sublet Work. One copy of the certification will be attached to each copy of the Request For Authorization To Sublet Work.

END OF SECTION 8

SECTION 9 - BINDING ARBITRATION

9.1 CFX and the Contractor shall submit any and all unsettled claims, counterclaims, and disputes to the Disputes Review Board (DRB) prior to initiating a demand for arbitration pursuant to this Section.

9.2 No demand for arbitration of any claim, dispute or other matter referred to the DRB initially for decision will be made until after final acceptance, per Article 3.9, of all Contract Work by CFX. The filing party shall pay all applicable fees associated with requested arbitration proceedings.

The failure to demand arbitration within thirty (30) days after final acceptance will result in the DRB's decision being final and binding upon CFX and Contractor.

9.3 Notice of the demand for arbitration is satisfied when it is filed in writing with the other party to the Contract and with the American Arbitration Association (including required fees). A copy will be sent to the Board for information.

9.4 The arbitration shall occur in Orlando, Florida and shall be conducted by a three (3) member panel pursuant to and under the auspices of the Construction Industry Arbitration Rules of the American Arbitration Association.

9.5 Procedure for Binding Arbitration

Arbitration shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations of this Section. The agreement to arbitrate (and any other agreement or consent to arbitrate entered into in accordance herewith) will be specifically enforceable under the laws of Florida.

Arbitration shall include by consolidation, joinder or in any other manner any person or entity who is not a party to the Contract in circumstances where:

- the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and
- such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings, and
- the written consent of the other person or entity sought to be included and of CFX and Contractor has been obtained for such inclusion, which consent shall make specific reference to this paragraph.

In order to assure complete resolution of any claim or controversy, the Contractor shall provide and require (in the agreements with subcontractors and material suppliers) for joinder in such arbitration proceedings. Therefore, if a claim, dispute or other matter in question between CFX and Contractor involves the work of a Subcontractor, either CFX or Contractor may join such subcontractor as a party to the arbitration. Nothing in this paragraph or in the provision of such subcontract consenting to joinder shall create any claim, right or cause of action in favor of subcontractor or supplier, and against CFX, CEI, or any of their consultants that does not otherwise exist.

In connection with the arbitration proceedings all participants shall be afforded pre-hearing discovery in accordance with the rules of the American Arbitration Association.

END OF SECTION 9

SECTION 10- DISPUTES RESOLUTION

10.1 Disputes Resolution

10.1.1 Disputes Review Board

A Disputes Review Board (“Board”) will be established to assist in the resolution of disputes arising out of the Work on the Project. This document describes the purpose, procedure, function and features of the Board.

The Board will provide special expertise to assist and facilitate the timely and equitable resolution of disputes and controversies between CFX and the Contractor in an effort to avoid construction delays and future claims.

It is not intended for CFX or the Contractor to avoid the normal responsibility to cooperatively and fairly settle differences by indiscriminately requesting dispute resolution by the Board. It is intended the Board encourage CFX and the Contractor to first try resolving potential disputes without resorting to the procedure set forth herein.

The Board will be used only when the claims procedure detailed in the Contract has been followed and has been unsuccessful. It is a condition of the Contract that the parties use the Board. Adherence to the Contract claims procedure is a condition precedent to the submission of a dispute to the Board, and the submission of an unresolved dispute to the Board is, in turn, a condition precedent to arbitration of such issue.

The Board will fairly and impartially consider disputes referred to it. The Board will receive testimony and other relevant evidence regarding such disputes, will analyze the facts within the parameters of the Contract, and will then provide written recommendations (to CFX and Contractor) to assist in the resolution of the disputes. The recommendations of the Board will not be binding on either CFX or the Contractor; however, the Board’s recommendations and findings shall be admissible for all purposes in any subsequent arbitration proceedings or the judicial enforcement thereof.

10.1.2 Continuance of Work During Dispute

During the dispute resolution process the Contractor shall conform to the CEI’s decision or order and continue with the Work as directed by the CEI in a diligent manner and without delay. Such Work will be governed by all applicable provisions of the Contract. With respect to any protested Work, the Contractor will keep complete records of extra costs and time incurred. Except for sealed Bid Records, the Contractor will permit CEI and the Board access to any records needed for evaluating the dispute, without any claim of privilege or confidentiality.

10.1.3 Disputes Review Board Membership

The Board will consist of three Members, one Member selected by CFX and approved by the Contractor, and one Member selected by the Contractor and approved by CFX. The first two Members will mutually select and agree on the third Member, which third Member shall not be subject to approval by either the Contractor or CFX. Normally, the third Member will act as Chairman for all Board activities. If the third Member declines to act as Chairman, the Members shall select an alternative Chairman. Neither the Contractor nor CFX shall seek to influence the Chairman selection decision.

The Contractor and CFX shall each submit the name and credentials of their proposed Member to the other within ten (10) days of the Contract award. The two Members, upon acceptance, shall meet promptly and mutually agree on the third Member. A Notice to Proceed shall not be issued until the Board Members have been selected and have signed the Three-Party Agreement. All three Members shall attend the Pre-Construction Meeting.

All Board Members shall be experienced with major road and bridge construction and the associated construction methods involved in the Project, in the interpretation of contract documents and in contract dispute resolution. The goal in selecting the third Member is to complement the construction experience of the first two Members and to provide leadership of the Board's activities.

It is imperative that Board Members show no partiality to either the Contractor or CFX, or have any conflict of interest.

The criteria and limitations for membership will be as follows:

- a. The person selected will not have any direct or indirect ownership or financial interest in (i) the Contractor, (ii) CEI or the CFX General Engineering Consultant ("GEC"), (iii) any subcontractor or supplier of the Project, or (iv) the employer of other Board Members.
- b. Except for services as a Board Member on CFX projects, no Member shall have been an employee, contractor or consultant to the Contractor or CFX, CEI, the GEC or any subcontractor or supplier for the Project within a period of ten (10) years prior to the Contract award.
- c. No Member will have had a close personal, professional or business relationship with CFX or the Contractor (or an employee or officer of CFX or the Contractor).
- d. No Member will have had any prior involvement in the Project (other than as a dispute board member) of a nature which could be construed to compromise an ability to impartially resolve disputes.

- e. No Member will be employed by the Contractor, the CEI, the GEC or any subcontractor or supplier of the Project during the term of the Contract, except as a Board Member pursuant to the Three Party Agreement.
- f. During the term of the Contract no discussion or agreement will be made between a Board Member and CFX or Contractor regarding employment after the Contract is completed.
- g. During the term of the Contract, ex-parte communications between a Board Member and a party to the Three Party Agreement is prohibited.

Before appointments are final, the first two prospective Members will submit complete disclosure statements for the approval of both CFX and the Contractor. Each statement (in the form prepared by CFX) will include a statement of experience and a declaration describing all past, present and anticipated or planned future relationships to the Project and with the parties to the Contract. Disclosure of professional or personal relationships with parties to the Contract will be included. The third Board Member will supply a similar statement to the first two Board Members (and to CFX and the Contractor) before the third Member appointment is finalized.

CFX and the Contractor will each select a Member, execute the Three Party Agreement (described below) and assure the Members execute the Three-Party Agreement within the first three (3) weeks after Contract award. CFX and the Contractor will immediately notify the selected Members to begin selection of the third Member. The first two Members will ensure the third Member meets all of the criteria listed above. The third Member will be selected within two (2) weeks after the first two Members are notified to proceed with the selection of the third Member. If there is an impasse in the selection of the third Member, the third Member will be selected by CFX and the Contractor, with the first consideration to the nominees reviewed by the first two Members.

In the event of death, disability or resignation of a Member, such Member shall be replaced in the same manner as the Member being replaced was selected. If for whatever other reason a Member fails or is unable to serve, the Chairman (or failing the action of the Chairman, then either of the other Members) shall inform the parties and such non-serving Member shall be replaced in the same manner as the Member being replaced was selected. Any replacement made by the parties shall be completed within fifteen (15) days after the event giving rise to the vacancy on the Board, failing which the replacement shall be made by the two remaining Members of the Board. Replacement shall be considered completed when the new Member executes the Dispute Review Board Three Party Agreement.

10.1.4 Board Operations

The Board will formulate procedures of operation that shall be flexible with respect to the functioning of the Board. The Board may formulate new or revised procedures respecting its operation from time to time to accommodate the needs of the Board and the circumstances.

Each Board Member shall be provided a complete set of the Contract Documents. CFX and the Contractor shall keep the Board informed of construction activity and progress by submitting written progress reports and other relevant data at least monthly. The Board will visit the Project at regular intervals and/or at times of critical construction events and meet with CEI and the Contractor. In circumstances of unresolved disputes, the Board will meet at least monthly until the unresolved disputes are concluded. The frequency of visits will be agreed upon by CFX, the Contractor and the Board, depending upon the progress of the Work.

Regular meetings will be held at the job site. Each meeting will consist of an informal discussion and a field inspection of the Work. The informal discussion will be attended by selected personnel from CFX, the CEI and the Contractor. Agenda for regular meetings of the Board will generally include the following:

- a. Meeting opened by the Chairman of the Board.
- b. Remarks by the CEI.
- c. A description by the CEI and the Contractor of Work accomplished since the last meeting, current status of the Work schedule, schedule for the future, potential problems and proposed solutions to anticipated problems.
- d. Discussion by the CEI of Work schedule, potential new disputes or claims, status of past disputes and claims and other issues.
- e. Set a date for next meeting.

The CEI will prepare minutes of all Board meetings and circulate them for comments, revisions and/or approval by all concerned.

The field inspection will cover all active segments of the Work. The Board will be accompanied by representatives of both the CEI and the Contractor. Soliciting any Board Member's advice or consultation regarding the Work or the Contract is expressly prohibited.

10.1.5 Procedure for Disputes Resolution

Disputes will be considered as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Steps may be omitted as agreed by both parties and the time periods stated below may be shortened in order to hasten resolution.

- a. If either CFX or Contractor object to any decision of the CEI with respect to claims, change order requests, or other actions or orders of the CEI, the objecting party may file a written protest with the CEI within fifteen (15) days after the CEI's disputed decision, action or order. The written protest must clearly state in detail the basis for the objection.
- b. The CEI will consider the written protest to its decision or directive, and make a final decision on the basis of the pertinent Contract provisions, together with the facts and circumstances involved in the protest. The decision will be furnished to CFX and Contractor in writing within fifteen (15) days after receipt of the written protest.
- c. The CEI's decision with respect to the protest will be final, unless a written exception is filed by CFX or Contractor with the CEI within fifteen (15) days after receiving the protest decision. If either rejects the CEI's final decision, the disputed matter may be referred to the Board by either CFX or the Contractor.
- d. Upon receipt by the Board of a written dispute, the Board will first decide when to conduct the hearing. If the matter is not urgent, it may be heard at the next regularly scheduled Board meeting. For an urgent matter, the Board will meet at its earliest convenience.
- e. Either party furnishing written evidence or documentation to the Board will furnish copies of such information to the other party a minimum of fifteen (15) days prior to the date the Board sets to hear the dispute. If the Board requests additional documentation or evidence prior to, during or after the hearing, CFX and/or the Contractor will provide the requested information to the Board and to the other party. Because each side needs a reasonable opportunity to understand and rebut the opposing side's point of view, failure of either party to timely provide written documentation in accordance with this provision shall result in such written documentation being excluded from the hearing before the Board unless the other party consents to its admission or consents to a delay in the hearing.

- f. The Contractor and CFX will each be afforded an opportunity to be heard by the Board and to offer evidence. The Board will consider all relevant evidence presented and analyze the same solely within the parameters of the Contract. Hearsay evidence shall be admissible but shall not be the sole basis for any recommendation of the Board.
- g. The Board's recommendations for resolution of the dispute will be given in writing within fifteen (15) days of completion of the hearing(s). In cases of extreme complexity, both parties may agree to allow additional time for the Board to formulate its recommendations. Generally, the Board will initially focus its attention (in the written report) only to matters of entitlement, and allow the parties to thereafter determine the monetary relief. If both parties request, and sufficient documentation is available, the Board may also make a recommendation of monetary relief, but only after formulation of the entitlement recommendation and only after the parties have attempted to agree upon the monetary relief amount.
- h. If the Board's recommendation for resolution is not unanimous, the dissenting member shall prepare a separate written opinion.
- i. Within fifteen (15) days of receiving the Board's recommendations, both CFX and the Contractor will respond to the other and to the Board in writing, signifying either acceptance or rejection of the Board's recommendations. The failure of a party to respond within the fifteen (15) day period will be deemed an acceptance by such party of the Board's recommendations. If CFX and the Contractor are able to resolve the dispute (with or without the aid of the Board's recommendations), CFX will promptly process any required Contract changes.
- j. If the dispute remains unresolved because of a bona fide lack of clear understanding of the recommendation, either party may request the Board clarify specific portions of its recommendations. Further, if new evidence becomes available, either party may request the Board reconsider its prior recommendation. Only evidence which did not exist at the time of the hearing, or which existed but which could not be discovered with reasonable and normal diligence shall be considered new evidence.
- k. If the Board's recommendation is rejected, either party may thereafter initiate resolution of the dispute by binding arbitration conducted pursuant to the Contract.

Both CFX and the Contractor should carefully consider the Board's recommendations, as the recommendations are binding unless written notice is provided to the other party within 30 days of the recommendations stating the party's intent to bring the disputed issue to arbitration. However, if the Board's recommendations do not resolve the dispute, all records and written recommendations, including any minority reports, will be admissible for informational purposes in any subsequent dispute resolution procedures. Such informational purposes shall include but not be limited to establishing that the Board considered the dispute, the qualifications of the Board Members, and the Board's recommendation that resulted from the dispute resolution process.

10.1.6 Conduct of Disputes Hearings

Each party shall file three copies of its written arguments with the Board no less than seven days prior to the scheduled hearing and shall simultaneously deliver a copy of such written arguments to the opposing party. Each party shall also submit to the Board along with its written arguments copies of its written evidence and documentation which has been previously provided to the opposing party as provided above.

Normally, the hearing will be conducted at the job site. However, any location more convenient and which provides all required facilities and access to necessary documentation is satisfactory.

While the Board will keep a record of its sessions during consideration of a dispute, the Board will not be required to keep its record in any particular form. The nature and completeness of the record will depend upon the nature and magnitude of the dispute and the desires of the parties. If possible, the hearings shall be kept informal. Formal records of the Board meetings may be taken and transcribed by a court reporter if requested by a party (at the requesting party's cost). Audio and/or video recording of the meeting is discouraged and shall only be made with the prior agreement of all parties and a majority of the Board.

CFX and the Contractor will have representatives at all dispute resolution hearings. The party requesting Board review will first discuss the dispute, followed by the other party. Each party will then be allowed successive rebuttals until all aspects are fully covered to the Board's satisfaction. The Members and the parties may ask questions, request clarification or ask for additional data. In large or complex cases, additional hearings may be necessary in order to consider and fully understand all evidence presented by both parties.

During the hearings, no Member will express any opinion concerning the merit of any facet of the dispute.

After the hearings are concluded, the Board will meet in private to formulate recommendations supported by two or more Members. All Board deliberations will be conducted in private, with individual views kept strictly confidential. No minutes shall be

prepared of the Board's private meetings. The Board's recommendations and discussions of its reasoning will be submitted as a written report to both parties. The recommendations will be based on the pertinent Contract provisions and the facts and circumstances involved in the dispute.

The Board will make every effort to reach a unanimous decision. If a unanimous decision is not possible, the dissenting Member may (but is not required to) prepare a minority report.

10.1.7 Compensation

The Contractor shall pay the fees of all three Board Members for services rendered under the Three Party Agreement. An allowance pay item has been established in the Contract for the reimbursing the Contractor. Funds remaining in the pay item, if any, at the completion of the Project will belong to CFX. CFX and the Contractor shall agree on the procedures and method of processing payments made against the allowance. CFX or the CEI will mail minutes and progress reports, will provide administrative services, such as conference facilities and secretarial services. If the Board desires special services, such as legal consultation, accounting, data research, etc., both parties must agree and the costs will be paid from the allowance.

10.1.8 Three Party Agreement

The Contractor, CFX and the Members of the Board will execute the Dispute Review Board Three Party Agreement within four (4) weeks of the final selection of the third Member.

END OF SECTION 10

ATTACHMENT A

**DISPUTES REVIEW BOARD
THREE PARTY AGREEMENT**

THIS THREE PARTY AGREEMENT (“Agreement”) made and entered into this ____ day of _____, 20__, between the **CENTRAL FLORIDA EXPRESSWAY AUTHORITY (“CFX”)**, _____ (**“Contractor”**) and the **DISPUTES REVIEW BOARD (“Board”)**, consisting of three members: _____, _____ and _____ (**“Members”**).

WHEREAS, CFX is now engaged in the construction of the _____, and

WHEREAS, the _____ contract (“Contract”) provides for the establishment and operation of the Board to assist in resolving disputes and claims.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein (or attached, incorporated and made a part hereof), the parties agree as set forth herein.

**I
DESCRIPTION OF PURPOSE**

To facilitate resolution of disputes between the Contractor and CFX, CFX has provided (in the Contract) for the establishment of the Board. The function of the Board is to fairly and impartially consider Contract disputes placed before it and provide written recommendations for resolution to both CFX and the Contractor. The Members of the Board shall perform the services designated in Section II, Scope of Work.

**II
SCOPE OF WORK**

The Scope of Work includes, but is not limited to, the following items:

A. Third Board Member Selection. The first duty of CFX and the Contractor selected Members of the Board is to select the third Member. The third Member shall not have any current financial or employment ties with either the Contractor or CFX. The selection goal is to obtain a third Board Member who will complement the first two by furnishing expertise, leadership and experience to facilitate the Board’s operations. The first two Board Members selected shall proceed with the selection of the third Board Member upon receiving their appointment. If the first two Members are unable to select a third

Member within four (4) weeks, CFX and the Contractor will select the third Member.

B. Procedures. After selecting the third Board Member and prior to considering a dispute, the Board shall establish procedures to govern the conduct of its business and reporting procedures based on the Guidelines, attached as an Appendix to this Agreement. The Board recommendations (resulting from a consideration of a dispute) shall be furnished in writing to CFX and the Contractor. The recommendations shall be based solely on the pertinent Contract provisions and the facts as reasonably determined by the Board. The Board shall have no authority to disregard or unilaterally modify pertinent Contract provisions including, but not necessarily limited to, those provisions pertaining to notices and claims procedures.

C. Furnishing Documents. CFX shall, at the time of each Board Member's appointment, furnish such Member a copy of the Contract. Both CFX and the Contractor shall, no later than seven (7) days prior to the scheduled Board hearing, submit to the Board three copies of all written documents and arguments that such party wishes the Board to consider. Each party shall provide its written documentation to the other side no later than fifteen (15) days prior to the scheduled Board hearing and shall provide a copy of its written argument to the other side no later than seven (7) days before the hearing in order to afford the other side the opportunity to review such documents and prepare any necessary rebuttal for the hearing.

D. Site Visits. The Board shall visit the project site to: (i) keep abreast of construction activities, and (ii) develop a familiarity of the work in progress. The frequency, exact time and duration of visits shall be in accordance with the attached Guidelines or as mutually agreed between CFX, the Contractor and the Board.

In the circumstance of an alleged differing site condition (or specific construction problem), it will be advantageous for the Board to view any relevant conditions. If viewing by the Board would cause delay to the project, photographs and descriptions of conditions collected by either (or both) party will suffice.

E. Board Consideration of Disputes or Claims. Upon receipt by the Board of a written appeal of a dispute (from either the Contractor or CFX) the Board shall convene to review and consider the dispute. CFX, the Contractor and the Board shall determine the time and location of Board meetings. Both CFX and the Contractor shall be given the opportunity to present evidence and argument at such meetings. Absent good cause to the contrary, written evidence shall be limited to that evidence which was previously supplied to both the Board and the other party in accordance with the previous paragraph. Mere negligence in providing such written evidence shall not be considered good cause for its admission. Hearsay evidence shall be permitted but shall not be the sole basis for any recommendation

by the Board. Additionally, Board Members may rely on their personal knowledge based on prior site visits, ongoing document reviews, and general project familiarity. Each party may, but is not required to, submit its proposed recommendations for resolving the dispute to the Board for its consideration.

Board Members are to act impartially and independently in weighing the evidence and in considering the respective positions of the parties within the confines and literal interpretation of the Contract terms. The recommendations concerning any such dispute are advisory and not binding on either party. The Board shall make every effort to reach a unanimous recommendation. If a unanimous recommendation is not possible, the dissenting Member shall prepare a minority report.

The Board's recommendations, together with explanations of its reasoning, shall be submitted as a written report to both parties. The recommendation shall be based solely on the pertinent provisions of the Contract, applicable laws and regulations, and the relevant facts as determined by the Board based upon the evidence presented. It is important for the Board to express, clearly and completely, the logic and reasoning leading to the recommendation so that both parties fully understand the recommendation.

Either CFX or the Contractor may request the Board to reconsider its recommendation. However, reconsideration will only be allowed when there is new evidence to present, or a clarification is required.

F. Miscellaneous Board Responsibilities. In addition to the matters set forth above:

1. The Board Member shall become familiar with the Contract Documents, review periodic reports, and maintain a current file of the project.
2. Except for providing the services required in this Agreement, the Board and its individual Members shall refrain from giving any advice to either party concerning conduct of the work or the resolution of problems. Ex-parte communications between a party and a Board Member are prohibited.
3. The Board shall perform services not specifically listed herein to the extent necessary to achieve the purposes of this Agreement.

G. Board Member Replacement. If the need occurs to appoint a replacement Board Member, the replacement Board Member shall be appointed in the same manner as the original Board Members were appointed. The selection of a replacement Board Member shall begin promptly upon notification of the necessity for a replacement. The Agreement will be supplemented to indicate change in Board membership.

III CONTRACTOR RESPONSIBILITY

A party shall furnish to each Board Member one copy of all pertinent documents that are or may become necessary for the Board to perform its function. Pertinent documents are any drawings or sketches, calculations, procedures, schedules, estimates or other documents that are used in the performance of the work or in justifying or substantiating the party's position. A copy of such pertinent documents must also be furnished to the other party.

IV CFX RESPONSIBILITIES

CFX shall furnish the following services and items:

A. Contract Related Documents. CFX shall furnish the Board copies of all Contract Documents, Supplemental Agreements, written instructions issued by the CEI or CFX to the Contractor, or other documents pertinent to the performance of the Contract and necessary for the Board to perform its function.

B. Coordination and Services. CFX (in cooperation with the Contractor) will coordinate the operations of the Board. CFX, through the CEI, will arrange or provide conference facilities at or near the site and provide secretarial and copying services.

V TIME FOR BEGINNING AND COMPLETION

The Board shall be in operation throughout the term of the Contract and, if needed, for a reasonable post-construction period.

The Board Members shall not begin any work under the terms of this Agreement until authorized by CFX in writing.

VI PAYMENT

The fees and expenses of all three Board Members for services rendered under this Agreement will be an expense to the Contractor with reimbursement under the pay item allowance as provided below. Payment for services of the CFX-appointed, Contractor-appointed, and the third Board Members will be full compensation for work performed or services rendered, and for all expenses, such as food, lodging, travel, telephone, postage etc.

A. Payment.

Each Board Member will be paid One Thousand Dollars (\$1,000.00) per day for each day the Board meets. This daily rate includes fees and expenses related to membership on the Board. Subsequent changes in the rate must be authorized by a Supplemental Agreement to this Agreement.

B. Inspection of Costs Records. The Board Members shall keep available the cost records and accounts pertaining to this Agreement for inspection by representatives of CFX for a period of three (3) years after final payment. If any litigation, claim or audit arising out of, in connection with or related to this Agreement is initiated before the expiration of the three (3) year period, the cost records and accounts shall be retained until such litigation, claim or audit involving the records is completed.

VII ASSIGNMENT OF TASKS OF WORK

Neither the Board nor the Board Members may assign or delegate any of the work of this Agreement.

VIII TERMINATION OF AGREEMENT

With the mutual consent of CFX and the Contractor, this Agreement may be terminated at any time. However, individual Board Members may be terminated with or without cause, but only by their original appointer, i.e., CFX may terminate the CFX appointed Member, the Contractor may terminate the Contractor's appointed Member, and the first two Members must agree to terminate the third Member.

IX
LEGAL RELATIONS

A. Each Board Member in the performance of duties on the Board is acting in the capacity of an independent agent and not as an employee of either CFX or the Contractor.

B. CFX and the Contractor expressly acknowledge that each Board Member is acting in a capacity intended to facilitate resolution of disputes. Accordingly, to the fullest extent permitted by law, each Board Member shall be accorded quasi-judicial immunity for any actions or decisions associated with the consideration, hearing and recommendation of resolution for disputes referred to the Board.

C. Except for the negligent acts or omissions of a Board Member, or for activities outside of the scope of this Agreement, each Board Member shall be held harmless for any personal or professional liability arising from or related to Board activities. To the fullest extent permitted by law, CFX and the Contractor shall defend and indemnify all Board Members against claims, losses, demands, costs and damages (including reasonable attorney's fees) for bodily injury, property damage or economic loss arising out of or related to Board Members carrying out Board functions. The foregoing indemnity is a joint and several obligations of the Contractor and CFX.

X
ARBITRATION, VENUE, APPLICABLE LAW

Any dispute, claim or controversy between the parties hereto arising out of or related to this Agreement shall be resolved by arbitration. The American Arbitration Association pursuant to its Construction Industry Arbitration Rules shall conduct such arbitration, and the arbitration proceeding shall occur in Orange County, Florida. All questions and issues respecting this Agreement and the arbitration shall be resolved by application of Florida law and the judgment of the arbitration panel shall be enforceable in accordance with the provisions of the Florida Arbitration Code.

XI
NO BONUS

The Contractor and CFX shall not pay and the Members shall not receive any additional commission, percentage, bonus or consideration of any nature (other than the payment provided for in Section VI above) for performance and services under this Agreement.

XII
NO CONFLICT

The Members of the Board agree individually they do not now and during the term of this Agreement will not have any direct or indirect ownership or financial interest in the Contractor, the Engineer of Record for the project, the CEI or any subcontractor or supplier of the project. The

Members of the Board affirm they have not for a period of ten (10) years prior to this Agreement been an employee, Contractor or consultant to the Contractor, the Engineer of Record for this project, the CEI or any subcontractor or supplier of the project, and that during the term of this Agreement they shall not become so employed. During the term of the Agreement no discussion or Agreement will be made between any Board Member and any party to this Agreement for employment after the Contract is completed.

By executing this Agreement the parties mutually agree that the Members of the Board identified herein are qualified and desirable and that the criteria and limitations detailed in subarticles 10.2.3 b and 10.2.3 c of the project General Specifications are satisfied or are hereby waived.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CFX:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Print Name: _____
Title: _____

BOARD:

DISPUTES REVIEW BOARD

By: _____
Print Name: _____

By: _____
Print Name: _____

By: _____
Print Name: _____

CONTRACTOR:


By: _____
Print Name: _____
Title: _____

**CONSENT AGENDA ITEM
#12**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 21, 2019

SUBJECT: Authorization to Execute Cooperative Purchase Agreement with Convergent Technologies, LLC for Systemwide Electronic Security System Services Contract No. 001611

Board authorization is requested to execute an agreement with Convergent Technologies, LLC in the not-to-exceed amount of \$600,000.00 for three (3) years to perform maintenance and repair of the building security systems at all CFX Plazas and the Headquarters Building. Services will be on a task ordered basis as needed.

This will be a cooperative purchase (piggyback) agreement based on a government contract between Region 4 Education Service Center and Convergent Technologies, LLC for security system services which will allow CFX to take advantage of the favorable bid prices received by 4 Education Service Center.

This amount is budgeted in the OM&A Budget.

Reviewed by: 
Donald Budnovich, P.E.
Director of Maintenance 

CFX CONTRACT NO. 001611

This Agreement is made this 12th day of December 2019, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and Convergent Technologies, LLC, whose address is 6200 Lee Vista Blvd, Suite 700, Orlando, FL, 32822, and who is registered and authorized to conduct business in the State of Florida hereinafter the CONTRACTOR:

WITNESSETH:

WHEREAS, CFX 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, CFX 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 CFX, in order to carry out the powers granted to it (by state law);” and

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to provide systemwide electronic security system services; and

WHEREAS, on or about July 1, 2017, the CONTRACTOR entered into an agreement with Region 4 Education Service Center, hereinafter “ESC,” to provide the same services as required by CFX; and

WHEREAS, the contract between the CONTRACTOR and ESC, as part of The Cooperative Purchasing Network, was procured through a competitive bidding process, which process is substantially similar to those required by CFX, and included a Request for Proposal 17-05 and sealed bids from other contractors; and

WHEREAS, competitive bids seeking qualified contractors to perform such services for CFX was not required because the CONTRACTOR has an existing contract with ESC, attached hereto as **Exhibit “2”**, which was awarded through a competitive bidding process, hereinafter “ESC Contract,” for the same services to be provided hereunder; and

WHEREAS, CFX has decided to contract with CONTRACTOR in accordance with Section 4.8 of **Exhibit “2”** through the use of a separate supplement agreement to further define the level of service requirements over and above the minimum defined in **Exhibit “2”** for the performance of the services described herein under the same conditions, calculations, and unit prices previously negotiated by ESC; and

WHEREAS, the CONTRACTOR agrees to provide the services under substantially the same terms and conditions as included in its contract with ESC subject to the additional terms and conditions detailed below and the CONTRACTOR proposal dated September 27, 2019 attached hereto as **Exhibit "1"**.

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. RECITALS

The recitals are true and incorporated as terms.

2. ADDITIONAL TERMS REQUIRED BY CFX

2.1 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 Agreement in the manner and to the full extent as set forth in the Scope of Services attached as **Exhibit "1"** which is 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 CFX, who shall have at all times full opportunity to evaluate the services provided under this Contract.

CFX does not guarantee that all of the services described in **Exhibit "1"** will be assigned during the term of the Contract. Further, the CONTRACTOR is providing these services on a non-exclusive basis. CFX, at its option, may elect to have any of the services set forth herein performed by other contractors or CFX staff.

2.1.1 Authorization for performance of services by CONTRACTOR under this Agreement will be in the form of written work order issued by CFX. Each work order will describe the services required, state the dates for commencement and completion of work, establish the amount and method of payment. CFX reserves the right to contract with other parties for the services contemplated by this Agreement when it is determined by CFX to be in the best interest of CFX to do so.

2.2 TERM AND NOTICE

2.2.1 Unless otherwise provided herein or by Supplemental Agreement, the provisions of this Agreement will remain in full force and effect for a three (3) year term from the date of the Notice to Proceed for the first task assignment.

2.2.2 CFX shall have the right to immediately terminate or suspend the Agreement, in whole or in part, at any time upon notice for convenience for any reason or for cause for CONTRACTOR's material failure to perform the provisions of the Agreement or for Default. A Default includes: a) Failure to respond to a work order; b) Failure to perform a work order; or c) any other deficiency in performance. Under no circumstances shall a properly noticed termination by CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX 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 in said written notification.

2.2.3 CFX reserves the right to immediately cancel or immediately terminate this Agreement in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of CFX, without penalty. Such termination shall be deemed a termination for default.

2.2.4 CFX reserves the right to immediately terminate or immediately cancel this Agreement 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.

2.3 CONTRACT AMOUNT

2.3.1 The Contract Amount for the Contract Term is no to exceed Six Hundred Thousand Dollars (\$600,000.00). The Contractor shall be responsible for keeping track of the amount remaining in the Contract. CFX is under no obligation to pay the Contractor any sum that exceeds the Contract Amount.

2.4 COMPENSATION FOR SERVICES

2.4.1 For the satisfactory completion of the services detailed in the **Exhibit "1"**, the Contractor will be paid at the prices shown in **Exhibit "1"** for all work completed and accepted by CFX.

2.4.2 Payment will be made to the Contractor not more than once monthly. The Contractor shall prepare and forward a digital copy (via e-mail) of each monthly invoice to Billing@CFXway.com. The invoice shall include the CFX contract number, and a breakdown of the work performed by the Contractor to verify the amount being requested for payment.

2.4.3 Contractor shall receive and accept the compensation and payment provided in its Proposal, **Exhibit "1"** and the Contract as full payment for all labor, materials, expenses, supplies and incidentals required to be provided by the Contractor in **Exhibit "1"**.

2.4.4 CFX reserves the right to withhold payment or payments in whole or in part, and to continue to withhold any such payments for work not completed, completed unsatisfactorily, work that is behind schedule or work that is otherwise performed in an inadequate or untimely fashion as determined by CFX or its designated representative. Any and all such payments previously withheld shall be released and paid to Contractor promptly when the work is subsequently satisfactorily performed. If any defined action, duty or service or part required by the Contract is not performed by the Contractor, the value of such action, duty or service or part thereof will be determined by CFX and deducted from any invoice or monthly billing period claiming such items for payment. In order to expedite the review, processing, and delivery of each month's invoice to Billing@CFXway.com.

2.4.5 If the action, duty or service, part or product thereof has been completed and is determined to be unsatisfactory by CFX, the Contractor will be notified and given the opportunity to correct any deficiencies within a time certain. Payment (for the unsatisfactory Work) will be withheld by CFX from any invoice or monthly billing period until such time as the Work is determined to be acceptable.

2.5 CONTRACTOR INSURANCE.

2.5.1 Anything contained herein to the contrary notwithstanding, during the term of the Agreement and for such additional time as may be further required, the CONTRACTOR shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the CONTRACTOR's activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX.

2.5.2 Upon execution of the Agreement, the CONTRACTOR shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company. No Work shall commence under the Agreement unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Contract number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company.

2.5.3 CONTRACTOR shall carry and keep in force during the period of this Agreement, 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 VII or higher, as defined by A.M. Best and Company's Key Rating Guide and must be approved by CFX. CONTRACTOR shall carry and keep in force the following insurance coverage, and provide CFX with correct certificates of insurance (ACORD forms) upon Agreement execution:

2.5.4 All insurance coverage required of the Contractor shall be primary and noncontributory over any insurance or self-insurance program carried by CFX.

2.5.5 No liability insurance required herein shall be written under a "claims made" form.

2.5.6 Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

2.5.7 Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the CONTRACTOR's obligation to maintain such insurance.

2.5.8 The acceptance of delivery by CFX of any certificate of insurance and endorsement evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance and endorsements are in compliance with the requirements.

2.5.9 Neither approval by CFX of insurance supplied by the Contractor nor disapproval of that insurance, shall release the Contractor of full responsibility for liability, damages and accidents as otherwise provided by the Contract. The requirement of insurance will not be deemed a waiver of sovereign immunity by CFX.

2.5.10 If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

2.5.11 Comprehensive General Liability Insurance:

2.5.11.1 Coverage shall be maintained by the Contractor providing Comprehensive General Liability Insurance as provided on Insurance Services Office form GC 00 01 or an equivalent thereof. Insurance Limits of Liability for Bodily Injury Liability and/or Property Damage Liability shall not be less than having a minimum coverage of Two Million Dollars (\$2,000,000.00) per occurrence of bodily injury or property damage and a minimum of Four Million Dollars (\$4,000,000.00) annual aggregate for both General and Products and Completed Operations. The contractual liability insurance coverage shall include coverage for responsibilities and liabilities assumed by CONTRACTOR under this Agreement.

2.5.11.2 Products and Completed Operations coverage, evidenced by a Certificate of Insurance, shall be maintained for a period of not less than two (2) years following completion of the final Work Order to which the Contract applies.

2.5.12 Comprehensive Automobile Liability Insurance:

2.5.12.1 The Contractor shall maintain coverage applicable to the ownership, maintenance, use, loading and unloading of any owned, non-owned, leased or hired vehicle issued on Insurance Services Office form CA 00 01 or its equivalent. The amount of coverage for bodily injury, death and property damage shall not be less than the Two Million Dollars (\$2,000,000.00) for each accident.

2.5.12.2 This policy shall include coverage for liability assumed under contract (if not provided for under the Comprehensive General Liability policy). In the event the Contractor does not own automobiles, the Contractor shall maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or through a separate Business Auto Liability policy.

2.5.12.3 CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

2.5.13 Umbrella/Excess Liability Insurance:

2.5.13.1 If an Umbrella or Excess Liability Insurance policy is used to attain the required limits of liability, the sum of the limits provided by the Primary insurance and the Umbrella or Excess Liability insurance must at least equal the Limits of Liability as required by this Agreement.

2.5.13.2 The Umbrella/Excess Liability Insurance policy or Excess policy shall afford coverage equivalent to the required coverage as set forth in this Agreement. Policy inception date must also be concurrent with the inception dates of the underlying General Liability and Automobile Liability policies.

2.5.13.3 Umbrella or Excess policy Certificate of Insurance shall stipulate the underlying limits of liability applicable. A photocopy of the endorsement so evidencing shall be attached to the Certificate.

2.5.13.4 CFX, its employees, members, officers, agents, consultants, and successors shall be named as Additional Insured under this policy.

2.5.14 Worker's Compensation and Employer's Liability Insurance:

2.5.14.1 The Contractor shall maintain coverage for its employees in accordance with the laws of the State of Florida. The amount of coverage shall not be less than the statutory / \$1,000,000;

2.5.15 Unemployment Insurance:

2.5.15.1 Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter;

2.5.16 Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary and noncontributory 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 CFX from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against CFX, 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. Renewal Certificates of Insurance for all policies shall be submitted by the CONTRACTOR so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the CONTRACTOR to meet this required timeframe shall result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX. Procurement of insurance shall not be construed to limit CONTRACTOR's obligations or liabilities under the Agreement. The requirement of insurance shall not be deemed a waiver of sovereign immunity by CFX.

2.6 INDEMNITY

CONTRACTOR shall indemnify and hold harmless CFX, 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 CONTRACTOR and other persons employed or utilized by CONTRACTOR in the performance of the contract.

2.6.1 Further, CONTRACTOR shall indemnify, defend and hold harmless CFX, and its respective officers and 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:

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

2.6.3 CFX's use or possession of the CONTRACTOR Property or CONTRACTOR Intellectual Property (as defined herein below),

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

2.6.5 CONTRACTOR's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),

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

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

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

2.6.9 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 CFX 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 CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

2.6.10 The obligations in Section 2.6, Idemnity, shall survive the expiration or termination of this Agreement and continue in full force and effect.

2.7 OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system and comprises a portion of CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

2.7.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; OR

2.7.2 CONTRACTOR has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONTRACTOR Property and CONTRACTOR Intellectual Property, as necessary to provide and install the CONTRACTOR Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONTRACTOR is current and will remain current on all royalty payments due and payable under any license where CONTRACTOR is licensee; AND

2.7.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with the CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; AND

2.7.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

CONTRACTOR further warrants and represents that there are no pending, threatened, or anticipated Claims against CONTRACTOR, its employees, officers, agents, or subcontractors with respect to the CONTRACTOR Property or CONTRACTOR Intellectual Property.

The provisions of this Section shall survive the term of this Contract for the longer of:

2.7.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; or

2.7.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; and

2.7.7 Notwithstanding sections 2.7.5 and 2.7.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 2.7.5 and 2.7.6.

2.8 DOCUMENTED ALIENS

2.8.1 The CONTRACTOR warrants that all persons performing work for CFX under this Agreement, regardless of the nature or duration of such work, shall be United States citizens or properly authorized and documented aliens. The CONTRACTOR shall comply with all federal, state and local laws and regulations pertaining to the employment of unauthorized or undocumented aliens at all times during the performance of this Agreement and shall indemnify and hold CFX harmless for any violations of the same. Furthermore, if CFX determines that CONTRACTOR has knowingly employed any unauthorized alien in the performance of this Agreement, CFX may immediately and unilaterally terminate this Agreement for cause.

2.9 E-VERIFY CLAUSE

2.9.1 CONTRACTOR 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 CONTRACTOR during the term of the contract. CONTRACTOR shall require all of its subcontractors to verify the employment eligibility of all new employees hired by the subcontractors during the term of the Agreement.

2.10 CONTRACTOR'S RECORDS.

2.10.1 The CONTRACTOR shall maintain records in accordance with generally accepted accounting practices to document its costs and expenditures under this Agreement. The CONTRACTOR hereby grants CFX and its duly authorized representative's permission to audit and review any and all of the CONTRACTOR's records pertaining to the Agreement. The CONTRACTOR shall furnish CFX all invoices and statements for which it requests reimbursement.

2.11 AUDIT AND EXAMINATION OF RECORDS

2.11.1 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 CFX 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 CFX.

(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.

2.11.2 CFX 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.

2.11.3 If CFX 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 CFX, 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 CFX 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 CFX until reinstated by CFX.

2.11.4 Final Audit for Project Closeout: The CONTRACTOR shall permit CFX, at CFX'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 CFX because of accounting errors or charges not in conformity with the Contract, the CONTRACTOR agrees that such amounts are due to CFX upon demand. Final payment to the CONTRACTOR shall be adjusted for audit results.

2.11.5 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 CFX, (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.

2.12 SUBLETTING AND ASSIGNMENT

2.12.1 CFX 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 CFX, which may be withheld in CFX's sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX's written consent shall be null and void and shall, at CFX's option, constitute a default under the Contract.

2.12.2 If, during the life of the Contract and any renewals hereof, CONTRACTOR desires to subcontract any portion(s) of the work to a subcontractor that was not disclosed by the CONTRACTOR to CFX 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 CFX'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 her/his designee, no such subcontract shall be executed by the CONTRACTOR until it has been approved by CFX 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 her/his designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by CFX Board at its next regularly scheduled meeting.

2.13 PRESS RELEASES.

2.13.1 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 CFX and securing its consent in writing.

2.14 PERMITS, LICENSES, ETC.

2.14.1 Throughout the term of the Contract, 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 CFX upon request.

2.15 INSPECTOR GENERAL.

2.15.1 CONTRACTOR agrees to comply with Section 20.055(5), Florida Statutes, and agrees to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing pursuant to this section. CONTRACTOR agree to incorporate in all subcontracts the obligation to comply with Section 20.055(5).

2.16 ANTI-DISCRIMINATION STATEMENT.

2.16.1 Pursuant to Section 287.134(2)(a), Florida Statutes, “an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.”

2.17 CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

2.17.1 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.

2.17.2 CONTRACTOR acknowledges that CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX’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.

2.17.3 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.

2.17.4 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.

2.18 RELATIONSHIPS

2.18.1 CONTRACTOR acknowledges that no employment relationship exists between CFX 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.

2.18.2 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 CFX.

2.19 NOTIFICATION of CONVICTION of CRIMES

2.19.1 CONTRACTOR shall notify CFX if any of CONTRACTOR's dedicated management team or other individuals assigned to CFX shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed. CFX reserves the right to require replacement of any individual for any reason with or without cause.

2.20 PUBLIC ENTITY CRIME INFORMATION

2.20.1 Pursuant to Section 287.133(2)(a), Florida Statutes, "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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.”

2.21 PUBLIC RECORDS RETENTION

2.21.1 Pursuant to Section 119.0701(2), Florida Statutes, Contractor acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the Contractor is in the possession of documents fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, Contractor agrees to comply with Section 119.0701, Florida Statutes, an excerpt of which is below.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (407) 690-5000, Email: PublicRecords@CFXWay.com, Central Florida Expressway Authority, 4974 ORL Tower Road, Orlando, Florida 32807.

119.0701(2) Contract requirements.

(b) . . . [t]he Contractor shall comply with public records laws, specifically to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency’s custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency’s

custodian of public records, in a format that is compatible with the information technology systems of the public agency.

119.0701(3) Request for records; noncompliance.

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

(b) If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract.

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

3.18.2 The obligations in Section 3.18.1 shall survive the expiration or termination of this Agreement and continue in full force and effect until all public records are transferred to CFX or the end of the longest applicable retention periods.

2.22 GOVERNING LAW AND VENUE

2.22.1 This Agreement, and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and enforced in accordance with, the internal laws of the State of Florida, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 2.22, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

2.23 NOTICES

CFX

Central Florida Expressway, Authority
4974 ORL Tower Rd., Orlando, FL 32807
Phone: 407-690-5000
Attention: CFX General Counsel

CONTRACTOR

Convergint Technologies, LLC
6200 Lee Vista Blvd., Suite 700
Orlando, FL. 32822
Phone: 407-734-0347
Attention: Richard Kuhn

With a copy to:

CFX

Central Florida Expressway, Authority
4974 ORL Tower Rd., Orlando, FL 32807
Phone: 407-690-5000
Attention: Director of Maintenance

CONTRACTOR

Convergint Technologies, LLC
6200 Lee Vista Blvd., Suite 700
Orlando, FL. 32822
Phone: 407-734-0347
Attention: Eric Balaban

2.24 SEVERABILITY

2.24.1 The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

2.25 AVAILABILITY OF FUNDS

2.25.1 CFX's performance and obligation to pay under this contract are contingent upon an annual budget appropriation by its Board. The parties agree that in the event funds are not appropriated, this Agreement may be terminated, which shall be effective upon CFX giving notice to the CONTRACTOR to that effect.

2.26 ENTIRE AGREEMENT

2.26.1 This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no other agreements between the parties in connection with the subject matter hereof. No waiver, amendment, or modification of these terms hereof will be valid unless in writing, signed by all parties and only to the extent therein set forth.

2.27 EXHIBITS

1. CONTRACTOR proposal dated September 27, 2019
2. ESC Contract

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 CFX's Board of Directors at its meeting on December 12, 2019.

APPROVED BY: **CONVERGINT TECHNOLOGIES, LLC**

By: _____

Print Name and Title: _____

Attest: _____ (Seal)

Date: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

Approved as to form and execution, only.

General Counsel for CFX

Appendix A
VENDOR CONTRACT AND SIGNATURE FORM

This Vendor Contract and Signature Form (“Contract”) is made as of 21 February 2017, by and between Convergent Technologies LLC and Region 4 Education Service Center (“Region 4 ESC”) for the purchase of **Security System Services**

RECITALS

WHEREAS, both parties agree and understand that the following pages will constitute the contract between the successful vendor(s) and Region 4 ESC, having its principal place of business at 7145 West Tidwell Road, Houston, TX 77092.

WHEREAS, Vendor agrees to include, in writing, any required exceptions or deviations from these terms, conditions, and specifications; and it is further understood that, if agreed to by Region 4 ESC, said exceptions or deviations will be incorporated into the final contract “Vendor Contract.”

WHEREAS, this contract consists of the provisions set forth below, including provisions of all attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any attachment, the provisions set forth below shall control.

WHEREAS, the Vendor Contract will provide that any state, county, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution (including community colleges, colleges and universities, both public and private), other government agencies or non-profit organization may purchase products and services at prices indicated in the Vendor Contract upon registering and becoming a member with TCPN; and it being further understood that Region 4 ESC shall act as the Lead Public Agency with respect to all such purchase agreements.

WHEREAS, TCPN has the administrative and legal capacity to administer purchases on behalf of Region 4 ESC under the Vendor Contract with participating public agencies and entities, as permitted by applicable law.

ARTICLE 1- GENERAL TERMS AND CONDITIONS

1.1 TCPN shall be afforded all of the rights, privileges and indemnifications afforded to Region 4 ESC under the Vendor Contract, and such rights, privileges and indemnifications shall accrue and apply with equal effect to TCPN, including, without limitation, Vendors obligation to provide insurance and other indemnifications to Lead Public Agency.

1.2 Awarded vendor shall perform all duties, responsibilities, and obligations, set forth in this agreement, and required under the Vendor Contract.

1.3 TCPN shall perform its duties, responsibilities, and obligations as administrator of purchases, set forth in this agreement, and required under the Vendor Contract.

1.4 **Purchasing procedure:**

- Purchase orders are issued by participating governmental agencies to the awarded vendor indicating on the PO “**Per TCPN Contract # R _____.**”
- Vendor delivers goods/services directly to the participating agency.
- Awarded vendor invoices the participating agency directly.
- Awarded vendor receives payment directly from the participating agency.
- Awarded vendor reports sales monthly to TCPN.

1.5 **Customer Support:** The vendor shall provide timely and accurate technical advice and sales support to Region 4 ESC staff, TCPN staff and participating agencies. The vendor shall respond to such requests within one (1) working day after receipt of the request.

ARTICLE 2- ANTICIPATED TERM OF AGREEMENT

2.1 Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew annually for an additional two (2) years if agreed to by Region 4 ESC. Region 4 ESC will notify the vendor in writing if the contract is extended. Awarded vendor shall honor all administrative fees for any sales made based on the contract whether renewed or not.

2.2 Region 4 ESC shall review the contract prior to the renewal date and notify the current awarded vendor, no less than ninety (90) days of Region 4 ESC’s intent renew the contract. Upon receipt of notice, awarded vendor must notify Region 4 ESC if it elects not to renew. Awarded vendor shall honor the administrative fee for any sales incurred throughout the life of the contract on any sales made based on a Region 4 ESC contract whether awarded a renewal or not. Region 4 ESC reserves the right to exercise each two-year extension annually.

ARTICLE 3- REPRESENTATIONS AND COVENANTS

3.1. **Scope:** This contract is based on the need to provide the economic benefits of volume purchasing and reduction in administrative costs through cooperative purchasing to schools and other members. Although contractors may restrict sales to certain public units (for example, state agencies or local government units), any contract that prohibits sales from being made to public school districts may not be considered. Sales without restriction to any Members are preferred. These types of contracts are commonly referred to as being “piggybackable”.

3.2. **Compliance:** Cooperative Purchasing Agreements between TCPN and its Members have been established under state procurement law.

3.3. **Offeror’s Promise:** Offeror agrees all prices, terms, warranties, and benefits granted by Offeror to Members through this contract are comparable to or better than the equivalent terms offered by Offeror to any present customer meeting the same qualifications or requirements.

ARTICLE 4- FORMATION OF CONTRACT

4.1. **Offeror Contract Documents:** Region 4 ESC will review proposed offeror contract documents. Vendor's contract document shall not become part of Region 4 ESC's contract with vendor unless and until an authorized representative of Region 4 ESC reviews and approves it.

4.2. **Form of Contract:** The form of contract for this solicitation shall be the Request for Proposal, the awarded proposal(s) and best and final offer(s), and properly issued and reviewed purchase orders referencing the requirements of the Request for Proposals. If a firm submitting an offer requires Region 4 ESC and/or Member to sign an additional agreement, a copy of the proposed agreement must be included with the proposal.

4.3. **Entire Agreement (Parol evidence):** The contract, as specified above, represents the final written expression of agreement. All agreements are contained herein and no other agreements or representations that materially alter it are acceptable.

4.4. **Assignment of Contract:** No assignment of contract may be made without the prior written approval of Region 4 ESC. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by Region 4 ESC. Awarded vendor is required to notify Region 4 ESC when any material change in operations is made that may adversely affect members (i.e. bankruptcy, change of ownership, merger, etc.).

4.5. **Novation:** If contractor sells or transfers all assets or the entire portion of the assets used to perform this contract, a successor in interest must guarantee to perform all obligations under this contract. Region 4 ESC reserves the right to accept or reject any new party. A simple change of name agreement will not change the contractual obligations of contractor.

4.6. **Contract Alterations:** No alterations to the terms of this contract shall be valid or binding unless authorized and signed by a Region 4 ESC staff member.

4.7. **Order of Precedence:** In the event of a conflict in the provisions of the contract as accepted by Region 4 ESC, the following order of precedence shall prevail:

- Special terms and conditions
- General terms and conditions
- Specifications and scope of work
- Attachments and exhibits
- Documents referenced or included in the solicitation

4.8. **Supplemental Agreements:** The entity participating in the Region 4 ESC contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor. Neither Region 4 ESC, TCPN, its agents, members and employees shall be made party to any claim for breach of such agreement.

4.9 Adding authorized distributors/dealers: Awarded vendors are prohibited from authorizing additional distributors or dealers, other than those identified at the time of submitting their proposal, to sell under their contract award without notification and prior written approval from TCPN. Awarded vendors must notify TCPN each time it wishes to add an authorized distributor or dealer. Purchase orders and payment can only be made to awarded vendor unless otherwise approved by TCPN. Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder, unless otherwise approved by TCPN.

ARTICLE 5- TERMINATION OF CONTRACT

5.1. Cancellation for Non-Performance or Contractor Deficiency: Region 4 ESC may terminate any contract if Members have not used the contract, or if purchase volume is determined to be low volume in any 12-month period. Region 4 ESC reserves the right to cancel the whole or any part of this contract due to failure by contractor to carry out any obligation, term, or condition of the contract. Region 4 ESC may issue a written deficiency notice to contractor for acting or failing to act in any of the following:

- i. Providing material that does not meet the specifications of the contract;
- ii. Providing work and/or material that was not awarded under the contract;
- iii. Failing to adequately perform the services set forth in the scope of work and specifications;
- iv. Failing to complete required work or furnish required materials within a reasonable amount of time;
- v. Failing to make progress in performance of the contract and/or giving Region 4 ESC reason to believe that contractor will not or cannot perform the requirements of the contract; and/or
- vi. Performing work or providing services under the contract prior to receiving an authorized purchase order from Region 4 ESC or participating member prior to such work

Upon receipt of a written deficiency notice, contractor shall have ten (10) days to provide a satisfactory response to Region 4 ESC. Failure to adequately address all issues of concern may result in contract cancellation. Upon cancellation under this paragraph, all goods, materials, work, documents, data and reports prepared by contractor under the contract shall become the property of the Member on demand.

5.2 Termination for Cause: If, for any reason, the Vendor fails to fulfill its obligation in a timely manner, or if the vendor violates any of the covenants, agreements, or stipulations of this contract Region 4 ESC reserves the right to terminate the contract immediately and pursue all other applicable remedies afforded by law. Such termination shall be effective by delivery of notice, to the vendor, specifying the effective date of termination. In such event, all documents, data, studies, surveys, drawings, maps, models and reports prepared by vendor for this solicitation may become the property of the participating agency or entity. If such event does occur, then vendor will be entitled to receive just and equitable compensation for the satisfactory work completed on such documents.

5.3 **Delivery/Service Failures:** Failure to deliver goods or services within the time specified, or within a reasonable time period as interpreted by the purchasing agent or failure to make replacements or corrections of rejected articles/services when so requested shall constitute grounds for the contract to be terminated. In the event that the participating agency or entity must purchase in an open market, contractor agrees to reimburse the participating agency or entity, within a reasonable time period, for all expenses incurred.

5.4 **Force Majeure:** If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

5.5 **Standard Cancellation:** Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order. Vendor may be requested to provide additional items not already on contract at any time.

ARTICLE 6- LICENSES

6.1 **Duty to keep current license:** Vendor shall maintain in current status all federal, state and local licenses, bonds and permits required for the operation of the business conducted by vendor. Vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of services under the contract. Region 4 ESC reserves the right to stop work and/or cancel the contract of any vendor whose license(s) expire, lapse, are suspended or terminated.

6.2 **Survival Clause:** All applicable software license agreements, warranties or service agreements that were entered into between Vendor and Customer under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All Purchase Orders issued and accepted by Order Fulfiller shall survive expiration or termination of the Contract.

ARTICLE 7- DELIVERY PROVISIONS

7.1 **Delivery:** Vendor shall deliver said materials purchased on this contract to the Member issuing a Purchase Order. Conforming product shall be shipped within 7 days of receipt of Purchase Order. If delivery is not or cannot be made within this time period the vendor must receive authorization from the purchasing agency for the delayed delivery. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

7.2 **Inspection & Acceptance:** If defective or incorrect material is delivered, purchasing agency may make the determination to return the material to the vendor at no cost to the purchasing agency. The vendor agrees to pay all shipping costs for the return shipment. Vendor shall be responsible for arranging the return of the defective or incorrect material.

ARTICLE 8- BILLING AND REPORTING

8.1 **Payments:** The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.

8.2 **Invoices:** The awarded vendor shall submit invoices to the participating entity clearly stating "Per TCPN Contract". The shipment tracking number or pertinent information for verification shall be made available upon request.

8.3 **Tax Exempt Status:** Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

8.4 **Reporting:** The awarded vendor shall provide TCPN with an electronic accounting report, in a format prescribed by TCPN, on a monthly basis summarizing all contract Sales for the applicable month.

Reports of Contract Sales for Region 4 ESC and member agencies in each calendar month shall be provided by awarded vendor to TCPN by the 10th day of the following month. If there are no sales to report, Vendor is still required to communicate that information via email.

Failure to provide a monthly report of the administrative fees within the time and manner specified herein shall constitute a material breach of this contract and if not cured within thirty (30) days of written to Supplier shall be deemed a cause for termination of the contract at Region4 ESC's sole discretion.

ARTICLE 9- PRICING

9.1 **Best price guarantee:** The awarded vendor agrees to provide pricing to Region 4 ESC and its participating entities that are the lowest pricing available and the pricing shall remain so throughout the duration of the contract. Pricing offered to Federal government buying consortiums for goods and services is exempt from this requirement. The awarded vendor,

however, agrees to lower the cost of any product purchased through TCPN following a reduction in the manufacturer or publisher's direct cost.

9.2 **Price increase:** Should it become necessary or proper during the term of this contract to make any change in design or any alterations that will increase expense Region 4 ESC must be notified immediately. Price increases must be approved by Region 4 ESC and no payment for additional materials or services, beyond the amount stipulated in the contract, shall be paid without prior approval. All price increases must be supported by manufacture documentation, or a formal cost justification letter.

Awarded vendor must honor previous prices for thirty (30) days after approval and written notification from Region 4 ESC if requested.

It is the awarded vendor's responsibility to keep all pricing up to date and on file with Region 4 ESC. All price changes must be provided to Region 4 ESC, using the same format as was accepted in the original contract.

9.3 **Additional Charges:** All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing.

9.4 **Price reduction and adjustment:** Price reduction may be offered at any time during contract and shall become effective upon notice of acceptance from Region 4 ESC. Special, time-limited reductions are permissible under the following conditions: 1) reduction is available to all Members equally; 2) reduction is for a specific time period, normally not less than thirty (30) days; 3) original price is not exceeded after the time-limit; and 4) Region 4 ESC has approved the new prices prior to any offer of the prices to a Member. Vendor shall offer Region 4 ESC any published price reduction during the contract period.

9.5 **Prevailing Wage:** It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser (Region 4 ESC or its Members). It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

9.6 **Administrative Fees:** All pricing submitted to Region 4 ESC shall include the administrative fee to be remitted to TCPN by the awarded vendor.

The awarded vendor agrees to pay 4% administrative fees monthly to TCPN. Administrative fees must be paid net 30 days after TCPN acceptance of the vendor's monthly report.

ARTICLE 10- PRICING AUDIT

10.1 **Audit rights:** Vendor shall, at Vendor's sole expense, maintain appropriate due diligence of all purchases made by Region 4 ESC and any entity that utilizes this Agreement. TCPN and Region 4 ESC each reserve the right to audit the accounting for a period of three (3) years from the time such purchases are made. This audit right shall survive termination of this Agreement

for a period of one (1) year from the effective date of termination. In the State of New Jersey, this audit right shall survive termination of this Agreement for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Region 4 ESC shall have the authority to conduct random audits of Vendor's pricing that is offered to eligible entities at Region 4 ESC's sole cost and expense. Notwithstanding the foregoing, in the event that Region 4 ESC is made aware of any pricing being offered to eligible agencies that is materially inconsistent with the pricing under this agreement, Region 4 ESC shall have the ability to conduct an extensive audit of Vendor's pricing at Vendor's sole cost and expense. Region 4 ESC may conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in the format and at the location designated by Region 4 ESC or TCPN.

ARTICLE 11- OFFEROR PRODUCT LINE REQUIREMENTS

11.1 **Current products:** Proposals shall be for materials and equipment in current production and marketed to the general public and education/government agencies at the time the proposal is submitted.

11.2 **Discontinued products:** If a product or model is discontinued by the manufacturer, vendor may substitute a new product or model if the replacement product meets or exceeds the specifications and performance of the discontinued model and if the discount is the same or greater than the discontinued model.

11.3 **New products/Services:** New products and/or services that meet the scope of work may be added to the contract. Pricing shall be equivalent to the percentage discount for other products. Vendor may replace or add product lines to an existing contract if the line is replacing or supplementing products on contract, is equal or superior to the original products offered, is discounted in a similar or to a greater degree, and if the products meet the requirements of the solicitation. No products and/or services may be added to avoid competitive procurement requirements. Region 4 ESC may require additions to be submitted with documentation from Members demonstrating an interest in, or a potential requirement for, the new product or service. Region 4 ESC may reject any additions without cause.

11.4 **Options:** Optional equipment for products under contract may be added to the contract at the time they become available under the following conditions: 1) the option is priced at a discount similar to other options; 2) the option is an enhancement to the unit that improves performance or reliability.

11.5 **Product line:** Offerors with a published catalog may submit the entire catalog. Region 4 ESC reserves the right to select products within the catalog for award without having to award all contents. Region 4 ESC may reject any addition of equipment options without cause.

11.6 **Warranty conditions:** All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing.

11.7 **Buy American requirement:** (for New Jersey and all other applicable States) Vendors may only use unmanufactured construction material mined or produced in the United States, as required by the Buy American Act. Where trade agreements apply, to the extent permitted by applicable law, then unmanufactured construction material mined or produced in a designated country may also be used. Vendors are required to check state specific requirements to ensure compliance with this requirement.

ARTICLE 12- SITE REQUIREMENTS

12.1 **Cleanup:** Vendor shall clean up and remove all debris and rubbish resulting from their work as required or directed by Member. Upon completion of the work, the premises shall be left in good repair and an orderly, neat, clean and unobstructed condition.

12.2 **Preparation:** Vendor shall not begin a project for which Member has not prepared the site, unless vendor does the preparation work at no cost, or until Member includes the cost of site preparation in a purchase order. Site preparation includes, but is not limited to: moving furniture, installing wiring for networks or power, and similar pre-installation requirements.

12.3 **Registered sex offender restrictions:** For work to be performed at schools, vendor agrees that no employee or employee of a subcontractor who has been adjudicated to be a registered sex offender will perform work at any time when students are or are reasonably expected to be present. Vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the Member's discretion. Vendor must identify any additional costs associated with compliance of this term. If no costs are specified, compliance with this term will be provided at no additional charge.

12.4 **Safety measures:** Vendor shall take all reasonable precautions for the safety of employees on the worksite, and shall erect and properly maintain all necessary safeguards for protection of workers and the public. Vendor shall post warning signs against all hazards created by its operation and work in progress. Proper precautions shall be taken pursuant to state law and standard practices to protect workers, general public and existing structures from injury or damage.

12.5 **Smoking:** Persons working under the contract shall adhere to local smoking policies. Smoking will only be permitted in posted areas or off premises.

12.6 **Stored materials:** Upon prior written agreement between the vendor and Member, payment may be made for materials not incorporated in the work but delivered and suitably stored at the site or some other location, for installation at a later date. An inventory of the stored materials must be provided to Member prior to payment. Such materials must be stored and protected in a secure location, and be insured for their full value by the vendor against loss and damage. Vendor agrees to provide proof of coverage and/or addition of Member as an additional insured upon Member's request. Additionally, if stored offsite, the materials must also be clearly identified as property of buying Member and be separated from other materials. Member must be allowed reasonable opportunity to inspect and take inventory of stored materials, on or offsite, as necessary.

Until final acceptance by the Member, it shall be the Vendor's responsibility to protect all materials and equipment. The Vendor warrants and guarantees that title for all work, materials and equipment shall pass to the Member upon final acceptance.

ARTICLE 13- MISCELLANEOUS

13.1 **Funding Out Clause:** Any/all contracts exceeding one (1) year shall include a standard “funding out” clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity’s current revenue only, provided the contract contains either or both of the following provisions: **NOTE: Please clarify, appears to be an incomplete statement.**

“Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.”

13.2 **Disclosures:** Offeror affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.

Include a complete description of any and all relationships that might be considered a conflict of interest in doing business with participants in TCPN.

The Offeror affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

13.3 **Indemnity:** The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.

13.4 **Franchise Tax:** The Offeror hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

13.5 **Marketing:** Awarded vendor agrees to allow Region 4 ESC/TCPN to use their name and logo within website, marketing materials and advertisement. Any use of TCPN name and logo or any form of publicity, inclusive of press releases, regarding this contract by awarded vendor must have prior approval from TCPN.

13.6 Certificates of Insurance: Certificates of insurance shall be delivered to the Region 4 ESC participant prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days' notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

13.7 Legal Obligations: It is the Offeror's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

13.8 Open Records Policy: Because Region 4 ESC contracts are awarded by a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by-page and line-by-line the parts of the response, which it believes, are exempt. In addition, the Offeror must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s). Offeror must provide this information on the "Acknowledgement and Acceptance to Region 4 ESC's Open Record Policy" form found at the beginning of this solicitation. Any information that is unmarked will be considered public information and released, if requested under the Public Information Act.

The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 4 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the Offeror are not acceptable. Region 4 ESC must comply with the opinions of the OAG. Region 4 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Offerors are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

After completion of award, these documents will be available for public inspection.

VENDOR CONTRACT SIGNATURE FORM

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this proposal in collusion with any other Offeror and that the contents of this proposal as to prices, terms, or conditions of said proposal have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Company Name: Convergint Technologies LLC

Address: 4395 Nicole Drive

City/State/Zip Lanham, Maryland, 20706

Telephone No. 301.459.8730

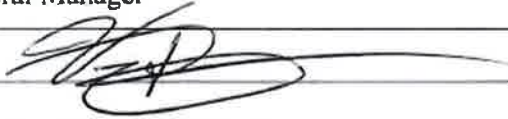
Fax No. 301.459.8731

Email Address: Vincent.piau@convergint.com and IPA@convergint.com

Printed Name: Vincent Piau

Position with company: General Manager

Authorized Signature: _____



Accepted by The Cooperative Purchasing Network:

Term of contract _____ **to** _____

Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew annually for an additional two (2) years if agreed to by Region 4 ESC and the awarded vendor. Awarded vendor shall honor all administrative fees for any sales made based on a contract whether renewed or not.

Region 4 ESC Authorized Board Member

Date

Print Name

Region 4 ESC Authorized Board Member

Date

Print Name

TCPN Contract Number _____

1.3 General Terms and Conditions Acceptance Form - Appendix D

APPENDIX D:

GENERAL TERMS & CONDITIONS ACCEPTANCE FORM

Signature on Vendor Contract Signature form certifies complete acceptance of the General Terms and Conditions in this solicitation, except as noted below (additional pages may be attached, if necessary).

Check one of the following responses to the General Terms and Conditions:

We take no exceptions/deviations to the general terms and conditions

(Note: If none are listed below, it is understood that no exceptions/deviations are taken.)

We take the following exceptions/deviations to the general terms and conditions. All exceptions/deviations must be clearly explained. Reference the corresponding general terms and conditions that you are taking exceptions/deviations to. Clearly state if you are adding additional terms and conditions to the general terms and conditions. Provide details on your exceptions/deviations below:

(Note: Unacceptable exceptions shall remove your proposal from consideration for award. Region 4 ESC shall be the sole judge on the acceptance of exceptions/deviations and the decision shall be final.)

Section/Page	Term, Condition, or Specification	Exception/Deviation	Region 4 Accepts
8.1 Payments Page 19	The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and upon receipt of a properly completed invoice.	The entity using the contract will make payments directly to the awarded vendor. Payment shall be made after satisfactory performance, in accordance with all provisions thereof, and within 30 days of receipt of a properly completed invoice.	
11.6 Warranty conditions: Page 21	All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in	All supplies, equipment and services shall include manufacturer's minimum standard warranty and one (1) year labor warranty unless otherwise agreed to in writing. NO FURTHER WARRANTIES OR GUARANTIES, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO ANY GOODS OR	


	writing.	SERVICES PROVIDED UNDER THIS AGREEMENT, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.	
13.3 Indemnity Page 22	The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.	<p>The awarded vendor shall protect, indemnify, and hold harmless both Region 4 ESC and TCPN and its participants, administrators, employees and agents against all claims, damages, losses and expenses to the extent they are arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract, including any supplemental agreements with members. Any litigation involving either Region 4 ESC or TCPN, its administrators and employees and agents will be in Harris County, Texas. Any litigation involving TCPN members shall be in the jurisdiction of the participating agency.</p> <p>IN NO EVENT SHALL EITHER VENDOR OR TCPN BE LIABLE TO THE OTHER PARTY HERETO, OR TO ANY INDEMNITEE, FOR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.</p>	

**CONSENT AGENDA ITEM
#13**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members



FROM: Aneth Williams 
Director of Procurement

DATE: November 25, 2019

SUBJECT: Approval of Assignment and Assumption of Contractual Obligations
Between AECOM Energy & Construction, Inc. and Shimmick Construction
Company, Inc.
Contract No. 001071

Board approval is requested to enter into an Assignment and Assumption of contractual obligations between AECOM Energy & Construction, Inc. and Shimmick Construction Company, Inc. and CFX.

AECOM Energy and Construction, Inc. has acquired Shimmick Construction Company, Inc. and desires to assign their current Toll Facilities Operations and Management Services contract with CFX to Shimmick Construction Company, Inc.

Reviewed by: 
David Wynne
Director of Toll Operations 

ASSIGNMENT AND ASSUMPTION AGREEMENT, CONSENT TO ASSIGNMENT AND AMENDMENT TO AGREEMENT

This **Assignment and Assumption Agreement, Consent to Assignment and Amendment to Agreement** (this "**Assignment**") is made as of _____ by and between AECOM Energy & Construction, Inc. (f/k/a URS Energy & Constructions, Inc.), an Ohio corporation ("**Assignor**"), Transportation Operations & Management Solutions, a registered name of Shimmick Construction Company, Inc., a California corporation ("**Assignee**"), and Central Florida Expressway Authority, a body and politic agency of the State of Florida ("**Beneficiary**"). Assignor, Assignee, and Beneficiary may be individually referred to herein as, a "**Party**" and collectively as, the "**Parties**".

RECITALS

A. Assignor and Beneficiary executed that certain Toll Facilities Operations and Management Services Contract No. 001071, dated November 12, 2015 (the "**Agreement**") for the operation and management of toll facilities (the "**Project**"). Defined terms used but not otherwise defined herein shall have the meanings given to them in the Agreement.

B. Section 17 of the Agreement allows Assignor to assign the Agreement with Beneficiary's prior written consent.

C. Assignor desires to assign the Agreement to Assignee and Assignee desires to accept and assume the Agreement, and Beneficiary desires to consent to such assignment and assumption.

D. As inducement for Beneficiary to consent to Assignor's assignment of the Agreement to Assignee, and contingent upon the effectiveness of such assignment, the Parties desire to amend the Agreement to increase the amount of the performance bond and extend the term required for Contractor to retain Key Personnel.

AGREEMENT

Accordingly, in consideration of the mutual covenants and promises set forth in this Assignment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Incorporation of Recitals. The recitals set forth above are incorporated herein and made a part of this Assignment.

2. Assignment and Assumption. Assignor hereby assigns, conveys, transfers and delivers to Assignee the Agreement and all of its right, title and interest thereunder. Assignee hereby accepts the assignment and conveyance and hereby assumes and agrees to perform and discharge all of the obligations, duties, liabilities, covenants and responsibilities of Assignor under the Agreement. Beneficiary hereby releases Assignor from all of its obligations and liabilities under the Agreement upon expiration of the base contract term in December 2020.

3. Conditions Precedent. This Assignment will be effective upon (the "**Effective Date**"):

a. Each party executing this Assignment;

- b. Assignee's delivery of a certificate of insurance in compliance with the Agreement; and
- c. Assignee's delivery of (i) a consent of surety evidencing the surety's consent to change the name of the principal on the Performance Bond to the Assignee and (ii) a surety rider evidencing the surety's consent to changing the bond amount to \$3,000,000.

4. Return of Instruments. Beneficiary covenants to promptly return Assignor's existing Performance Bond upon receipt of the replacement or substitute instrument.

5. Consent to Assignment. Beneficiary hereby consents to the assignment of the Agreement to, and the assumption of the Agreement by, Assignee.

6. Amendment of Agreement. Conditioned upon the effectiveness of this Assignment and effective upon the Effective Date, the Agreement shall be amended as follows:

- a. Section 6.5 of the Agreement is hereby amended by deleting "\$1,000,000" from the first sentence and replacing it with "\$3,000,000".
- b. The third paragraph of Section 8 of the Agreement is hereby amended by deleting "second anniversary of the Effective Date of this Contract" from the first sentence and replacing it with "end of the five-year Contract term".

7. Entire Agreement. This Assignment constitutes the entire agreement between the Parties hereto and supersedes all prior agreements, correspondence, conversations and negotiations with respect to the subject matter hereof. This Assignment shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Except as expressly modified herein, all terms and conditions of the Agreement shall remain in full force and effect.

8. Severability. If any term or provision of this Assignment or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Assignment or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Assignment shall be valid and enforced to the fullest extent permitted by law.

9. Modification. This Assignment may not be modified or changed except by an instrument in writing duly executed by the Parties hereto, and no waiver of any provision or condition hereof and no consent provided herein shall be effective unless evidenced by an instrument in writing duly executed by the Party hereto seeking to be charged with such waiver or consent.

10. Governing Law. This Assignment shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a dispute regarding enforcement of the terms of this Assignment, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party.

11. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned have executed this Assignment as of the Effective Date set forth above.

ASSIGNOR:

**AECOM ENERGY &
CONSTRUCTION, INC.**

By: _____

Name:

Title:

ASSIGNEE:

**TRANSPORTATION OPERATIONS
& MANAGEMENT SOLUTIONS,**
a registered name of Shimmick
Construction Company, Inc.

By: _____

Name:

Title:

**ACKNOWLEDGED, ACCEPTED AND
AGREED:**

BENEFICIARY:

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

By: _____

Name:

Title:

[Previous on List](#)[Next on List](#)[Return to List](#)[Fictitious Name Search](#)**No Filing History**

Fictitious Name Detail

Fictitious Name

TRANSPORTATION OPERATIONS & MANAGEMENT SOLUTIONS

Filing Information

Registration Number G19000075552
Status ACTIVE
Filed Date 07/11/2019
Expiration Date 12/31/2024
Current Owners 1
County MULTIPLE
Total Pages 1
Events Filed NONE
FEI/EIN Number NONE

Mailing Address

8201 EDGEWATER DRIVE
SUITE 202
OAKLAND, CA 94621

Owner Information

SHIMMICK CONSTRUCTION COMPANY, INC.
8201 EDGEWATER DRIVE, SUITE 202
OAKLAND, CA 94621
FEI/EIN Number: 94-3107390
Document Number: F11000003995

Document Images

[07/11/2019 -- Fictitious Name Filing](#)

[Previous on List](#)[Next on List](#)[Return to List](#)[Fictitious Name Search](#)**No Filing History**

APPLICATION FOR REGISTRATION OF FICTITIOUS NAME

REGISTRATION# G19000075552

Fictitious Name to be Registered: TRANSPORTATION OPERATIONS & MANAGEMENT SOLUTIONS

Mailing Address of Business: 8201 EDGEWATER DRIVE
SUITE 202
OAKLAND, CA 94621

Florida County of Principal Place of Business: MULTIPLE

FEI Number:

**FILED
Jul 11, 2019
Secretary of State**

Owner(s) of Fictitious Name:

SHIMMICK CONSTRUCTION COMPANY, INC.
8201 EDGEWATER DRIVE, SUITE 202
OAKLAND, CA 94621 US
Florida Document Number: F11000003995
FEI Number: 94-3107390

I the undersigned, being an owner in the above fictitious name, certify that the information indicated on this form is true and accurate. I further certify that the fictitious name to be registered has been advertised at least once in a newspaper as defined in Chapter 50, Florida Statutes, in the county where the principal place of business is located. I understand that the electronic signature below shall have the same legal effect as if made under oath and I am aware that false information submitted in a document to the Department of State constitutes a third degree felony as provided for in s. 817.155, Florida Statutes.

GREG DUKELLIS

07/11/2019

Electronic Signature(s)

Date

Certificate of Status Requested (X)

Certified Copy Requested ()

State of Florida

Department of State

I certify from the records of this office that SHIMMICK CONSTRUCTION COMPANY, INC. is a California corporation authorized to transact business in the State of Florida, qualified on October 4, 2011.

The document number of this corporation is F11000003995.

I further certify that said corporation has paid all fees due this office through December 31, 2019, that its most recent annual report/uniform business report was filed on March 6, 2019, and that its status is active.

I further certify that said corporation has not filed a Certificate of Withdrawal.

*Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capital, this
the Twenty-sixth day of June,
2019*



Randy R. ...
Secretary of State

Tracking Number: 3396680050CU

To authenticate this certificate, visit the following site, enter this number, and then follow the instructions displayed.

<https://services.sunbiz.org/Filings/CertificateOfStatus/CertificateAuthentication>

State of Florida

Department of State

I certify from the records of this office that TRANSPORTATION OPERATIONS & MANAGEMENT SOLUTIONS is a Fictitious Name registered with the Department of State on July 11, 2019.

The Registration Number of this Fictitious Name is G19000075552.

I further certify that said Fictitious Name Registration is active.

I further certify that this office began filing Fictitious Name Registrations on January 1, 1991, pursuant to Section 865.09, Florida Statutes.

Given under my hand and the Great Seal of Florida, at Tallahassee, the Capital, this the Twelfth day of July, 2019



Randy Rye

Secretary of State

NAME CHANGE AGREEMENT

WHEREAS, on November 12, 2015, Central Florida Expressway Authority, a body politic and agency of the State of Florida, hereinafter referred to as "CFX", and URS Energy & Construction, Inc., "CONTRACTOR", entered into an Agreement, and amendments thereto, whereby the CONTRACTOR would provide toll facilities operations and management and related tasks as may from time to time be assigned to the Contractor by CFX.

WHEREAS, on September 12, 2016 the CONTRACTOR officially changed its legal, registered name to AECOM Energy & Construction, Inc.; and

WHEREAS, AECOM Energy & Construction, Inc. will continue to perform all of its duties, responsibilities, and obligations under the Agreement.

WHEREAS, CFX hereby consents to continuing the Agreement with AECOM Energy & Construction, Inc.

WHEREAS, where the term URS Energy & Construction, Inc. shall appear in the original Agreement as amended, the term shall hereinafter mean and refer to AECOM Energy & Construction, Inc.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS except as expressly amended hereby, all the remaining provisions of the Agreement shall remain in full force and effect.

Contract No. 001071
Contract No. 001169

IN WITNESS WHEREOF, the CONTRACTOR caused these presents to be executed by
their duly authorize officer this 17 day of January, 2017.

ATTEST:



CONTRACTOR AECOM Energy & Construction, Inc.

BY

A handwritten signature in black ink, appearing to read "Brad White", written over a horizontal line.

Signature

A handwritten signature in black ink, appearing to read "Tamica Sinanan Dizon", written over a horizontal line.

Brad White, Vice President

Name and Title

CONSENT TO ABOVE AND FOREGOING NAME CHANGE
ON BEHALF OF CENTRAL FLORIDA EXPRESSWAY AUTHORITY

BY

A handwritten signature in black ink, appearing to read "Aneth Williams", written over a horizontal line.

Signature

Aneth Williams
Aneth Williams, Director of Procurement

1-19-17

Date

Approved as to form and execution, only.

A handwritten signature in black ink, appearing to read "Joseph Floriature", written over a horizontal line.

General Counsel for CFX

EXHIBIT "A"

**CERTIFICATE OF AMENDED
AND RESTATED ARTICLES OF INCORPORATION**

**CERTIFICATE OF
AMENDED AND RESTATED ARTICLES OF INCORPORATION
URS ENERGY & CONSTRUCTION, INC.**

Charter Number 171108

The undersigned, *Jeane C. Baughman*, who is the Secretary of URS Energy & Construction, Inc., an Ohio corporation for profit, does hereby certify that in a writing signed by all the shareholders who would be entitled to notice of a meeting held for that purpose, the attached Amended and Restated Articles of Incorporation were adopted to supersede and take the place of the existing Articles and all amendments thereto.

IN WITNESS WHEREOF, the above named officer, acting for and on behalf of the corporation, has hereunto subscribed her name on September 7, 2016.

URS ENERGY & CONSTRUCTION, INC.



Jeane C. Baughman, Secretary

AECOM ENERGY & CONSTRUCTION, INC.
(an Ohio corporation)

AMENDED AND RESTATED ARTICLES OF INCORPORATION

(As of September 12, 2016)

- FIRST:** The name of the corporation is *AECOM Energy & Construction, Inc.*
- SECOND:** The place in the State of Ohio where its principal office is located is in the City of Columbus, Franklin County.
- THIRD:** The purposes of the corporation are as follows: To perform a broad range of design, engineering, construction, construction management, facilities and operations maintenance, environmental remediation and mining services including, but not limited to, engineering and architectural work of a general, civil, mechanical, electrical or mining nature, including preparation of plans and specifications, and act as consulting and superintending engineers and architects, and generally to do and perform any and all work as engineers, architects, builders and contractors, and to solicit, obtain, make, perform, promote and carry out contracts covering the general building and contracting business and all operations connected therewith of every kind, character and description, and to engage in any other lawful act or activity for which corporations may be formed under Sections 1701.01 to 1701.98, inclusive, of the Revised Code of Ohio.
- FOURTH:** The number of shares which the corporation is authorized to have outstanding is sixty thousand (60,000) shares of common stock, all of which shall have a par value of Ten Dollars (\$10.00).
- FIFTH:** These Amended and Restated Articles of Incorporation take the place of and supersede the existing Articles of Incorporation as heretofore amended.
-

CONTRACT

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
AND
URS ENERGY & CONSTRUCTION, INC.**

**TOLL FACILITIES OPERATIONS AND
MANAGEMENT SERVICES**

**CONTRACT NO. 001071
CONTRACT DATE: NOVEMBER 12, 2015
CONTRACT AMOUNT: \$67,274,165.81**

**CENTRAL FLORIDA EXPRESSWAY
AUTHORITY**

**CONTRACT, SCOPE OF SERVICES, METHOD OF
COMPENSATION, ADDENDA, TECHNICAL PROPOSAL,
PRICE PROPOSAL, REFERENCE DOCUMENTS,
STANDARD OPERATING PROCEDURES, PERFORMANCE
BOND, AND FORMS**

**CONTRACT, SCOPE OF SERVICES, METHOD OF COMPENSATION,
ADDENDA, TECHNICAL PROPOSAL, PRICE PROPOSAL, REFERENCE
DOCUMENTS, STANDARD OPERATING PROCEDURES, PERFORMANCE
BOND, AND FORMS**

FOR

TOLL FACILITIES OPERATIONS AND MANAGEMENT SERVICES

CONTRACT NO. 001071

NOVEMBER 2015

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Members of the Board

Welton Cadwell, Chairman
Scott Boyd, Vice-Chairman
Brenda Carey, Secretary/Treasurer
Buddy Dyer, Member
Fred Hawkins, Jr., Member
Teresa Jacobs, Member
Andria Herr, Member
Jay Madara, Member
S. Michael Scheeringa, Member
Diane Gutierrez- Scaccetti, Non-Voting Advisor

Executive Director

Laura Kelley

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PERFORMANCE BOND	PB-1 to PB-4

Attached compact disk contains the following and are incorporated herein

Reference Documents (Part of Scope of Services)
Standard Operating Procedures (Part of Scope of Services)
Addendum No. 1
Addendum No. 2
Addendum No. 3
Addendum No. 4
Addendum No. 5
Addendum No. 6
Technical Proposal
Acknowledgement of Addenda
Code of Ethics Form
Conflict of Interest Form
Drug Free Workplace Form

CONTRACT

This Contract No. 001071 (the "Contract" as defined herein below), is made this 12th day of November, 2015, between the CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, hereinafter called CFX and URS ENERGY & CONSTRUCTION, INC., 10276 NW 47th Street, Sunrise, Florida 33351, hereinafter the CONTRACTOR:

WITNESSETH:

WHEREAS, CFX 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 CFX 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, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a contractor to provide toll facilities operations and management and related tasks as may from time to time be assigned to the contractor by CFX; and,

WHEREAS, on or about February 15, 2015, CFX 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 CFX, 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 toll facilities operations and management as detailed in the Contract Documents and any amendments, supplements, or modifications thereto.

CFX 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. CFX, at its option, may elect to have any of the services set forth herein performed by other contractors or CFX staff.

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

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

(collectively, the "Contract").

2. TERM AND TERMINATION

The initial term of the Contract will be five (5) years from the date established in the Notice to Proceed from CFX. There shall be five (5) renewal options of one (1) year each. The options to renew are at the sole discretion and election of CFX. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by the CONTRACTOR are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX 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.

CFX shall have the right to terminate or suspend the Contract, in whole or in part, at any time with 90-days' notice for convenience or 60 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 CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX 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 CFX reasonably exercised, or for any other cause whatsoever, fails to carry on the work in an acceptable manner, or if the surety executing the bond, for any reasonable cause, becomes unsatisfactory in the opinion of CFX, CFX will give notice in writing to the CONTRACTOR and CONTRACTOR's surety of such delay, neglect or default. If the Contract is declared in default, CFX may require the CONTRACTOR's surety to take over and complete the Contract performance. Upon the failure or refusal of the surety to assume the Contract within the time demanded, CFX 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, CFX 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, CFX will have the right to appropriate or use any or all materials and equipment on the sites where work is or was occurring, as CFX determines, and may retain others for the completion of the work under the Contract, or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX 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 and the surety shall be jointly and severally liable and shall pay CFX the amount of the excess. If, after the default notice curative period has expired, but prior to any action by CFX to complete the work under the Contract, CONTRACTOR demonstrates an intent and ability to cure the default in accordance with CFX's requirements, CFX may, but is not obligated to, permit CONTRACTOR to resume work under the Contract. In such circumstances, any costs of CFX 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 CFX which exceed the remaining amount due on the Contract shall be reimbursed to CFX 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.

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

CFX reserves the right to cancel and terminate this Contract in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of CFX, without penalty. Such termination shall be deemed a termination for default.

CFX 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 five-year Contract term is \$67,274,165.81.

3.2 CFX 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 CFX 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 CFX.

(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.

CFX 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 CFX 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 CFX, 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 CFX 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 CFX until reinstated by CFX.

Final Audit for Project Closeout: The CONTRACTOR shall permit CFX, at CFX'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 CFX because of accounting errors or charges not in conformity with the Contract, the CONTRACTOR agrees that such amounts are due to CFX 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 CFX, (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

CFX has adopted a program to provide opportunities for small business, including Minority Business Enterprises ("MBEs") and Women's Business Enterprises ("WBEs"). Under CFX's program, CONTRACTOR is encouraged to grant small businesses the maximum opportunity to participate in the provision of the Services with respect to the operation and maintenance of the System. CONTRACTOR shall provide information regarding its employment of such businesses and the percentage of payments made to such businesses and others. CONTRACTOR shall provide an annual report to CFX on or before each anniversary of the Contract Date hereof and throughout the Term, regarding use of small business MBEs and WBEs and the percentage of payments made to enterprises falling within such categories. Such report shall consolidate the information contained in CONTRACTOR's invoices, and shall be in a form reasonably acceptable to CFX.

6. CONTRACTOR INSURANCE AND PERFORMANCE BOND

CONTRACTOR shall carry and keep in force during the period of this Contract, the required amount of coverage as stated below. All bonds and 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 CFX. All surety bonds shall be in a form and issued by a surety company approved by CFX. CONTRACTOR shall carry and keep in force the following insurance coverage, and provide CFX 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.

6.5 **Performance Bond** equivalent to \$1,000,000.00 issued on an annually renewable basis. The terms and provisions of the performance bond shall be satisfactory to CFX in its sole and absolute discretion. CFX may apply any or all of such bond to reimburse it for damages caused by any defaults of CONTRACTOR under this Contract or to remedy any events of default. If CONTRACTOR is not in default at the expiration or termination of this Contract, CFX will authorize the release and return of the performance bond to CONTRACTOR.

6.6 **Employees Fidelity Bond** covering each employee for a minimum of \$100,000.00 per employee, covering each employee of CONTRACTOR employed on this Contract.

Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX 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 CFX from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against CFX, 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 CFX 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 CFX.

Any insurance carried by CFX 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 CFX with certificates of same, CFX may obtain such policies and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments.

7. CONTRACTOR RESPONSIBILITY

7.1 CONTRACTOR shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and subcontractors to do the same. CONTRACTOR shall be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:

(i) all employees of CONTRACTOR and its subcontractors and other persons who would reasonably be expected to be affected by the performance of the Services;

(ii) other property of CONTRACTOR and its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible on or adjacent to the plazas or other areas upon which services are performed;

(iii) members of the public who may be traveling through the plazas and their vehicles.

7.2 CONTRACTOR shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible, with the 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, CFX's Drug-Free

Workplace Policy; And

(iv) compliance with the public records laws of Chapter 119, Florida Statutes.

7.3 CONTRACTOR shall be responsible for actual damage and loss that may occur with respect to any and all property located on or about any structures in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the negligent acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.

7.4 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public. CONTRACTOR shall immediately notify CFX of any material adverse change in CONTRACTOR's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a 10% interest in CONTRACTOR, or of the existence of any material impairment of rights or ability of CONTRACTOR to carry on as its business and operations are currently conducted.

7.5 CONTRACTOR shall not make any requirement of any employee, or enter into a non-competition agreement with any employee, whether oral or written, of any kind or nature that would prohibit CONTRACTOR's employees from leaving CONTRACTOR's employ and taking employment with any successor of CONTRACTOR.

7.6 CONTRACTOR shall be responsible for any shortage of tolls collected in accordance with the Scope and SOP Manual, and any theft or conversion of collected toll funds by employees of Contractor, or arising out of the negligence of Contractor;

8. ASSIGNMENT AND REMOVAL OF KEY PERSONNEL

A significant factor in the decision of CFX to award this Contract to the CONTRACTOR is the level of expertise, knowledge and experience possessed by employees of CONTRACTOR, particularly the Project Manager, Quality Controls and Training Manager, Accounting Manager, Audit Manager, Safety and Security Manager, and Toll Operations Manager (the "Key Personnel") and CONTRACTOR's covenant to have employees possessing such expertise, knowledge and experience available at all times to assist in the provision of the services. Throughout the Term of this Contract, CONTRACTOR shall employ individuals having significant training, expertise, and experience in the areas or disciplines more particularly set forth in the Scope of Services, together with such other areas of expertise or experience, as may be designated from time to time during the Term of this Contract by CFX. When CFX designates an additional area for which expertise or experience shall be required, CONTRACTOR shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such experience or expertise.

CONTRACTOR shall hire and maintain Key Personnel as employees throughout the Term of the Contract. The identity of the individuals, initially assigned to each of such positions by CONTRACTOR, shall be submitted to CFX and CFX shall be notified in advance of any changes in the individuals. The Key Personnel shall be committed to performing services on this Contract to the extent required. Key Personnel may be dismissed for unsatisfactory performance or any reason set forth below.

If prior to the second anniversary of the Effective Date of this Contract, CONTRACTOR removes, suspends, dismisses, fires, transfers, reassigns, lays off, discharges, or otherwise terminates any Key Personnel without the prior notification to CFX, such action shall constitute an event of default by CONTRACTOR hereunder. CONTRACTOR may cure such event of

default only by replacing the Key Personnel with another employee having comparable experience and qualifications.

Promptly upon request of CFX, CONTRACTOR shall remove from activities associated with or related to the performance of this Contract any employee whom CFX considers unsuitable for such work. Such employee shall not be reassigned to perform any work relating to the services except with the express written consent of CFX

9. INDEMNITY

The CONTRACTOR shall indemnify, defend and hold harmless CFX 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:

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

9.2 CFX's use or possession of the CONTRACTOR Property or CONTRACTOR Intellectual Property (as defined herein below),

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

9.4 CONTRACTOR's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),

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

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

9.7 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 CFX 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 CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

10. 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 CFX. Thereafter, CONTRACTOR shall follow CFX'S instructions with regard to such request. To the extent that such request seeks non-exempt public records, CFX 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 CFX.

11. 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 CFX Property and CFX Intellectual Property, without first notifying CFX and securing its consent in writing.

12. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system, and comprises a portion of CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

12.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; **OR**

12.2 CONTRACTOR has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONTRACTOR Property and CONTRACTOR Intellectual Property, as necessary to provide and install the CONTRACTOR Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONTRACTOR is current and will remain current on all royalty payments due and payable under any license where CONTRACTOR is licensee; **AND**

12.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; **AND**

12.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

CONTRACTOR further warrants and represents that there are no pending, threatened, or anticipated Claims against CONTRACTOR, its employees, officers, agents, or subcontractors with respect to the CONTRACTOR Property or CONTRACTOR Intellectual Property.

The provisions of this Section shall survive the term of this Contract for the longer of:

12.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; **or**

12.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; **and**

12.7 Notwithstanding sections 12.5 and 12.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 12.5 and 12.6.

13. 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 CFX upon request.

14. 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 CFX officials and employees are prohibited from soliciting and accepting funds or gifts from any person who has, maintains, or seeks business relations with CFX in accordance with CFX'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.

15. 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.

16. NOTIFICATION of CONVICTION of CRIMES

CONTRACTOR shall notify CFX if any of CONTRACTOR's Key Personnel shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed.

17. SUBLETTING AND ASSIGNMENT

CFX 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 CFX, which may be withheld in CFX'S sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX'S written consent shall be null and void and shall, at CFX's option, constitute a default under the Contract.

Notwithstanding the foregoing:

17.1 CONTRACTOR may assign its rights to receive payment under this Agreement with CFX's prior written consent, which consent shall not be unreasonably withheld. CFX may assign all or any portion of its rights under this Agreement without consent of or advance notice to CONTRACTOR; and

17.2 Subject to the right of CFX to review and approve or disapprove subcontracts, and subject to the compliance by CONTRACTOR with the provisions of this Contract with regard to Key Personnel, CONTRACTOR shall be entitled to subcontract some of the services hereunder to other entities, provided that all subcontracts:

(i) shall name CFX as a third party beneficiary and provide that the subcontract is assignable to CFX (or its successor in interest under the terms of this Contract) without the prior approval of the parties thereto, and that the assignment thereof shall be effective upon receipt by the subcontractor of written notice of the assignment from CFX. Upon such event, CFX shall be deemed to assume all rights and obligations of the CONTRACTOR under the subcontract, but only to the extent such rights and obligations accrue from and after the date of the assignment. Without limitation, all warranties and representations of subcontractor shall inure to the benefit of CFX, and

(ii) shall require the subcontractor to comply with all laws and the SOP Manual, as all may be revised, modified and supplemented from time to time, and must require the subcontractor to carry forms and amounts of insurance satisfactory to CFX in its sole discretion, and shall provide CFX with certificates of insurance upon request. CFX shall be listed as an additional insured on all such insurance policies, and copies of correct insurance certificates and policies shall be delivered to CFX upon request, and

(iii) shall require the subcontractor to join in any dispute resolution proceeding upon request of CFX, and

(iv) shall include the same or similar terms as are included in this Contract with respect to subcontractors, providing CFX with equal or greater protections than herein.

If, during the life of the Contract and any renewals hereof, CONTRACTOR desires to subcontract any portion(s) of the work to a subcontractor that was not disclosed by the CONTRACTOR to CFX 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 CFX'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 her/his designee, no such subcontract shall be executed by the CONTRACTOR until it has been approved by CFX 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 her/his designee, but such subcontract shall contain a provision that provides that it shall be automatically terminated if not approved by CFX Board at its next regularly scheduled meeting.

18. DISPUTES

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX's Executive Director (or her/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 CFX Board if amendments are required) and supplemental agreement(s) of such nature as required may be entered into by the parties in accordance herewith.

19. REMEDIES

In addition to any remedies otherwise available to CFX under law, upon an uncured default CFX shall have the right to appropriate or use any or all materials and equipment on the sites where work is or was occurring, and may enter into agreements with others for the completion of the work under the Contract, or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX because of or related to the CONTRACTOR's default including, but not limited to, the costs of completing Contract performance shall be charged against the CONTRACTOR. If the expense of Contract completion exceeds the remaining sum which would have been payable under the balance of the Contract, CONTRACTOR shall be liable to CFX for the difference. On a Contract terminated for default, in no event shall CFX have any liability to the CONTRACTOR for expenses or profits related to unfinished work, or for CFX's use of any CONTRACTOR materials or

equipment on the work sites, including without limitation the CONTRACTOR Property and CONTRACTOR Intellectual Property.

20. 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 CFX, failing which CFX 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 CFX (exclusive of interest, costs or expenses) on claims asserted by CFX 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 CFX by CONTRACTOR (disputed by CFX) 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 CFX 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 CFX 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 CFX, and CFX 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, CFX 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.

21. 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.

22. GOVERNING LAW

This Agreement is accepted and entered into in Florida and any question regarding its validity, construction, enforcement, or performance shall be governed by Florida law. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida.

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

23. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between CFX 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 CFX.

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

24. 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 CFX and request clarification of CFX'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.

25. 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 CFX 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 CFX, whichever is later.

26. 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:

26.1 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

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

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

26.4 Obligations upon expiration or termination of the Contract, as set forth in Section 27; and

26.5 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.

27. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

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

27.2 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 CFX.


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 CFX's Board of Directors at its meeting on November 12, 2015.

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: 
Director of Procurement

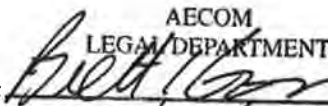
Print Name: Claude Miller

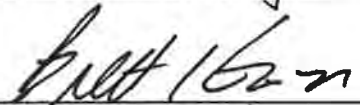
URS ENERGY & CONSTRUCTION, INC.

By: 

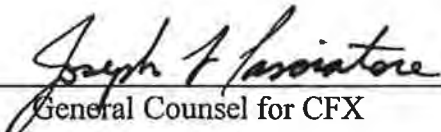
Print Name: Bruce A. Trott

Title: General Manager

AECOM
LEGAL DEPARTMENT
BY: 
DATE: 11/19/15

ATTEST:  (Seal)
Asst Sec

Approved as to form and execution, only.


General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

SCOPE OF SERVICES

TOLL FACILITIES OPERATIONS AND MANAGEMENT

CONTRACT NO. 001071

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1 SCOPE OF WORK

1.1 GENERAL REQUIREMENTS

The Toll Operations Contractor (TOC) shall operate and manage the Central Florida Expressway Authority's (Authority's) Toll Collection Operations and Toll Facilities. The TOC shall provide:

1. Efficient toll collection operations,
2. Effective management and operations of the Electronic Toll Collection (ETC) System,
3. Sound audit and reporting processes,
4. Responsive, courteous customer service, and
5. Proper facilities management.

A detailed Operations Plan shall be submitted by the TOC showing how it intends to carry out these responsibilities. The Operations Plan shall be updated on an annual basis.

1.1.1 Description of Services

The services required under this Contract will be to manage and operate the Authority's Toll Collection Operations and Toll Facilities. The TOC shall provide all the qualified and trained personnel, plus all the materials, supplies, equipment, furnishings and support services necessary to manage and operate the Authority's Toll Collection Operations and Toll Facilities. The TOC shall provide services 24-hours per day, 7-days a week, 52-weeks per year. The TOC shall manage all aspects of the toll operations. This includes all toll collections, on-going training, scheduling, courier service, etc. The TOC shall partner with the Authority and provide not only excellent personnel, but ensure ongoing excellence in operations by quality training, testing, monitoring, evaluation, and reporting. A set of approved Standard Operating Procedures (SOP) has been established and shall be followed until change requests have been submitted and approved. As such, the SOP is hereby incorporated into the Scope of Services and the Contract as part of operations and included as a major component of the Training Plan. The TOC shall also ensure that excellent customer service is provided.

The TOC shall operate and oversee the Authority's ETC System at the plaza, ramp, and lane levels. The ETC System includes manual lane terminals (MLT), automatic coin machines (ACM), and ETC. The TOC shall monitor the ETC System to ensure that all lanes are operating properly, promptly report ETC System maintenance issues, and perform some preliminary actions to help correct some ETC System issues. The TOC shall ensure that all lanes required to be open are properly open; reversible lanes are properly changed when required; and all lanes are in the proper collection mode. The TOC shall monitor traffic operations at the plazas and ramps to take appropriate actions.

The TOC shall provide a thorough auditing process to ensure that all revenue, transactions, and monies are properly collected, processed, verified, reconciled, and reported. The TOC shall provide an accurate and timely reporting process.

The TOC shall manage the Toll Facilities, including administrative buildings, plazas, ramps, and all lanes. The TOC shall oversee security at Toll Facilities, provide janitorial services for all Toll Facilities, and provide any other services required to ensure the proper completion of the requirements in this Scope of Services.

The TOC is responsible for 100% of the contractual requirements and shall perform a minimum of 60% of the work with its own forces. Subcontractors shall be financially capable of handling the cost of doing business, and shall have the expertise to perform the work assigned. However, if the subcontractors cannot perform the work assigned then the TOC shall ensure that the job is performed and completed properly. The Authority does not guarantee that all of the services described in this Scope of Services will be assigned during the term of the Contract. Further, the TOC shall provide 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 Authority also reserves the right to add personnel to the Contract, depending on circumstances and staffing requirements.

1.1.2 Personnel

It is the Authority's intent to minimize any adverse employment impacts to the current contractor's full-time employees as a result of implementing this Contract. To that end, the TOC shall give first right of refusal to the current contractor's full-time employees having a performance rating of "Satisfactory" or better. It is not the Authority's intent to require the TOC to keep personnel indefinitely if they are not performing as expected. The TOC shall be required to keep employees who are eligible and have indicated a desire to continue working, for a minimum of 60 days. There are approximately 340 toll collectors, supervisors, and plaza managers under the existing contract. Approximately 40 percent are full-time employees.

The Authority expects the TOC to provide compensation that will be at a level to promote the hiring and retention of quality personnel. The current wage levels for toll collection classifications are provided in the reference documents and are to be considered the minimum wage levels for those classifications. Reference Document No 1.

1.1.3 Authority's ETC System

The Authority's current ETC System has been in operation since 1994 and includes 14 mainline plazas and 64 ramp plazas on 109 centerline miles of highway, which includes S.R. 408 (East-West Expressway); S.R. 417 (Central Florida GreeneWay); S.R. 528 (Beach Line Expressway); S.R. 429 (Daniel Webster Western Beltway); S.R. 414 (John Land Apopka Expressway); S.R. 451 and SR 551 (the Goldenrod Road Extension).

The ETC System is fully integrated and includes three modes of collection:

- Electronic Toll Collection (ETC) or Automatic Vehicle Identification (AVI),
- Automatic Coin Machines (ACM), and
- Manual Lane Terminals (MLT).

E-PASS® is the registered trademark name for the Authority's ETC System. The ETC System has many mixed lane configurations. The ETC System currently consists of 307 toll-equipped lanes plus equipment used for training (Operations), E-PASS transponder testing (Customer Service Center), and equipment testing (Maintenance Facility). There are currently 72 MLT lanes, 100 ACM lanes, 75 dedicated ETC lanes, and 60 ORT lanes. The Violation Enforcement System (VES) equipment is located in all lanes. See the Reference Documents for a listing of equipment, software applications, and locations.

The main communication link is the Fiber Optic Network (FON). Each lane has a lane controller that controls the sensing equipment in the lane, processes transaction data, generates equipment alarms, and sends reports to the appropriate plaza computer. The plaza computer, in turn, reports to the host computer located at the Authority's headquarters. The lane controller also communicates with the host computer in real-time to update E-PASS customer accounts.

1.2 PROGRAM MANAGEMENT AND ADMINISTRATION

1.2.1 Program Management and Administration Plan

The TOC shall provide a Program Management and Administration Plan showing the organization of the project and office staff, and identifying all functional areas, the key personnel in all the functional areas, and a detailed Staffing Plan. The Staffing Plan shall identify all positions, personnel, and functions to be filled at the TOC Operations Office. These plans shall be updated annually, at a minimum, or whenever changes occur.

1.2.2 TOC Operations Office

The TOC shall furnish and maintain a TOC Operations Office. This office is currently located at the Authority's Operations and Administration Building (Headquarters). There will be no leasing charge to the TOC for the space allocated to them in the Authority's Headquarters, however the TOC will be required to execute a Zero-Dollar Lease Agreement with the Authority. All business performed in the Authority's Headquarters by the TOC shall be solely in connection with the operations of the Authority's toll facilities. The Authority will provide approximately 6,700 square feet. The Authority reserves the right at its discretion to request the TOC to relocate its Operations Office from the Authority's building. If the Authority were to make such a request the Authority would negotiate with the TOC on reimbursement and billing of any additional cost incurred by the TOC.

1.2.2.1 Location

The TOC Operations Office shall be located at the Authority's Headquarters.

1.2.2.2 Office Site Plan

A plan is not required at this time, but may be required if the TOC is asked to move its Operations Office from the Authority's Headquarters.

1.2.2.3 Furniture and Equipment

The TOC shall provide all office furnishings and equipment required for this Contract not provided by the Authority. All furnishings and equipment provided by the TOC for the Contract will be considered the property of the Authority and shall be remitted to the custody of the Authority at the end of the Contract. The exception to this would be any equipment which is under lease. The Authority will provide the application software, "TRIMS" and access rights to the ETC System network. TRIMS software, in conjunction with the appropriate TOC workstations and network access, provides "intelligent" terminal access to the Authority's ETC System network. This software, through the workstations and the available ETC System applications, provides on-line, user-defined functional access to host and plaza system-level functions (i.e., report generation, monitoring of traffic, collector and lane activity monitoring, system real-time monitors, e-mail, and system maintenance functions). The current contractor has PC workstations with TRIMS installed. These include the Audit staff, Operations Manager, Program Manager, etc.

1.2.2.4 Training Facility

The training facility is provided by the Authority at the Authority's Headquarters along with the necessary equipment to simulate toll transactions. The TOC is responsible for all other materials and equipment to facilitate training.

1.2.3 Vehicles

1.2.3.1 Vehicles

The TOC shall furnish and maintain all vehicles necessary to support the Contract. All vehicles shall be owned or leased, operated, and maintained in good working order by the TOC. All insurance and licensing shall be provided by the TOC. The vehicles provided by the TOC for "official use" shall be white with no markings. All vehicles shall be safe and present a clean appearance. Vehicles not meeting these requirements, as determined by the Authority, shall be removed from the project by the TOC.

1.2.3.2 Transportation and Parking

The TOC shall provide transportation for collectors working the ramp toll plazas, or may allow collectors to use their personal vehicles and reimburse

expenses. As a general rule, employees are not allowed to cross dedicated or express E-PASS lanes. Transportation for staff shall be provided by the TOC where ever a condition exists that would require an employee to cross a dedicated or express lane. The TOC shall transport employees from one side of the plaza to the other when going to and from work. No TOC personnel shall park personal vehicles on Authority right-of-way, except at mainline and ramp plazas in designated parking areas, unless specifically approved in writing by the Authority.

1.2.3.3 Vehicle List

The TOC shall provide a detailed listing of all vehicles assigned to the Contract. The vehicle list shall include vehicle make and model, color, description, vehicle identification number, license (tag) number, E-PASS account and transponder identification number, assignment location, and authorized drivers. The TOC shall provide an updated vehicle listing to the Authority whenever the active listing changes.

1.2.4 Security and Safety

1.2.4.1 Security

1. The TOC shall provide security for all toll collection facilities, including the safety and security of employees as well as the physical structures.
2. The TOC shall provide and maintain strict security for all operating funds and collected revenues.
3. The security procedures shall include the installed security/card access system and combination locks at each Authority facility.
4. The combinations of all locks at all plazas shall be changed annually by the TOC.
5. The SOP requires a check of each booth at least once per shift. This requirement includes not only the mainline plazas, but also each ramp plaza. These activities shall be included in the TOC's Operations Plan and pricing.
6. The TOC shall develop additional procedures, as necessary, to include quarterly security inspections. Reports summarizing the security inspection results shall be submitted to the Authority no later than 15 days after the security inspection is completed.
7. The TOC shall make recommendations to the Authority staff regarding security items needing repair and/or recommend improvements to the security of the Authority's facilities.
8. Investigations – The TOC shall conduct and document investigations into incidents of theft and fraud, and activities of a suspicious nature. All investigation reports shall be immediately forwarded to the Authority for

review. The TOC's investigators shall cooperate with Authority representatives and all law enforcement personnel while conducting investigations.

1.2.4.2 Safety

The TOC shall develop, implement, and maintain a Safety Program Plan. The Safety Program Plan shall comply with all applicable state, local, and federal regulations. The Safety Program Plan will include, at a minimum, safety training, safety awareness, and written safety procedures to be followed by TOC personnel. The TOC (and any subcontractor) shall ensure that all work environments conform to the safety and health standards set forth in *Title 29, Code of Federal Regulations*.

1.2.5 Construction Liaison (not required at this time)

When applicable, the Construction Liaison shall attend designated construction-related meetings with the Authority, the Authority's Construction Engineering and Inspection (CEI) consultant and/or contractors. The Construction Liaison shall coordinate with the CEI and the TOC to assist with maintaining operations at toll facilities during construction. The Construction Liaison shall provide input to the CEI with respect to toll operations and toll collection issues that may affect construction activities. It is the Construction Liaison's responsibility to keep plaza managers and the Authority's Director of Toll Operations informed on planning, scheduling, and progress of construction activities that impact the mainline and ramp plazas. The TOC shall provide the Construction Liaison with the tools necessary to adequately perform his/her job.

1.2.6 Emergency Operations Plan

The TOC shall develop, implement, and maintain an Emergency Operations Plan. The TOC shall submit the Emergency Operations Plan to the Authority for review and approval. The TOC shall maintain toll operations during all emergencies, including fire, accident and rescue operations, strike, civil disturbances, natural disasters, and military contingency operations. Toll collection may be suspended when specifically authorized by the Office of the Governor, Florida Department of Transportation (FDOT) Secretary, the Florida Highway Patrol, local police, the Authority's Executive Director or a designee assigned by the Authority's Executive Director.

1.2.7 Customer and Public Relations

1. The TOC shall provide excellent customer service and achieve a high level of customer satisfaction.
2. The TOC shall assist in providing customer relations services for the Authority. The TOC shall provide a personnel customer training program as part of each new employee's orientation process. These services shall address toll-related announcements which, at a minimum, shall include the distribution of information, including circulars and flyers, to toll customers.

3. The TOC shall make no statements, press releases, or publicity releases concerning the Contract or reveal any of the data or other information obtained or furnished according to the Contract, or any particulars of it, during the Contract, without first notifying the Authority and securing its consent in writing. The TOC shall not publish, copyright, or patent any data furnished according to the Contract. Such data or information is the property of the Authority.

1.3 TOLL OPERATIONS

1.3.1 General Requirements – Toll Collection

The TOC shall be responsible for hiring, training, and managing a qualified staff to perform all activities related to the operation and management of the Authority's toll collection facilities. The TOC shall provide, implement, maintain, and manage approved toll collection procedure(s) addressing, at a minimum, the requirements included in the SOPs and as specified herein. The Toll Operations SOP manual contains the current requirements for operating the Authority's toll facilities. When changes are required, the TOC shall submit these change requests to the Authority for review and approval. The TOC shall request updates/changes to the Toll Operations SOP as needed and the Toll Operations SOP shall be updated no less than once a year.

1.3.2 Operations Plan

The TOC's Operations Plan shall detail how superior toll collection operations and management will be accomplished. The Operations Plan shall be updated on an annual basis.

1.3.3 Toll Collection Operations

1. **Toll Collection** - The TOC shall accurately and efficiently collect and account for all transactions and revenues associated with each vehicle using the Authority's facilities. The TOC shall perform these services courteously and, when requested, provide the Authority's customers with information and assistance.
2. **Toll Deposit** - The TOC shall be responsible for preparing all deposit documentation and assuring that all collected funds are verified and deposited daily in the proper accounts, and according to the approved SOP(s).
3. **Toll Audit** - Using existing financial, operational, exception, and unusual occurrence reports, the TOC shall provide a complete and accurate audit of the toll collection and traffic management operation.
4. **Customer Reports** - Reports from customers and other sources concerning accidents and/or incidents shall be verified and reported to the appropriate agencies by the TOC to ensure rapid and efficient dispatch of required services. The TOC shall maintain a complete record and log of all accidents and incidents and shall make them available to the Authority upon request. Content and format shall be subject to the review and approval of the Authority.

5. **Toll Staffing** - Toll collection facilities shall be staffed by the TOC to provide efficient and safe operation while minimizing delay to the customers and traffic congestion in the toll plaza area.
6. **Toll System** - The TOC shall use/operate the Authority's toll collection system according to approved SOPs and user manuals.
7. **Toll Training** - The TOC shall be responsible for training all operators on the operation of all types of collection and processing equipment used by the Authority on its facilities.

1.3.4 Plaza Staff Scheduling

Toll collection personnel shall be staffed so that a minimum of 40 percent of each plaza's regularly scheduled staff shall be full-time employees. These full-time employees shall be scheduled over seven days per week and all shifts. A TOC Supervisor shall be scheduled on duty 24 hours per day, 7 days per week. The Supervisor shall be first-line management for toll collectors. Schedules shall be developed to ensure that the plazas are properly staffed at peak traffic times and all required lanes are open in the proper mode. It is the Authority's intent to reduce customer delay and congestion to the maximum extent possible, consistent with efficient staffing. Reference Document No. 2 shows the initial minimum requirements for lane operating hours and lane usage. Any desired staffing changes will be subject to approval by the Authority.

1.3.5 Deposit Preparation and Verification Procedure

The TOC shall provide, implement, and maintain a Deposit Preparation and Verification Procedure within the Toll Operations SOP for the collection and disposition of all revenues collected. The Authority reserves the right to review preparation of deposits and supervisor verification at any time.

1.3.6 Discrepancy Operations Reporting Procedure

The TOC shall provide, implement, and maintain a Discrepancy Operations Reporting Procedure as part of the Toll Operations SOP. The procedure shall be used to report unusual circumstances. This includes estimates of revenue lost due to theft, banking errors, or loss from any other reason, and/or procedures violations.

1.3.7 Toll Collection System

The Authority's Toll Collection System is the primary internal control over revenue collection. It provides complete shift data for every lane no matter what the collection mode. Therefore all transactions can be accounted for and a reliable audit can be performed, unless the system was not working in a particular lane. The Toll Collection System lanes are managed from the mainline plaza computer for those lanes assigned to each plaza. The plaza manager's and supervisor's terminals provide the monitoring devices for the Toll Collection System, and for all lanes reporting to a particular mainline plaza. The terminals provide real-time monitoring of transactions in each lane, and show system maintenance alarms which must be acknowledged by the supervisor. Lanes can be opened and closed remotely at the plaza or on site in the lane. It is of great importance that the TOC understands the Toll Collection System and its capabilities.

1.3.8 Toll Collection System – Monitoring

The TOC is required to monitor the ETC System. As stated above, the real time monitors provide the TOC with the ability to monitor activity in the lanes. The TOC shall make appropriate use of this capability. This includes monitoring and acknowledging maintenance alarms and actual lane activity or inactivity. The Authority is relying on the TOC to be the steward of the ETC System. The TOC shall be especially vigilant in regards to the dedicated and express E-PASS lanes because there is a great potential for lost revenue if the ETC System is not performing properly or is out of service. The TOC is responsible for notifying the System Maintenance Contractor and if appropriate the Authority staff. The TOC has a minimum of a two hour notification window, from the time of the lane failure to the time of reporting the incident. The TOC shall track when the ETC System issue became known, when the System Maintenance Contractor and the Authority were notified, and when the issue was fixed or addressed. It is expected that these activities shall be reported as soon as the TOC learns of them and, with few exceptions, well within the required time frame.

1.3.9 Plaza and Ramp Collection Mode Configuration and Required Hours of Operations

The Plaza and Ramp Collection Mode Configuration reference document shows the mode of collection for each lane and the hours each lane is required to be open. This reference document also indicates the hours that manual lanes must be operated. It is through this data that the man-hour requirements were developed. Reference Document No. 2 Lane Coverage Requirements.

1.3.10 SOP Manual

The TOC shall operate the Authority's facilities in strict adherence to the approved SOP, approved plans, and according to the terms and conditions described herein. Any deviation from the SOP manual requires Authority approval. The TOC shall provide updates to these documents whenever they change, or at a minimum of once a year. The changes and the manual as a whole shall be submitted to the Authority for approval. The TOC shall provide an Authority-approved SOP. There are provisions and forms that the TOC will have to request to change immediately at Notice to Proceed. These should be addressed in the Mobilization and Transition Plan.

Without limiting the generality of other provisions of this scope with respect to updates and revisions of the SOP Manual, Authority may, from time to time, develop and institute updates or upgrades to its software or other components of the System, in order to take advantage of technological developments or advancements, to enhance efficiency, to correct problems or to accomplish any other purpose deemed important by Authority, in which event the SOP Manual shall be modified to address any appropriate changes with regard to the operation, repair or maintenance of the System.

1.3.11 Maintenance of Counting Machines

Counting room bill and coin counting equipment shall be cleaned by the TOC once a week. The TOC shall arrange for a representative from equipment manufacturer (Cummins) to train the TOC personnel responsible for the preventive maintenance procedures. The TOC shall provide all equipment necessary for the preventive maintenance activities. This includes a small portable

vacuum, liquid wax, dust brushes, rags, cleaning solvent, screwdrivers and erasers. It is important to keep these machines clean to ensure that they operate properly.

1.3.12 ACM – Coin Jams & Preliminary Cleaning

Preventative maintenance on the ACM machines is not the responsibility of the TOC and will be performed by the System Maintenance Contractor. However, the TOC shall clear coin jams and provide some preliminary cleaning of the ACMs while clearing coin jams.

1.3.13 Payment of Tolls

The Authority cannot, by law, grant free passage to those using its facilities except for certain cases. Therefore, all vehicles using Authority facilities, with limited special exceptions for emergency and certain official vehicles, are required to pay the applicable toll rate indicated at each plaza pay point. Most toll free vehicles will have a Non-Revenue E-Pass Transponder issued by the Authority or possibly another toll agency. According to Authority policy, any contractor operating and/or maintaining any of the Authority's toll facilities shall be responsible for all tolls for the contractor's vehicles even though the trip is in connection with work for the Authority. The TOC can submit an invoice to the Authority for reimbursement of tolls incurred while performing their duties on an Authority contract.

1.4 AUDIT AND REPORTING

1.4.1 Audit Requirements

The TOC shall make available all facilities, plazas, ramps and the TOC Toll Operations Office, for audits ordered by the Authority whether the audit is conducted by Authority personnel, FDOT, or by the Authority's designated accounting firm. The Authority, or its designated representative, shall have unlimited and unrestricted access to all facilities and applicable operations and maintenance documentation. The Authority reserves the right to bring this service in house. The TOC shall be required to:

1. Develop, implement, and maintain a thorough auditing process to ensure that all revenue, transactions and monies are properly collected, processed, verified, reconciled, and reported.
2. Perform daily audits/counts of change funds, tour funds, deposits, vaults, collector, and lane transactions. These audits shall be documented and retained at each toll collection location and/or at the TOC Operations Office, with copies forwarded to the Authority as required.
3. Account for 100 percent of all transactions processed at each lane in the Toll Collection System. These transactions include cash, ETC/AVI, special events, non-revenue, unusual occurrence, and violations.
4. Exceptions to 100 percent accountability – The TOC shall not be responsible for loss of revenue due to:

- a. Violations if the lane is staffed according to approved staffing schedule;
- b. Equipment malfunction if it has been reported to the System Hardware Maintenance Contractor in a timely manner (within 2 hours);
- c. Equipment failure or malfunction when the Authority has specifically directed that the lane remain open (peak period, in peak direction);
- d. ETC/AVI failure when no alarm was sounded or displayed on the plaza real-time monitor;
- e. Police-directed traffic management;
- f. Missing or malfunctioning lane equipment and/or programming cannot substantiate a reasonably accurate audit
- g. Counterfeit money as long as accepted money-handling practices were followed; and
- h. Robbery as long as approved security procedures were followed.

1.4.2 Audit Criteria:

- 1. Initial variance tolerances will be set at negative or positive 0.5% and \$5.00 for revenue. The variance criteria will be reviewed periodically with the Authority and adjusted as required. (SOP Section 4)
- 2. Initial vault variances exceeding 2 percent revenue will require a full audit review. (SOP Section 4)
- 3. Repay to the Authority all negative discrepancies up to \$100,000 annually. For negative discrepancies above \$100,000 annually, the TOC will repay those amounts in excess of \$10.00 per collector per day, except as referenced above.

1.4.3 Reporting Requirements

All reporting requirements under the Contract shall be processed through the Authority's ETC System and the TOC Operations Office personal computer (PC)-based workstations. These reporting requirements shall include, but not be limited to, all ad hoc, traffic and revenue, collector daily, unusual occurrence, detailed audit, discrepancy, deposit verification, audit, and alarm history reports. All required reports, other than existing Toll Collection System reports, shall be subject to review and approval by the Authority.

- 1. Make available to the Authority, or its designee, all applicable audit documentation immediately upon request.
- 2. Besides daily deposit and audit reports, the TOC shall also provide the Authority with a detailed transaction accountability exception report. This report will identify and explain any transactions not in alignment with the verification and reconciliation process.
- 3. The TOC shall prepare daily a deposit reconciliation report. The TOC shall also provide a weekly and monthly summary report to the Authority. The report shall depict daily activity, applicable financial transaction dates for all plaza activity, the indicated and actual revenue, TOC deposited revenue, and bank counts and receipts.

1.4.3.1 Four main reports are currently delivered to the Authority: (SOP Section 4).

1. The **Transaction Accountability Exception Report** reflects all audited MLT activity (traffic, revenues, adjustments, explanations, violations, and final variance), by plaza by collector by day.
2. The **ACM Vault/Deposit Audit Report** indicates all audited ACM activity (traffic, revenues, violations, explanations, and final variances), by plaza by lane by vault number by day.
3. The **Summary of Traffic and Revenue Report** summarizes the total ACM and MLT traffic and actual revenue, by plaza by day, for each seven-day increment within each month.
4. The **Monthly Transaction and Revenue Report** provides a high-level summarization of all the MLT, ACM, and AVI traffic and revenue, special events, and violation traffic, by plaza by month. The appropriate source documentation to support, explain, and justify the final reporting will accompany this report.

1.4.3.2 Other reports include:

1. Customer's Request for Reimbursement;
2. Deposit Logs (So Authority can balance the bank statements early);
3. Negative Discrepancies;
4. Lost revenue estimate due to Citrus Bowl Events (to be billed to the City); and
5. Various statistical/performance reports, as requested.

1.4.3.3 General requirements for each report developed by the TOC:

1. The report format shall be submitted by the TOC to the Authority for approval prior to being used on the Contract. Examples of reports, with explanations shall be submitted with the proposal.
2. The report period will be established by the Authority. For example, weekly reports will cover the period from Monday to Sunday. Monthly reports will cover from the first to the last day of the month.
3. The due date of the report will be specified by the Authority.
4. Reports are to be submitted in hard and soft copy, formats acceptable to the Authority.
5. The TOC will be specifically informed of who is to receive certain reports. Any report for which a recipient has not specified will automatically be addressed to the Director of Toll Operations. The Authority may at any time add or delete individuals on the distribution list.

1.4.4 Accounting

The TOC shall operate and maintain a cost accounting system and a general ledger accounting system that complies with generally accepted accounting principles. The TOC shall ensure that all documents required for the backup of the data shall be available and provided upon request for review or audit of any section of the TOC.

1.5 HUMAN RESOURCES MANAGEMENT PLAN

The TOC shall develop, implement and manage a Human Resources Management Plan. The draft Human Resources Management Plan submitted by the TOC with the Technical Proposal shall be finalized and submitted to the Authority for review and approval at the time of the Notice to Proceed. The Human Resources Management Plan shall be updated on an annual basis.

1.5.1 Providing Qualified Personnel

The TOC shall provide qualified personnel to perform the duties and responsibilities assigned under the terms of the Contract. The Human Resources Management Plan shall present how the TOC will provide the qualified personnel to perform the duties and responsibilities assigned under the terms of the Contract. The Human Resources Management Plan shall also present how the TOC will ensure a stable workforce including both full-time and part-time employees. All TOC employees shall speak fluent English. TOC policies and procedures, to which the TOC staff will be required to adhere, shall be provided to the Authority for review. A staffing report shall be submitted on a monthly basis. This report shall provide the status of the work force, the percentage of required positions filled, the progress and efforts being made in filling the vacant positions, and turnover rates.

1.5.2 Job Descriptions

The Human Resources Management Plan shall provide complete and detailed formal job descriptions for all staff positions on this Contract. This shall include requirements for initial and ongoing training.

1.5.3 Screening Process

The Human Resources Management Plan shall include a screening process for all potential employees assigned to the Contract. This process shall include a drug testing program and a state and national background check to exclude individuals with criminal records or other backgrounds that could jeopardize the Authority's assets and the TOC's ability to properly provide the specified services. The safe and proper handling of Authority revenues and assets by the TOC's personnel shall be the focus of the screening process.

1.5.4 Drug Testing

The TOC shall certify that the personnel it provides are drug-free upon initial assignment to the Contract. The TOC shall re-certify, on an on-going basis, a minimum of 25 percent of its personnel every six months, based on random employee testing. This testing process shall ensure that all employees are retested within a two-year time frame. The TOC shall provide a semi-annual report to the Director of Toll Operations showing employees tested, test results, and the status of the employee population as it relates to re-certification. The Authority reserves the right to request that an employee be tested regardless of certification status.

1.5.5 Personnel Files

The TOC shall, as part of the Human Resources Management Plan, establish and maintain a personnel file on each employee assigned to the Contract. The file shall include a recent photograph and a complete set of the employee's fingerprints. The fingerprints shall be taken by an entity or TOC staff that is trained on proper fingerprinting technique. The Authority reserves the right to review personnel files from time to time at its discretion.

1.5.6 Benefits

The TOC shall provide full-time and part-time employees with competitive salaries and all normal privileges, benefits, and guarantees of employment that are afforded to the firm's existing regular and part-time employees. This includes providing benefits, such as medical coverage, retirement plans, sick leave, vacation pay, and holiday pay. These benefits shall be comparable to those provided to the current work force. The benefits provided under the current contract are detailed in Reference Document No. 3.

1.5.7 Fidelity Bonds

All TOC personnel shall be bonded. All management and supervisory personnel shall be bonded and approved by the Authority. TOC shall provide a commercial blanket Fidelity Bond covering each individual in the minimum amount of \$100,000 to protect the Authority from property losses, including money occasioned by theft, when such losses are identifiable to specific TOC employees. The TOC shall be responsible for promptly filing any claims and reimbursing the Authority to the full extent of the loss. No "deductible amount" of the bond shall apply to reimbursement to the Authority. The Fidelity Bond shall be completed and furnished to the Authority along with the executed Contract. The TOC shall submit a report every six months showing a list of employees and certification that they are all bonded.

1.5.8 Security Policy

The TOC shall develop and submit a Security Policy for review and approval by the Authority. If at any time the Authority puts in place a Security Policy, the TOC shall adopt the policy and adhere to it. The Authority maintains many data files that are considered highly confidential from which negative consequences could ensue should the information be published or otherwise divulged negligently or maliciously. Unauthorized access to these files is, in some cases, a violation of the law.

1.5.9 Appearance

The TOC's employees shall present a neat, clean, and professional appearance with no visible tattoos or body piercing. Women are allowed two earrings per ear. The TOC shall provide uniforms for all Toll Collectors, Supervisors, and Couriers (including part-time). All of these employees shall wear the uniform in a professional manner, including acceptable shoes. The uniforms shall be submitted to the Authority for approval before they are put into use. The TOC shall maintain the uniforms in a presentable manner and ensure each person required to wear a uniform has a sufficient supply.

1.5.10 Removal Rights

The Authority reserves the right, at any time and without incurring liability, to require immediate removal from the Contract any TOC employee or subcontractor whom the Authority identifies as a potential threat to the health, safety, security, or general well-being of the Authority's customers, employees, agents, or assets, or whom the Authority determines does not meet the minimum performance requirements of the work.

1.5.11 Authority's Right to Hire

The Authority may hire the TOC's employees at any time, whether during or beyond the term of the Contract. In addition, the TOC agrees not to restrict, or attempt to restrict, the rights of its employees to seek work with subsequent contractors providing the same service to the Authority.

1.5.12 Time Keeping

The TOC shall provide an electronic time keeping system for the purpose of reporting the start times, stop times, hours worked and compensated time off of its personnel that are billed to the Authority.

1.6 TRAINING PLAN

The TOC shall develop, implement, and maintain a detailed Training Plan to ensure all TOC personnel are knowledgeable and competent in all phases of their jobs. The Training Plan shall be in place upon receiving the Notice to Proceed to ensure initial training during the transition period. The Training Plan shall include a new employee orientation program, and a follow-up training program throughout the Contract.

1. The Training Plan shall perform the following functions, at a minimum:
 - a. Provide a complete new employee orientation program that includes an introduction to the Authority.
 - b. Fully train all personnel, including supervisors, to perform all phases of job duties and responsibilities for each job description. Training shall be provided, as appropriate, for all processes and procedures used in the performance of work under the Contract.

- c. Fully train all toll operations personnel in the area of customer service. The Training Plan shall include, at a minimum, geographical and directional instructions (routes and distances to prominent landmarks and points of interest within a 50-mile radius of the Orlando area) and effective communications training.
2. All training materials acquired and/or developed by the TOC for the Contract shall be considered the property of the Authority and shall be remitted to the custody of the Authority at the end of the Contract. Any special licenses or rights acquired by the TOC for training materials shall be obtained in the name of the Authority. All training records shall be considered the property of the Authority. The Authority reserves the right to attend any TOC training classes. Final training manuals and documentation shall be subject to review and approval by the Authority.
3. The TOC shall submit for review and approval, all training courses and materials to the Authority before training is conducted. The final training course and materials shall be subject to review and approval by the Authority.

1.7 DOCUMENTATION REQUIREMENTS

The TOC shall maintain current and accurate records for all operations work. The records shall be organized and managed by a computerized data and information management system. The TOC shall maintain records in an electronic form easily retrievable and transferable to the Authority. All text documents and records created electronically shall be prepared on an Authority-approved software (Microsoft Word) or e-mail program (using only ASCII/unformatted text). Each page of text shall include a footer, which shall indicate the project, page number, and issue date or latest revision date of the document. All drawings, figures, flowcharts, etc., prepared electronically shall use an Authority-approved version of Excel, Visio or AutoCAD. All records are the property of the Authority and, as such, the Authority has the right to review and retrieve data and records at any time, electronic or hard copy. The TOC shall provide a full explanation of how and what system is going to be used to fulfill this requirement.

1.7.1 Documentation and Tracking Data

Documentation is a crucial element to the long-term reliable operation of the Authority's toll facilities. The ultimate role of documentation is to capture the knowledge accumulated by individuals working for the Authority and to transmit that knowledge to the next generation of people responsible for on-going Authority operations. Within that context, all information that might be useful for training the next generation of people shall be collected and reduced to a written form so that future expenses and operational difficulties are minimized. The current SOP is a prime example of this type of effort.

1.7.2 Correspondence - General

Written, hardcopy correspondence between the TOC and the Authority shall be used for all issues involving schedule, budget, technical approval, design reviews, contractual matters, and any other issue requiring formal documentation. A verbal approval shall be followed by a written approval to be obtained within one (1) business day.

1.7.3 Correspondence – Detail

All correspondence shall include the Contract name and identifying number assigned by the Authority. All correspondence shall have the date of creation and the name and signature of the correspondence author. One (1) hardcopy of all written correspondence shall be filed and accessible to the Authority on request. All correspondence shall be prepared with Microsoft Word and an electronic copy of all correspondence shall be maintained and archived. E-mail may be used for routine communication between the TOC's employees, Authority staff, and other consultants and contractors. Matters listed previously that require written correspondence will not be approved based upon e-mail. All e-mail that deals with any issues requiring written correspondence shall be archived.

1.8 PERFORMANCE

1.8.1 Employee Performance Incentive Plan Requirements

The Authority and the TOC agree that it is in the best interests of both parties to design and implement an Employee Incentive Plan to motivate employees to provide a high-level of customer service. It is this agreement that allows for an equitable means of allocating payments to the TOC to allow its full-time employees to receive an incentive to provide the highest quality customer service. The TOC shall disburse all incentive payments to the fulltime employees, except to the extent that the funds shall be withheld for FICA, income tax, insurance, other benefits, or for other standard payroll taxes or deductions. Payments received by the TOC from the Authority for the Employee Incentive Plan shall not exceed \$150,000 annually. Approval by the Authority's Director of Toll Operations of any incentive plan is required prior to initiation.

1.8.2 Contract Performance Incentive Program

The Authority is open to developing a viable Contract Performance Incentive Program to improve operational efficiencies. The Authority will entertain discussions with the TOC on implementing a Contract Performance Incentive Program based on future operational efficiencies.

1.9 LIQUIDATED DAMAGES

1.9.1 System-Related Monitoring and Reporting Requirements – Actual Damages

The TOC is responsible for monitoring the ETC System which includes maintenance alarms and actual lane activity. When revenue is lost due to equipment failure (whether it involves manual collections, ACMs, AVI, or VES) and cannot be recovered from customers, the TOC shall be responsible for these lost revenues when:

1. The TOC has received an ETC System maintenance alarm and does not respond by notifying the maintenance contractor and/or the designated Authority staff member, within the specified time periods;
2. It is determined that the TOC failed to recognize problems in the lanes that should have been detected, as determined by the Authority; or
3. It is determined that the equipment failure or malfunction is a result of the TOC's negligence.

The Authority reserves the right to estimate the amount of lost revenue and invoice the TOC for that amount. The exception to this provision would be catastrophic events, as determined by the Authority.

1.9.2 System-Related Monitoring and Notification Requirements – Liquidated Damages

If the TOC has not fulfilled its notification requirements, and it has resulted in lost revenue, and actual damages cannot be determined, the Authority has the option of assessing Liquidated Damages for the TOC's failure to meet the monitoring and notification requirements. The response times, as specified in Section 1.3.8 of the Scope, are two hours from the time of System failure. Liquidated Damages will be applied at the following rates:

Response Time: Two (2) hours from the time of occurrence.

Hourly Charge per lane when response time is exceeded: The average revenue per hour for the time frame and collection point in question.

The TOC shall track when the ETC System issue became known, when the System Maintenance Contractor and the Authority were notified, and when the issue was fixed or addressed. The Authority will advise the TOC in writing of its intent to assess liquidated damages within 5 days of becoming aware of the occurrence and any delay. The time frame for measurement of response time will be determined through an analysis of available ETC System data and events surrounding the incident. Partial hours may be treated as whole hours at the discretion of the Authority, and liquidated damages amounts may be withheld from payments.

1.9.3 Performance Requirements – Liquidated Damages

If the Authority determines that the TOC is not meeting the performance requirements for any provision, the Authority will notify the TOC in writing, and the TOC will have two weeks to correct the level of performance cited to the appropriate standard. The TOC, in response to the written notification, shall provide an explanation of why the problem is occurring, and a plan for correcting it. If the TOC is unable to achieve the required level of performance, the Authority will have the right to assess liquidated damages retroactive to the date of notification at the rate of \$200 per day, per criteria not achieved until the standard is met.

1.9.4 Reporting Requirements – Liquidated Damages

If the Authority determines that the TOC has failed to provide a required report, the Authority will notify the TOC in writing, and the TOC shall have two working days to provide the required report, containing the required information, in the fully completed, required, acceptable format.

The Authority will have the option of assessing liquidated damages at the rate of \$200 per day, per report from the date the report is due to the date it is received

1.10 MISCELLANEOUS PROVISIONS

1.10.1 Coordination with Other Contractors

There are several other contractors working with the Authority on the ETC System. Some of these are directly related to the work being done by the TOC and some are not, but it is imperative that the TOC cooperate and coordinate activities where appropriate to ensure smooth operation. Examples of other contractors are: Toll System Maintenance Contractor, Customer Service Center Operator, fiber optic network maintenance, security maintenance, software maintenance, roadway maintenance, landscape maintenance, construction, installations, etc. This requirement is especially true when work involves the Toll System Hardware or Software Maintenance Contractor and/or the Installation Contractor for new construction or modifications. The TOC shall take whatever steps are deemed necessary by the Authority to accommodate this requirement.

1.10.2 Work Limitations

The TOC will be limited in the type of work activities that may be conducted. In general, the TOC shall not make physical modifications to the Authority's facilities. Some examples of this would be: modifications to the toll islands, structural modifications, certain electrical wiring, and cuts in the pavement (without a work order form the Authority specifically ordering the work). Running conduits and cables through the toll plaza tunnels or existing openings is allowed. Pre-approval by the Authority or the Authority's designated representatives is required for all facilities-related work. If physical, structural, or electrical modifications are requested of the TOC to accommodate the ETC System, the Authority will provide a specific work order, which describes the work to be done. The TOC shall provide acceptable detailed sketches, engineering drawings, and descriptions of the requested modifications required for proper installation.

1.10.3 E-PASS Related Programs and Activities

- The Authority and the Greater Orlando Airport Authority (GOAA) have a program where E-PASS is supported as a payment method for airport parking. The Customer Service Center (CSC) will provide the primary customer service support for this activity.
- Currently, the Authority supports interoperability with the following; Florida Turnpike Enterprise's SunPass® program, Lee County's Leeway program, North Carolina Turnpike's Quick Pass program and Georgia's State Road Toll Authority's Peach Pass program. While these agencies have their own CSCs, E-PASS customers who use these facilities may contact the E-PASS CSC with questions.

1.10.4 Upcoming Projects

The following is a list of proposed up-coming projects which are included in the Authority's Five Year Work Plan. These are presented for informational purposes only and the dates

included are estimated. The Authority has not committed to either the completion of the projects or to the dates shown.

- SR 429 Schofield Road – (2) 2 – Lane Ramps Plazas, 2015
- SR 528 Airport Plaza Demo/Widening – Removal of Mainline plaza and the addition of (4) 2 – Lane Ramps, 2016
- Innovation Way Interchange – (2) 2 - Lane Ramp Plazas, 2016
- Wekiva Parkway – This roadway will be an all-electronic (AET) roadway, 2016

1.10.5 Equipment Changes:

In addition to the above projects, the Authority is currently in the process of replacing/upgrading various components of its toll collection system. These upgrades primarily focus on in lane hardware and software along with the violation processing system.

1.11 JANITORIAL SERVICES

The TOC shall perform janitorial services in a manner that ensures the facilities specified below (including ramps) are maintained in an attractive, clean, and sanitary manner.

1.11.1 Name and Location of Mainline Toll Facilities

1. Beach Line Airport Plaza – SR 528
2. Beach Line Main Plaza – SR 528
3. University Plaza – SR 417
4. Curry Ford Plaza – SR 417
5. Boggy Creek Plaza – SR 417
6. John Young Plaza – SR 417
7. Dean Plaza – SR 408
8. Conway East Plaza – SR408
9. Conway West Plaza – SR 408
10. Hiawassee Plaza – SR 408
11. Forest Lake Plaza – SR 429
12. Independence Plaza – SR 429
13. Coral Hills Plaza – SR 414
14. Dallas Plaza – SR 528
15. Goldenrod Road Extension – SR 551

1.11.2 General Requirements

1. The TOC shall furnish all labor, materials, consumable supplies (including toilet tissue, hand towels, and hand soap), equipment, and tools necessary to perform all stated duties in an efficient and workmanlike manner. The services shall be performed for all mainline plazas and ramps. Mainline plazas shall be serviced on a daily basis whereas unmanned ramps shall be serviced monthly unless circumstances warrant immediate attention. The services shall be performed between the hours of 6:00 a.m., and 11:00 p.m., 7 days per week, or as approved by the Director of Toll Operations or his authorized representative.
2. The TOC shall keep a daily log of all routine maintenance operations performed by the janitorial personnel and make available to the Authority upon request.
3. The TOC shall submit, upon request by the Authority, a list of all materials to be used in providing the cleaning service. The Authority may approve or disapprove any product prior to commencement of service.
 - a. The floor finish shall be non-staining and shall provide a high degree of slip protection.
 - b. No cleaners shall be harmful to the surface to which they are applied.
 - c. Dust mop treatment materials, which leave an oily residue, shall not be used.
4. The TOC shall be responsible for any breakage, damage, or loss incurred through the carelessness of any of its employees.
5. Dumpsters at the mainline plazas shall not be used for disposal of old fluorescent bulbs. The TOC shall be responsible for proper disposal of bulbs in accordance with environmental regulations.

1.11.3 Daily Work Cycle – Specific Requirements

- Clean glass in all entrance doors, inside and out.
- Shake interior/exterior mats and clean surrounding area.
- Vacuum carpeted areas and spot clean as needed.
- Dust mop uncarpeted areas with chemically treated mop.
- Empty wastebaskets, trash receptacles (replace liners where needed).
- Clean and sanitize water fountains.
- Clean and sanitize restroom sinks, commodes, urinals, counters, mirrors, and tile floors. Remove fingerprints, as needed. Clean dispensers and replenish paper towels, toilet tissue, sanitary napkins, and soap.
- Clean sinks, wipe counters, tables, chairs, trash receptacle, microwave (inside and outside), and refrigerator (outside only) in break room.
- Dust chairs and tables in reception area.
- Check lights. Replace burned-out lights, as necessary, using long-life rough service bulbs.

- Lanes – Sweep and blow down lanes. Pick-up trash on total concrete area, including under and around attenuators.
- Booths – Vacuum and mop, wipe counters, and empty trash.
- Empty outside trash barrels.
- All other tasks consistent with janitorial services.

1.11.4 Weekly Inside Work Cycle – Specific Requirements

- Vacuum, wet mop, and wax all floors.
- Clean windows and wash all countertops.
- Clean windowsills and shoe moldings.
- Remove cobwebs from walls, corners, and ceilings.
- Clean air conditioner vents.
- Vacuum tunnel floor at mainline plazas.
- Clean walls and ceilings of all tollbooths.
- Clean all ductwork and vents in plaza tunnels.

1.11.5 Weekly Outside Work Cycle – Specific Requirements

- Pick-up trash on grounds (i.e. parking lot, adjacent to building, and side walks).
- Clean booth air conditioning filters and vents.
- Vacuum stairway from tunnel to booth.
- Sweep or blow parking lot.

1.11.6 Monthly Work Cycle – Specific Requirements

- Vacuum under furniture and in corners.
- Wax all floors (Full strip & wax annually).
- Dust furniture, desks, chairs (including lags and spreaders), files, business equipment, etc.
- Spot clean painted surfaces.
- Clean exterior doorjambs, frames, and transoms in all entrances.
- Clean tile walls in bathrooms and Formica partitions.
- Clean inside walls.
- Clean outside storage areas.
- Clean all window blinds.
- Clean light panels in ceilings.

1.11.7 Quarterly Work Cycle – Specific Requirements

- Wash windows, inside and out.
- Wash painted walls and woodwork.
- Vacuum upholstered furniture.
- Clean picture frames and glass.
- Wash Naugahyde or plastic-covered furniture.

1.11.8 Semi-Annual Work Cycle – Specific Requirements

TOC shall clean carpeting twice per year (shampoo, steam clean, or dry chemical clean).

2 QUALITY MANAGEMENT AND QUALITY ASSURANCE

The TOC shall develop, implement, and maintain a Quality Management and Quality Assurance Plan.

2.1 QUALITY MANAGEMENT

2.1.1 Quality Policy

This policy shall reflect a commitment to achieve the highest standards of customer satisfaction and performance of the procedures necessary to provide toll operations services, while maintaining good organizational relationships with the Authority, FDOT, and law enforcement personnel. This policy shall include an organizational mission statement and/or managerial philosophy, along with goals and objectives linked to the quality management and assurance.

2.1.2 Quality Management/Quality Assurance

Identify all procedures/processes and include quality standards of behavior where appropriate. Acceptable tolerance/limitations shall be identified for each process/procedure. Methods of assuring compliance, such as inspection, monitoring, and audit review shall be identified with time frames noted.

2.1.3 Quality Assurance (QA)

QA shall include procedures to determine that quality control is being, or has been, performed effectively and appropriately. It shall include such activities as planned inspections necessary to ensure optimum toll collection, accounting verifications and audits, administration, toll plaza management, and TOC operations office management. Frequency of QA activities shall be noted, along with any appropriate minimum standards, showing the need for additional action if these are not met.

2.1.4 Quality Control (QC)

QC shall include prescribed procedures by which work products are reviewed and brought into compliance, where necessary, to conform with professional standards, contractual obligations, and commitments to the Authority. This includes activities to identify and eliminate causes of unsatisfactory performance and meet the goals and objectives of operational activities included as part of the Quality Policy.

2.1.5 Customer Satisfaction

2.1.5.1 Complaint Resolution

Customer complaints shall be received and handled by the TOC. Complaints received at the plazas shall be logged in with the date and time, and name and address of the customer. An attempt shall be made to resolve the complaint at the plaza with TOC staff or escalated to TOC management. If complaint

resolution is unsuccessful, the customer shall be politely referred to the Authority.

2.1.5.2 Customer Satisfaction Survey

The Authority will conduct periodic surveys at its discretion according to appropriate survey research methods. The TOC shall help in the development, distribution, collection, and analysis of the surveys. The survey will include questions concerning satisfaction with those aspects of toll operations that are most visible to the customer. These may include topics such as the degree of friendliness and courtesy shown by collectors, the attention paid to unique problems/difficulties faced by the customer, delays while traveling through toll plazas, cleanliness/overall appearance of facilities, and preference of traveling through toll facilities compared with alternate routes.

2.1.6 Employee Performance Assessment and Evaluation

The SOP shall contain a set of policies and procedures that creates a method to evaluate the performance of all employees. This method shall identify the evaluation process, including factors such as frequency of formal evaluation, the rating scale or criteria used to decide levels of performance, and the process by which employees are counseled regarding performance improvement.

2.2 CONTRACT PERFORMANCE MONITORING

1. The Authority will review the performance of the TOC's operations.
2. The SOP, coupled with the operations criteria, provide the standardization and performance levels necessary to ensure the Authority's effective development, administration, coordination, operation, and management.
3. The Authority expects the TOC to exceed minimum performance standards and equates that level of performance with a "Satisfactory" performance. The TOC shall strive to attain the highest standards of excellence in executing its responsibilities under the Contract as measured against performance standards consistent with best available practices. The TOC shall develop standards of excellence and have a strong, ongoing self-assessment program to measure progress against the standards. The TOC will receive favorable ratings for identifying "a better way" and for developing and implementing cost savings ideas and quality performance standards.

3 MOBILIZATION AND TRANSITION PLAN

The draft Mobilization and Transition Plan submitted by the TOC with the Technical Proposal shall be finalized for resubmittal to the Authority for review and approval immediately upon receipt by the TOC the Notice to Proceed.

3.1 MOBILIZATION

It is the Authority's intent that the TOC shall transition with the current contractor over no more than a two (2) month period covering May through June 2015. The TOC shall also use this time for project mobilization and start-up activities. The TOC shall provide a fully equipped office, a qualified staff, all necessary equipment and supplies, and maintain all documentation, forms and manuals necessary for the operation of the Authority's toll facilities and toll collection system.

3.2 TRANSITION

Smooth continuity of services is critical during the transition period from the current TOC to the new TOC. The Mobilization and Transition Plan submitted with the Technical Proposal shall be finalized and submitted to the Authority for review and approval immediately upon Notice to Proceed. The plan shall describe, in detail, the TOC's methodology and approach to carrying out and coordinating the transition of personnel and equipment. The plan shall include a Staffing Plan for both Administrative and Toll Collection Personnel. The plan shall address maintaining unobstructed traffic flow, normal and peak hour toll collection staffing, audit and control of toll transactions and revenues, and coordination. The plan shall include procedures to ensure that responsibility for reports, documentation, records and operating procedures is properly transferred from the current contractor to the TOC without degradation or interruption of services.

3.3 PLAZA TRANSITION STAFFING PLAN

Not later than 14 days before assumption of each toll collections plaza, the TOC shall submit the following hiring plan documents, developed in accordance with the Contract, to the Authority for review and approval:

1. Hiring Plan for Eligible Current Contractor Full-Time Employees – After reviewing the list and files (provided by current Contractor) of full-time employees eligible for first right of refusal, the TOC shall submit its hiring plan for these employees, including the first date of employment.
2. Hiring Plan for Other Toll Collection Employees – The TOC shall submit a hiring plan for toll positions required beyond those filled by current Contractor's full-time employees. The list shall include additional full-time and all part-time employees.
3. Summary of Hiring Plan – The TOC shall submit a hiring plan for the total number of full-time and part-time toll collection positions and the total number of toll plaza managerial and supervisory positions for each plaza.

3.4 PROPERTY AND EQUIPMENT INVENTORIES

Not later than seven days before assumption of each toll collections plaza operations and operations at the Authority's Headquarters, the TOC, Authority, and current contractor will jointly inventory all Authority owned property at each plaza and associated ramp locations. Any discrepancies shall be reported to the Authority in writing. A property inventory report shall be submitted. The preliminary version of the report shall be submitted with each phase and a final

report, including all plazas, shall be submitted with the last plaza. The report shall be maintained current and shall be reissued annually, or as directed by the Authority. The property inventory report(s) shall contain a list of all relevant property items by Authority inventory number. All property and equipment purchased for this project will remain the property of the Authority at the end of the contract.

3.5 UNIFORMS

3.5.1 General

The TOC shall provide all toll collection uniforms. All employees required to meet with the public in a toll collection capacity shall be properly uniformed. These staff positions shall include, at a minimum: toll collectors, toll collection supervisors, and toll collection couriers. The TOC shall maintain the uniforms in a presentable manner and ensure each person required to wear a uniform has a sufficient supply.

3.5.2 Uniform Design

The current contractor has recently signed a contract to provide uniforms. The contract has provisions for the new TOC to assume the uniform contract. The TOC shall assume the uniform contract and use it for providing the required uniforms. Pricing will be provided with the pricing sheets.

3.6 END OF CONTRACT TRANSITION

1. The TOC acknowledges that the services under the Contract are vital to the Authority and must be continued without interruption and that, upon Contract expiration or termination, a successor (either the Authority or another contractor) may continue them. The TOC agrees to exercise its best efforts and cooperation to affect an orderly and efficient transition to a successor.
2. The TOC shall, upon the Authority's written notice, furnish transition services during the last 90 days of the Contract. The TOC shall also negotiate in good faith with the successor a plan describing the nature and extent of transition services required. The training program and a date for transferring responsibilities for each division of work shall be subject to Authority approval. The TOC shall provide sufficient experienced personnel during the transition period to ensure that the services called for by the Contract are maintained at the required level of proficiency.
3. The TOC shall allow as many personnel as necessary, in the judgment of the Authority, to remain on the job to help the successor maintain the continuity and consistency of the services required by the Contract. The TOC shall also make available to the Authority for use by the successor all necessary personnel records, as it pertains to performance and training, and shall allow the successor to conduct on-site interviews with these employees. The TOC shall release those employees to be hired by the successor at a mutually agreeable date.

4. The TOC shall be reimbursed for all reasonable and applicable costs (i.e., costs that the TOC might incur after Contract expiration) that result from operations transition and a fee (profit) not to exceed a pro rata portion of the fee (profit) under the Contract.


End of Scope of Services

**CONSENT AGENDA ITEM
#14**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 25, 2019

SUBJECT: Approval of KECH, Inc. as a Subconsultant for the General Systems Consultant Services Contract with AECOM Technical Services, Inc.
Contract No. 001215

AECOM Technical Services, Inc., CFX's General Systems Consultant, has requested approval to use KECH, Inc. to develop Customer Relationship Management (CRM) training materials and to provide training. The cost is expected to exceed the \$25,000.00 threshold established by the Procurement Policy for subconsultants not disclosed by AECOM Technical Services, Inc. when its contract with CFX was originally awarded.

Board approval of KECH, Inc. as subconsultant to AECOM Technical Services, Inc. is requested.

Reviewed by: 
Jim Greer
Chief Technology & Operating Officer

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
REQUEST FOR AUTHORIZATION TO SUBLET SERVICES

Consultant: AECOM Date: 11/25/2019

CFX Contract Name: General Systems Consultant Services CFX Contract No.: 001215

Authorization is requested to sublet the services identified below which are included in the above referenced Contract. Consultant requests approval to sublet services to:

Subconsultant Name: KECH, Inc.

Address: 965 S Highway 25 W Ste 11, Williamsburg, KY 40769

Phone No.: 606-703-0347

Federal Employee ID No.: 81-3982000

Description of Services to Be Sublet: KECH shall develop Customer Relationship Management (CRM) training materials and perform training for 250 users.

Estimated Beginning Date of Sublet Services: 12/13/2019

Estimated Completion Date of Sublet Services: 12/31/2020

Estimated Value of Sublet Services*: \$ Greater than \$25,000
*(Not to exceed \$25,000 without prior Board Approval)


Consultant hereby certifies that the proposed subconsultant has been advised of, and agrees to, the terms and conditions in the Consultant's Contract with the Authority that are applicable to the subconsultant and the services to be sublet:

Requested By: 
(Signature of Consultant Representative)

Project Manager ITS Florida Manager
Title

Recommended by: _____
(Signature of Appropriate CFX Director/Manager)

Date: _____

Approved by: 
(Signature of Appropriate Chief)

Date: 11/25/19


Attach Subconsultant's Certificate of Insurance to this Request.

**CONSENT AGENDA ITEM
#15**

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Aneth Williams 
Director of Procurement

DATE: November 21, 2019

SUBJECT: Approval of Contract Award for Toll Operations Printing and Mailing Services to Cathedral Corporation
Contract No.001604

Request for Proposals (RFP) from qualified firms to provide Toll Operations Printing and Mailing Services for CFX was advertised on October 6, 2019. Responses were received from two (2) firms by the deadline. Those firms were Cathedral Corporation and TC Delivers Mail Solutions & Savings. A meeting was held with the Chief Technology and Operation Officer, Director of Toll Operations and the Manager of E-PASS and Toll Operations to discuss the receipt of the two proposals. After discussion and consideration, it was agreed that the solicitation process should proceed.



The Evaluation Committee unanimously agreed to shortlist the firms.

As part of the scoring process, the Evaluation Committee heard oral presentations from the firms on November 21, 2019. After the oral presentations were completed, the fee proposals were opened and scored. The combined scores for the technical proposals and fee proposals as submitted by each firm were calculated and the result is shown below:

<u>Ranking</u>	<u>Firm</u>	<u>Total Points</u>
1	Cathedral Corporation	193.53
2	TC Delivers Mail Solutions & Savings	190.25

Board award of the contract to Cathedral Corporation in the amount of \$15,247,161.13 for a five (5) year term with five one-year renewals is requested.

This contract is budgeted in the OM&A Budget.

Reviewed by: 
David Wynne
Director of Toll Operations 

**CONTRACT, SCOPE OF SERVICES, METHOD OF COMPENSATION,
ADDENDA, SPECIFICATIONS, TECHNICAL PROPOSAL, PRICE PROPOSAL,
PERFORMANCE AND PAYMENT BOND, AND FORMS**

TOLL OPERATIONS PRINTING AND MAILING SERVICE

CONTRACT NO. 001604

DECEMBER 2019

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

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Contract No. 001604

This Contract is made this 12th day of December 2019, between CENTRAL FLORIDA EXPRESSWAY AUTHORITY, a body politic and agency of the State of Florida, created by Chapter 2014-171, Laws of Florida, which is codified in Chapter 348, Part III of the Florida Statutes, hereinafter "CFX," and Cathedral Corporation, a foreign profit corporation, registered and authorized to do business in the State of Florida, whose principal address is 6851 TPC Drive, Orlando, FL 32822, hereinafter "the CONTRACTOR."

WITNESSETH:

WHEREAS, CFX 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, CFX has been granted the power under Section 348.754(2)(m) of Florida Statutes, "to do everything necessary or convenient for the conduct of its business and the general welfare of the authority in order to comply with this part or any other law;" **and**

WHEREAS, CFX has determined that it is necessary and convenient in the conduct of its business to retain the services of a CONTRACTOR to perform Toll Operations Printing and Mailing Services under Contract No. 001604, and related tasks as may be assigned to the CONTRACTOR by CFX; **and**

WHEREAS, on or about October 06, 2019, CFX 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 Scope of Services attached as **Exhibit "A"** which is 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 CFX, 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 toll operations printing and mailing services as detailed in the Addendum to the Scope of Services attached as Exhibit "A1" and incorporated by reference as though set forth fully herein.

CFX 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. CFX, at its option, may elect to have any of the services set forth herein performed by other contractors or CFX staff.

2. TERM AND NOTICE

The initial term of the Contract will be five (5) years from the date indicated in the Notice to Proceed from CFX, hereinafter "Initial Contract Term." At the sole discretion and election of CFX, there may be one (5) five-year renewal options, or portions thereof. Renewals will be based, in part, on a determination by CFX that the value and level of service provided by CONTRACTOR are satisfactory and adequate for CFX's needs. If a renewal option is exercised, CFX will provide CONTRACTOR with written notice of its intent at least 90 days prior to the expiration of the term of the Contract.)

CFX shall have the right to immediately terminate or suspend the Contract, in whole or in part, at any time upon notice for convenience or for cause for CONTRACTOR's material failure to perform the provisions of the Contract. Under no circumstances shall a properly noticed termination by CFX (with or without cause) constitute a default by CFX. In the event of a termination for convenience or without cause, CFX 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 in said written notification. CONTRACTOR will be paid for all work properly performed prior to termination. CONTRACTOR will not be paid for special, indirect, consequential, or undocumented termination costs and 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 convenience or 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, satisfactory, or suitable personnel or with sufficient, satisfactory, or suitable materials to assure the prompt performance of the work items covered or services required by the Contract; (iv) fails to comply with the Contract, or (v) performs unsuitably or unsatisfactorily in the opinion of CFX reasonably exercised, or for any other cause whatsoever, fails to carry on the work or services in an acceptable manner, CFX will give notice in writing to the CONTRACTOR of such delay, neglect or default. If the Contract is declared in default, CFX 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, CFX 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, CFX will have the right to appropriate or use any or all materials as CFX determines and may retain others for the completion of the work under the Contract or may use other methods which in the opinion of CFX are required for Contract completion. All costs and charges incurred by CFX 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 CFX the amount of the excess. If, after the default notice curative period has expired, but prior to any action by CFX to complete the work under the Contract, CONTRACTOR demonstrates an intent and ability to cure the default in accordance with CFX's requirements, CFX may, but is not obligated to, permit CONTRACTOR to resume work under the Contract. In such circumstances, any costs of CFX 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 CFX which exceed the remaining amount due on the Contract shall be reimbursed to CFX 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.

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

CFX reserves the right to immediately cancel or immediately terminate this Contract in the event the CONTRACTOR or any employee, servant, or agent of the CONTRACTOR is indicted or has a direct information issued against him for any crime arising out of or in conjunction with any work being performed by the CONTRACTOR for on behalf of CFX, without penalty. Such termination shall be deemed a termination for default.

CFX reserves the right to immediately terminate or immediately 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 Initial Contract Term is \$15,247,161.13.

3.2 CFX agrees to pay CONTRACTOR for services performed in accordance with the Method of Compensation attached hereto as **Exhibit "B"** and incorporated by reference as though set forth fully herein.

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 CFX 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 CFX.

(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.

CFX 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 and any subcontractor submits to and agree to comply with the provisions of this section.

If CFX 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 CFX, 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 CFX 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 CFX until reinstated by CFX.

Final Audit for Project Closeout: The CONTRACTOR shall permit CFX, at CFX'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 CFX because of accounting errors or charges not in conformity with the Contract, the CONTRACTOR agrees that such amounts are due to CFX 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 by CFX of the project or all work performed under the Contract, (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. PUBLIC RECORDS

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 407-690-5000, publicrecords@CFXWay.com, and 4974 ORL Tower Road, Orlando, FL. 32807.

Notwithstanding the section on "Press Releases," CONTRACTOR acknowledges that CFX is a body politic and corporate, an agency of the State of Florida, and is subject to the Public Records Act codified in Chapter 119, Florida Statutes. To the extent that the CONTRACTOR is in the possession of documents that fall within the definition of public records subject to the Public Records Act, which public records have not yet been delivered to CFX, CONTRACTOR agrees to comply with Section 119.0701, Florida Statutes, and to:

1. Keep and maintain public records required by the public agency to perform the service.
2. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the public agency.
4. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If CONTRACTOR transfers all public records to the public agency upon completion of the contract, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If CONTRACTOR keeps and maintains public records upon completion of the contract, CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

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 Contract Records and Proposal Records, if and as applicable), CONTRACTOR shall immediately notify the CFX. In the event CONTRACTOR has public records in its possession, CONTRACTOR shall comply with the Public Records Act and CONTRACTOR must provide the records to CFX or allow the records to be inspected or copied within a reasonable time. Failure by CONTRACTOR to grant such public access shall be grounds for immediate unilateral termination of this Contract by CFX for cause. Failure to provide the public records to CFX within a reasonable time may subject the CONTRACTOR to penalties under Section 119.10, Florida Statutes.

The obligations in this Section shall survive the expiration or termination of this Contract and continue in full force and effect as set forth above.

6. CONFLICT OF INTEREST AND STANDARDS OF CONDUCT

No Contingent Fees. CONTRACTOR warrants that it has not employed or retained any entity or person, other than a bona fide employee working solely for 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. For breach of this provision, CFX shall have the right to terminate this Contract without liability at its sole discretion.

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

As required by Section 348.753, Florida Statutes, and CFX's Code of Ethics, CONTRACTOR agrees to complete CFX's Potential Conflict Disclosure Form prior to the execution of the Contract, upon the occurrence of an event that requires disclosure, and annually, not later than July 1st. The Potential Conflict Disclosure Form is attached as **Exhibit "C."**

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 Section 112.313, Florida Statutes, 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.

CONTRACTOR hereby certifies that no officer, agent or employee of CFX has any “material interest” (as defined in Section 112.312(15), Florida Statutes) either directly or indirectly, in the business of CONTRACTOR, and that no such person shall have any such interest at any time during the term of this Agreement.

7. DISADVANTAGED/MINORITY/WOMEN BUSINESS ENTERPRISES

CFX has adopted a program to provide opportunities for small business, including Disadvantaged/Minority Business Enterprises (“D/MBEs”) and Women’s Business Enterprises (“WBEs”). Under CFX’s program, CONTRACTOR is encouraged to grant small businesses the opportunity to participate in CFX’s contracts. CONTRACTOR shall provide information regarding its employment of such businesses and the percentage of payments made to such businesses and others. CONTRACTOR shall provide an annual report to CFX on or before each anniversary of the date indicated in the Notice to Proceed and throughout the Term, regarding use of small business D/MBEs and WBEs and the percentage of payments made to enterprises falling within such categories. Such report shall consolidate the information contained in CONTRACTOR’s invoices and shall be in a form reasonably acceptable to CFX.

8. CONTRACTOR INSURANCE AND PERFORMANCE AND PAYMENT BOND

Anything contained herein to the contrary notwithstanding, during the term of the Contract and for such additional time as may be further required, the Contractor shall provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the Contractor’s activities and those of any and all subcontractors (including officers, directors, employees or agents of each and their successors).

Upon execution of the Contract, the Contractor shall furnish to CFX, Certificates of Insurance bearing an original manual signature of the authorized representative of the insurance company.

No Work shall commence under the Contract unless and until the required Certificates of Insurance described herein are in effect and have been approved by CFX. The Certificate of Insurance shall be issued to CFX and shall reference the complete and correct Project number, as well as the full and complete name of each insurance company, including city and state of domicile, as listed by A.M. Best Company.

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 VII or higher, as defined by A.M. Best and Company's Key Rating Guide and must be approved by CFX. CONTRACTOR shall carry and keep in force the following insurance coverage, and provide CFX with correct certificates of insurance (ACORD forms) upon Contract execution:

8.1 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.

8.2 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;

8.3 Workers' Compensation Insurance:

Coverage, including all coverage required under the laws of the state of Florida (as amended from time to time hereafter);

8.4 Unemployment Insurance:

Coverage in amounts and forms required by Florida law, as it may be amended from time to time hereafter;

8.5 Professional Liability:

Professional Liability Coverage shall have limits of not less than One Million Dollars (\$1,000,000) Combined Single Limit (CSL) or its equivalent, protecting the selected firm or individual against claims of CFX for negligence, errors, mistakes or omissions in the performance of services to be performed and furnished by the CONTRACTOR.

8.6 Information Security/Cyber Liability Insurance:

If a data breach is possible, the Contractor shall maintain information security/cyber liability insurance to include Internet Media Liability including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least the minimum limits listed below.

- Each Occurrence – \$1,000,000
- Network Security / Privacy Liability –\$1,000,000
- Breach Response/ Notification Sublimit – A minimum limit of 50% of the policy aggregate
- Technology Products E&O – \$1,000,000 (Only applicable for Vendors supplying technology related services and or products)
- Coverage shall be maintained in effect during the period of the Agreement and for no less than two (2) years after termination/ completion of the Agreement.

Information Security/Cyber Liability Insurance written on a “claims-made” basis covering Supplier, its employees, subcontractors and agents for expenses, claims and losses resulting from wrongful acts committed in the performance of, or failure to perform, all services under this Agreement, including, without limitation, claims, demand and any other payments related to electronic or physical security, breaches of confidentiality and invasion of or breaches of privacy.

8.7 Commercial Crime Insurance:

If the scope of the contract includes involvement with monies and monetary instruments, the Contractor shall maintain commercial crime insurance having a minimum coverage of Ten Million Dollars (\$10,000,000.00) per occurrence and a minimum of Ten Million Dollars (\$10,000,000.00) annual aggregate.

8.8 Fiduciary Liability Insurance:

If the scope of the contract includes fiduciary duties, the Contractor shall maintain commercial crime insurance having a minimum coverage of Ten Million Dollars (\$10,000,000.00) per claim and a minimum of Ten Million Dollars (\$10,000,000.00) annual aggregate.

Such insurance policies shall be without co-insurance, and shall (a) include CFX, and such other applicable parties CFX shall designate, as additional insureds for commercial general liability and business automobile liability, (b) be primary and noncontributory 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 CFX from the company providing such insurance, and (e) provide that the insurer waives any right of subrogation against CFX, 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. Renewal Certificates of Insurance for all policies shall be submitted by the Contractor so that they are received by CFX no later than thirty (30) calendar days prior to the expiration of existing insurance coverage. Failure by the Contractor to meet this required timeframe shall result in suspension of partial payments on monthly estimates until the certificates are received and accepted by CFX. 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 CFX.

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

Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX 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 CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

If CONTRACTOR fails to obtain the proper insurance policies or coverages, or fails to provide CFX with certificates of same, CFX may obtain such polices and coverages at CONTRACTOR's expense and deduct such costs from CONTRACTOR payments. Alternately, CFX may declare CONTRACTOR in default for cause.

8.9 Performance and Payment Bond:

The CONTRACTOR shall furnish to CFX and shall maintain in effect throughout the term of the Contract, an acceptable surety bond in a sum equal to the annual amount of the Contract exclusive of the estimated bulk postage rate (Contract Amount - \$12M/5years). The initial term of the bond shall be July 1, 2020 to June 30, 2021. The bond shall be renewed each year thereafter until the expiration of the Contract term. Each fully executed renewal bond shall be transmitted to CFRX at least 15 days prior to the expiration of the bond in effect so that there is no lapse in coverage. Failure to timely renew the bond may result in CFX giving notice of default to the CONTRACTOR as detailed in Article 2 above. Such bond shall be executed on the form furnished by CFX. The surety shall meet all requirements of the laws of Florida and shall be approved and at all times acceptable to CFX. The surety agent's name, address and telephone number shall be clearly stated on the face of the Performance and Payment Bond.

In the event that the surety executing the bond (although acceptable to CFX at the time of execution of the Contract) subsequently becomes insolvent or bankrupt or becomes unreliable or otherwise unsatisfactory due to any cause which becomes apparent after CFX's initial approval of the company, then CFX may require that the CONTRACTOR immediately replace the surety bond with a similar bond drawn on a surety company which is reliable and acceptable to CFX. In such event, all costs of the premium for the new bond, after deducting any amounts that might be returned to the CONTRACTOR from its payment of premium on the defaulting bond, will be borne by CFX.

9. CONTRACTOR RESPONSIBILITY

9.1 CONTRACTOR shall take all reasonable precautions in the performance of the Services and shall cause its employees, agents and subcontractors to do the same. CONTRACTOR shall be solely responsible for the safety of, and shall provide protection to prevent damage, injury or loss to:

(i) all employees of CONTRACTOR and its subcontractors and other persons who are on or about the plazas or would reasonably be expected to be affected by the performance of the Services;

(ii) other property of CONTRACTOR and its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible on or adjacent to the plazas or other areas upon which services are performed;

(iii) members of the public who may be traveling through the plazas and their vehicles.

9.2 CONTRACTOR shall comply, and shall cause its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible, with the SOP, 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, CFX'S Drug-Free Workplace Policy; And

(iv) compliance with the public records laws of Chapter 119, Florida Statutes.

9.3 CONTRACTOR shall be responsible for all damage and loss that may occur with respect to any and all property located on or about the plazas or in any way involved in the provision of services by CONTRACTOR, whether such property is owned by CONTRACTOR, CFX, or any other person, to the extent such damage or loss shall have been caused or brought about by the acts or omissions of CONTRACTOR or its employees, agents, officers or subcontractors or any other persons for whom CONTRACTOR may be legally or contractually responsible.

9.4 CONTRACTOR shall ensure that all of its activities and the activities of its employees, agents, officers and subcontractors and all other persons for whom CONTRACTOR may be legally or contractually responsible are undertaken in a manner that will minimize the effect on surrounding property and the public. CONTRACTOR shall be responsible for any shortage of tolls collected in accordance with the Scope and SOP Manual, and any theft or conversion of collected toll funds by employees of CONTRACTOR, or arising out of the negligence or willful misconduct of CONTRACTOR;

9.5 CONTRACTOR shall immediately notify CFX of any material adverse change in CONTRACTOR's financial condition, business, prospects, affairs, or operations, or of such change of any partner, or of such change of any shareholder holding greater than a 10% interest in CONTRACTOR, or of the existence of any material impairment of rights or ability of CONTRACTOR to carry on as its business and operations are currently conducted.

9.6 With respect to any employees of CONTRACTOR directly providing work to CFX, CONTRACTOR shall not make any requirement of any such employee or enter into a non-competition agreement with any such employee, whether oral or written, of any kind or nature, that would prohibit those employees from leaving CONTRACTOR's employ and taking employment with any successor of CONTRACTOR for CFX's toll operations and management services.

10. INDEMNITY

CONTRACTOR shall indemnify and hold harmless CFX, 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 CONTRACTOR and other persons employed or utilized by CONTRACTOR in the performance of the contract.

10.1 Further, CONTRACTOR shall indemnify, defend and hold harmless CFX, and its respective officers and 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:

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

10.3 CFX's use or possession of the CONTRACTOR Property or CONTRACTOR Intellectual Property (as defined herein below),

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

10.5 CONTRACTOR's violation of the confidentiality and security requirements associated with CFX Property and CFX Intellectual Property (as defined herein below),

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

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

10.8 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 CFX 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 CFX to CONTRACTOR for CONTRACTOR's indemnity and the parties further agree that the 1% is included in the amount negotiated for each authorized task.

11. 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 CFX Property and CFX Intellectual Property, without first notifying CFX and securing its consent in writing.

12. OWNERSHIP OF MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

CFX is and shall be and remain the sole owner of all rights, title, and interest in, to, and associated with all plans, documents, software in all forms, hardware, programs, procedures, specifications, drawings, brochures pamphlets, manuals, flyers, models, photographic or design images, negatives, videos and film, tapes, work product, information, data and other items (all whether in preliminary, draft, master, final, paper, electronic, or other form), along with the media on which they reside and with which they interface for function or aesthetics, that are

generated or developed with respect to and in connection with this Contract and the performance thereof (collectively, the "CFX Property"). CFX's ownership of CFX Property includes without limitation all common law, statutory and other rights, title, and interest in, to, and associated with trademark, service mark, copyright, patent, trade secret, and publicity (collectively, the "CFX Intellectual Property"). CONTRACTOR, its employees, agents, officers, and subcontractors acknowledge that E-PASS® is CFX's registered trademark name for CFX's electronic toll collection system and comprises a portion of CFX Intellectual Property.

CONTRACTOR, its employees, agents, officers, and subcontractors may not use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR, its employees, agents, officers, and subcontractors' access to and/or use of CFX Property and CFX Intellectual Property is without any warranty or representation by CFX regarding same.

For all materials listed hereinabove that are not generated or developed under this Contract or performance hereof, but rather are brought in, provided, or installed by CONTRACTOR (collectively, the "CONTRACTOR Property"), and the intellectual property rights associated therewith (collectively, the "CONTRACTOR Intellectual Property"), CONTRACTOR (its employees, officers, agents, and subcontractors, which for purposes of this section shall collectively be referred to as "CONTRACTOR") warrants and represents the following:

12.1 CONTRACTOR was and is the sole owner of all right, title and interest in and to all CONTRACTOR Property and CONTRACTOR Intellectual Property; **OR**

12.2 CONTRACTOR has obtained, and was and is the sole holder of one or more freely assignable, transferable, non-exclusive licenses in and to the CONTRACTOR Property and CONTRACTOR Intellectual Property, as necessary to provide and install the CONTRACTOR Property and/or to assign or grant corresponding to CFX all licenses necessary for the full performance of this Contract; and that the CONTRACTOR is current and will remain current on all royalty payments due and payable under any license where CONTRACTOR is licensee; **AND**

12.3 CONTRACTOR has not conveyed, and will not convey, any assignment, security interest, exclusive license, or other right, title, or interest that would interfere in any way with the CFX's use of the CONTRACTOR Property or any license granted to CFX for use of the CONTRACTOR Intellectual Property rights; **AND**

12.4 Subject to Chapter 119, Florida Statutes (Florida Public Records Act), CONTRACTOR shall maintain CFX Property and CFX Intellectual Property in strictest confidence and may not transfer, disclose, duplicate, or otherwise use CFX Property or CFX Intellectual Property in any way, other than in performance of its services under the terms of this Contract, without the prior written consent of CFX, which may be granted or denied in CFX's sole discretion. CONTRACTOR shall not publish, copyright, trademark, service mark, patent, or claim trade secret, publicity, or other rights of any kind in any of the Property. In ensuring the confidentiality and security of CFX Property and CFX Intellectual Property, CONTRACTOR shall utilize the same standards of protection and confidentiality that CONTRACTOR uses to protect its own property and confidential information, but in no instance less than reasonable care plus the standards set forth anywhere in this Contract.

CONTRACTOR further warrants and represents that there is no pending, threatened, or anticipated Claims against CONTRACTOR, its employees, officers, agents, or subcontractors with respect to the CONTRACTOR Property or CONTRACTOR Intellectual Property.

The provisions of this Section shall survive the term of this Contract for the longer of:

12.5 The statute of limitations on any action arising out of either party's conduct relating to this section, whether such action may be brought by CFX, CONTRACTOR, or a third party; **or**

12.6 CFX's continued use (notwithstanding any temporary suspension of use) of any CONTRACTOR Property or CONTRACTOR Intellectual Property; **and**

12.7 Notwithstanding sections 12.5 and 12.6, the confidentiality and security provisions contained herein shall survive the term of this Contract for ten (10) years beyond 12.5 and 12.6.

13. 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 CFX upon request.

14. 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.

15. NOTIFICATION OF CONVICTION OF CRIMES

CONTRACTOR shall notify CFX if any of CONTRACTOR's Key Personnel shall be convicted of any crime, whether state or federal, or felony or misdemeanor of any degree. Such notification shall be made no later than thirty (30) days after the conviction, regardless of whether such conviction is appealed.

16. COMPLIANCE WITH LAWS; EQUAL EMPLOYMENT OPPORTUNITY

CONTRACTOR shall conform and comply with and take reasonable precaution to ensure that every one of their directors, officers and employees abides by and complies with all applicable laws of the United States and the State of Florida, and all local laws and ordinances. Furthermore, CONTRACTOR agrees to and shall comply with all federal, state and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, age, sex, marital status or the presence of any sensory, mental or physical handicap or other disability, and will take affirmative steps to insure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, disability or national origin. This provision shall include, but not be limited to, the following: employment; promotion; demotion; transfer; recruitment; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

17. ASSIGNMENT AND REMOVAL OF KEY PERSONNEL

A significant factor in the decision of CFX to award this Contract to the CONTRACTOR is the level of expertise, knowledge and experience possessed by employees of CONTRACTOR, particularly the Program Manager, Technical Manager and Project Administrator (the "Key Personnel") and CONTRACTOR's covenant to have employees possessing such expertise, knowledge and experience available at all times to assist in the provision of the services. Throughout the Term of this Contract, CONTRACTOR shall employ individuals having significant training, expertise, and experience in the areas or disciplines more particularly set forth in the Scope of Services, together with such other areas of expertise or experience, as may be designated from time to time during the Term of this Contract by CFX. When CFX designates an additional area for which expertise or experience shall be required,

CONTRACTOR shall use all reasonable and diligent efforts to promptly hire and retain one or more individuals possessing such experience or expertise.

CONTRACTOR shall use commercially reasonable efforts to maintain Key Personnel as employees throughout the Term of the Contract. The identity of the individuals, initially assigned to each of such positions by CONTRACTOR, shall be submitted to CFX and CFX shall be notified in advance of any changes in the individuals. The Key Personnel shall be committed to performing services on this Contract to the extent required.

If prior to the second anniversary of the Effective Date of this Contract, CONTRACTOR removes, suspends, dismisses, fires, transfers, reassigns, lays off, discharges, or otherwise terminates any Key Personnel, CONTRACTOR will use commercially reasonable efforts to replace Key Personnel with employees of like expertise.

Promptly upon request of CFX, CONTRACTOR shall use commercially reasonable efforts to substitute any remove any employee whom CFX considers unsuitable for such work.

18. SUBLETTING AND ASSIGNMENT

CFX has selected CONTRACTOR to perform the Services based upon characteristics and qualifications of CONTRACTOR and its employees. Therefore, CONTRACTOR shall not further 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 CFX, which may be withheld in CFX'S sole and absolute discretion. Any attempt by CONTRACTOR to dispose of this Contract as described above, in part or in whole, without CFX'S written consent shall be null and void and shall, at CFX'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 CFX 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 CFXs 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 CFX 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 CFX Board at its next regularly scheduled meeting.

19. DISPUTES

All services shall be performed by the CONTRACTOR to the reasonable satisfaction of CFX'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 CFX Board if amendments are required) and supplemental agreement(s) of such nature as required may be entered into by the parties in accordance herewith.

20. 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.

21. INTEGRATION

It is understood and agreed that the entire agreement of the parties is contained in this Contract herein and that this Contract supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. No waiver, amendment, or modification of these terms hereof will be valid unless in writing, signed by all parties and only to the extent therein set forth.

22. PUBLIC ENTITY CRIME INFORMATION AND ANTI-DISCRIMINATION STATEMENT

CONTRACTOR hereby acknowledges that pursuant to Section 287.133(2)(a), Florida Statutes, “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, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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 s. 287.017 for CATEGORY TWO (\$35,000) for a period of 36 months following the date of being placed on the convicted vendor list.”

CONTRACTOR further acknowledges that pursuant to Section 287.134(2)(a), Florida Statutes, “an entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies 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.”

23. GOVERNING LAW AND VENUE

This Agreement, and all claims, controversies, and causes of action arising out of or relating to this Agreement, whether sounding in contract, tort, or statute, shall be governed by, and enforced in accordance with, the internal laws of the State of Florida, including its statutes of limitations, without giving effect to any conflict-of-laws or other rule that would result in the application of the laws of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The parties consent to the exclusive jurisdiction of the courts located in Orange County, Florida. The obligations in Section 23.0, Governing Law and Venue, shall survive the expiration or termination of this Agreement and continue in full force and effect.

24. RELATIONSHIPS

CONTRACTOR acknowledges that no employment relationship exists between CFX 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 CFX.

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

25. 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 CFX and request clarification of CFX's interpretation of the Contract.

26. 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 CFX 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 CFX, whichever is later.

27. 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:

27.1 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

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

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

27.4 Obligations upon expiration or termination of the Contract; and

27.5 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.

28. OBLIGATIONS UPON EXPIRATION OR TERMINATION OF CONTRACT

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

28.2 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 CFX.

29. INSPECTOR GENERAL

CONTRACTOR understands and shall comply with subsection 20.055(5), Florida Statutes, and to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing pursuant to this section. The undersigned further agrees that any subconsultants and subcontractors to the undersigned participating in the performance of this Contract shall also be bound contractually to this and all applicable Florida statutory requirements.

30. E-VERIFY

CONTRACTOR 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 CONTRACTOR during the term of the contract. CONTRACTOR shall require all of its subcontractors to verify the employment eligibility of all new employees hired by the subcontractors during the term of the Agreement.

31. APPROPRIATION OF FUNDS

CFX's performance and obligation to pay under this Agreement are contingent upon an annual budget appropriation by its Board. The parties agree that in the event funds are not appropriated, this Agreement may be terminated, which shall be effective upon CFX giving notice to the CONTRACTOR to that effect.

32. NOTICE TO THE PARTIES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by registered or certified United States mail, with return receipt requested, addressed to the party to whom it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to wit:

CFX: CENTRAL FLORIDA EXPRESSWAY CFX
 4974 ORL Tower Road
 Orlando, Florida 32807
 ATTN: Manager of Traffic Operations

CENTRAL FLORIDA EXPRESSWAY CFX
 4974 ORL Tower Road
 Orlando, Florida 32807
 ATTN: General Counsel

CONTRACTOR:
 CATHEDRAL CORPORATION
 6851 TPC Drive

Orlando, FL 32822
ATTN: Lori Foerster

33. EXHIBITS

This Contract references the exhibits listed below.

Exhibit "A" Scope of Services
Exhibit "A1" Addendum to Scope of Services
Exhibit "B" Method of Compensation
Exhibit "C" Potential Conflict Disclosure Form

[SIGNATURES TO FOLLOW]

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 CFX's Board of Directors at its meeting on December 12, 2019.

ACCEPTED AND AGREED TO BY:

CONTRACTOR

By: _____

Title

ATTEST: _____ (Seal)

DATE: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

By: _____
Director of Procurement

Print Name: _____

Date: _____

Approved as to form and execution for the use and reliance by
CFX only.

General Counsel for CFX

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

SCOPE OF SERVICES

TOLL OPERATIONS

PRINTING & MAILING SERVICES

CONTRACT NO. 001604

**SCOPE OF SERVICES
TOLL OPERATIONS
PRINTING AND MAILING SERVICES
CONTRACT NO. 001604**

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**SCOPE OF SERVICES
TOLL OPERATIONS
PRINTING AND MAILING SERVICES
CONTRACT NO. 001604**

1.0 DESCRIPTION

Contractor shall provide daily Printing and Mailing services for the Central Florida Expressway Authority (CFX) that includes E-PASS Statements, Pay by Plate Invoices (PBP), Uniform Traffic Citations (UTC), and various letters or mailings as required. CFX will be responsible for maintaining and updating the master list of all document templates and inserting the required data fields transmitted to the Contractor. This work involves receiving and processing CFX data in electronic format and then printing, inserting and mailing each letter and or document to the corresponding recipient. This list is not considered all-inclusive and other additional printing and mailing projects may be added in the future.

2.0 GENERAL REQUIREMENTS

2.1 General - The Contractor shall provide all the computers, software, equipment, labor, materials, supplies, support assistance and incidentals necessary including postage costs to provide all the printing and mailing services required by CFX. The Contractor shall be able to provide printing in black and white and color. No CPI adjustments for materials will be made during the duration of the contract.

2.2 Data Transfer - The Contractor shall provide an SFTP site which will be used to transfer all data. The SFTP login provided to CFX shall require a password allowing access to a directory available only to CFX and the Contractor. Contractor must be ready to implement data transfer process in one of two methods.

Web Service: This implementation requires a Secure Web Service for transfer of documents such as HTTPS with SOAP or REST; REST being the preferred method of interfacing with the Contractor. The Secure Web Service shall accept the following:

- (a) Single PDF for each document type.
- (b) JSON string for any necessary account information, i.e. name, address, etc.

Appropriate responses from the service are expected such as a 200 response from REST or No Error from SOAP indicating a successful transfer. Endpoint shall support single file transfers and batching (Zip File sent or multiple in one request.)

CFX proposes Contractor to build a rest Application Program Interface (API) to handle the outline below:

- CFX would send an address file of all recipients to the API, API would return NCOA processed addresses back.
- CFX would update document addresses received from API and transmit file to Contractor for printing and mailing.
- Contractor sends confirmation the file was printed and mailed.

OR

- Sending each document created by CFX to Contractor for NCOA processing. The request would contain file and document number.
- Contractor returns document and CFX updates recipient's address based on data Contractor receives from NCOA. The request would include document number and new address fields.
- Confirmation document shall be created and mailed based on bad address information received from the NCOA process, request would include document number.

CFX is open to other recommendations if the above options outlined to handle address verification/updates are not suitable.

File Transfer: This implementation will use a predefined file format to transfer the data to the Contractor. Files will typically be in XML or Text Delimited format and might be password protected and/or compressed(zipped). Templates provided by CFX will be utilized to merge the data fields and produce the appropriate document. CFX will be responsible for updating all document templates. Contractor shall provide electronically an individual copy of each document file mailed using PDF document type or in a format acceptable by CFX. If data transfer through the SFTP site is not possible due to technical problems, the Contractor must be able to accept data through other means such as compact disc or external/flash drive.

- 2.3 Coding Accuracy Support System (CASS)** - The Contractor shall be Coding Accuracy Support System (CASS) certified or have the capability of CASS-certifying CFX files. All data records received from CFX for all printing must be run through this process. The CASS process is necessary to meet the U.S. Postal service's requirements for automated postage discounts. The Contractor shall take the address information for each data record and process it through this program. The program shall standardize and update the street information, city, state, and zip code to match the Post Office's national database of address information. The program shall also append the +4 digits to the end of the zip code and create the POSTNET barcode required by the Post Office. All the data records shall be sorted into the correct station order for the Post Office. The Contractor shall provide CASS certification for each mailing.

2.4 National Change of Address (NCOA) - The Contractor shall process all data records through the NCOA database to ensure the presorted mailing meets the USPS Move Update Requirements. Data records that are identified as Undeliverable or Bad Address shall be made available to CFX IT in an acceptable format. CFX shall update the document with the correct address and resend the record to the Contractor for final processing. **Postage** - The Contractor is responsible for invoicing postage for E-PASS and VES. Cost break down and mail piece amount for the postage associated to the data record file is also to be provided. CFX may add other postage accounts as deemed necessary. The Contractor shall invoice CFX the prior month's amount of postage including quantities used for each document type as part of the monthly invoice. Total combined postage currently amounts to \$2,340,000 for fiscal year period July 1, 2018 – June 30, 2019. This amount is specific to E-PASS statements, E-PASS letters, Violation Enforcement Section Final Notices, PBP Invoices and Uniform Traffic Citations. The respective postage amounts for the various categories shall be invoiced according to document type.

Disclaimer: CFX may elect to fund separately postage accounts for E-PASS and VES. This would also require Contractor to manage and track separately both accounts.

2.5 Mail Out Requirements - Contractor shall print, insert and make direct delivery of mail pieces to the U.S. Post Office by the next business day or within 24 hours after receipt of data from CFX. All E-PASS statements and E-PASS mail pieces shall have "Return Service Requested" printed on the envelope and not interfere with the bar code read zone. **Return Service Requested** instructs the USPS that if a piece of mail cannot be delivered as addressed, the piece is to be **returned**, free of charge, to the sender, with the new address or an explanation of the reason for non-delivery attached to it, regardless of whether a change of address order is on file for the recipient.

2.6 Laser Printing - The Contractor shall provide quality laser printing of single and multiple page statements for E-PASS customer accounts, letters and for other specialty requests. Average statement consists of two to three pages. Multiple page statement varies and can be several hundred pages.

2.7 Intelligent Insert - Contractor shall perform multiple and selective inserts using "intelligent" inserters. The Contractor shall also electronically insert statement pages, handle multiple page statements mixed-in with single page statements; handle "No Mail" statements, and "heavies", or multiple pages that do not fit into a standard #10 envelope. A heavy account is anything that does not fit a #10 envelope and over four ounces. Heavy accounts are mailed in a closed face envelope with an address label applied.

2.8 PDFs - For the Web Service data transfer method, CFX will provide the Contractor with PDFs of each document that is to be mailed and printed. The Contractor will repurpose the PDF and place a two-dimensional bar code symbol as a form of secondary identification for each document. A proof for the placement of the two-dimensional bar code symbol shall be approved by CFX. For the File Transfer method of data transfer, the Contractor shall provide daily to the CFX IT department a PDF of each document mailed in an acceptable format approved by CFX.

2.9 Templates - CFX is responsible for storing historical archives of all templates including changes that are printed and mailed except for envelope samples that are to be supplied by the Contractor. Sample package of all documents currently in production provided as **Exhibit A**.

2.10 Software and Database

2.10.1 Software developed by the Contractor and paid for by CFX remains Authority property. The Contractor shall provide CFX with working copies of the programs, and the programs shall be turned over to CFX in working order upon request.

2.10.2 Data provided to the Contractor by CFX is not to be shared, sold, or otherwise used for any purposes other than those specified in the agreement. Databases developed or refined by the Contractor using CFX data remain the property of CFX and can only be used with CFX's authorization and only on CFX's project.

2.10.3 The Database file, at end of Project, termination of Contract, or other times, shall be turned over to CFX in total upon request and deleted from the Contractor's computer upon request. The request will be in writing from CFX designated Contract Manager.

3.0 E-PASS STATEMENTS

3.1 E-PASS Statement Files - The Contractor shall receive monthly data containing one record per E-PASS account for the statement processing. Statement data is sent all at the same time and currently averaging at 14,000 accounts. A separate data transfer is used for customer discounts that are inserted with the statement.

* This may be modified in the future to a daily process.

3.2 Other requirements

3.2.1 Database Maintenance - Provide Database maintenance including merge/purge; append postal zip + 4, destination point bar coding.

3.3 Production

3.3.1 Adapt print format for high speed printing, simplex and duplex formats. Simplex print format will consist of static information and variable data. Duplex format will contain variable data on each side of the print sheet.

3.3.2 Maintain throughput capability of at least 48,000 for multiple page statements per hour with growth on existing equipment of up to 70,000 per distribution hour.

3.3.3 Provide both form and data proofs prior to production, if requested.

4.0 SPECIAL PRINTING and MAILING

The Contractor shall provide special printing and mailing services, as required, to assist CFX in the preparation and distribution of special notices, newsletters, and other printed materials, i.e. postcards. All mail pieces shall have "Return Service Requested" printed on the envelope.

4.1 Mailing List - As part of the special services to be provided, the Contractor shall maintain a mailing list of the names and addresses of persons whom mailing are sent.

4.2 Special Printing - Special printing services shall be provided by the Contractor to CFX on an as-needed basis and include laser printing of names and addresses from the mailing list to individual mail pieces; laser printing on heat resistant laser ink letterhead which may be provided by CFX; or other laser printing of miscellaneous documents. Any special programming, folding, inserting, tabbing, sealing, metering or sorting of the special printing shall be invoiced to and paid for by the respective CFX department at the unit prices established in the Contract and invoiced as such.

4.3 Special Mailing - Special mailing services shall be provided by the Contractor to CFX on an as needed basis, and may include folding, inserting, metering, sealing and sorting of other preprinted materials which may be provided by CFX. The work activities associated with the special mailing services as described herein shall be invoiced to and paid for by the respective CFX department at the unit rates established for the various work activities in the Contract and invoiced as such.

4.4 Special Postage - The Contractor is responsible for invoicing and managing a separate postage account for Special CFX Printing and Mailing unrelated to the E-PASS and VES postage accounts. The Contractor is also to provide the cost

break down and mail piece amount with the postage associated to the data record file and shall be invoiced separately to the respective CFX department.

5.0 UNIFORM TRAFFIC CITATION (UTC) PROCESS

CFX will transmit electronically daily Violation Enforcement data to the Contractor for printing and processing. The Contractor shall process all records for address verification. If the address is "Undeliverable or Bad", Contractor shall mail the UTC's at full rate to the address CFX has provided. CFX request that Contractor mail all UTC's received daily. CFX has a legal obligation to attempt to deliver the citations and provides proof of the attempt. The Contractor shall print the UTC with the imbedded data transmitted.

The Contractor shall print, insert and mail the UTC in letter form in a Standard window envelope, which will also include a return address envelope. For all VES mailings, USPS endorsement of "Forwarding Service Requested" is to be printed on the envelope. The Contractor shall process the UTC document with the next business day of the issuance of the UTC. Volume per month is expected to increase to 6,000 – 7,000. Contractor shall print and mail a UTC for each record in the Violator file. The UTC shall be printed on standard paper with CFX logo in black and white and mailed in a window envelope. **Contractor shall mail UTCs to violators via first-class mail including addresses identified as bad within 24 hours of receiving the Violator file.** Refer to pricing sheet for material type requirements.

6.0 PAY BY PLATE INVOICES (PBP)

CFX will transmit data electronically daily to the Contractor for printing and processing. Contractor will transmit address verification results to CFX including Undeliverable/Bad Addresses which will be updated and resent to Contractor for processing of data identifying the recipients to whom an invoice should be sent.

The scope of work involves receiving and processing data in electronic format (PDF) and processing the data and image into the letter format required by CFX. The Contractor shall print, insert and mail the PBP in letter form in a Standard window envelope which will also include a Standard return address envelope. Letter form shall be perforated above the remittance section of the letter. PBP invoices including Final Notices requires an USPS endorsement of "Forwarding Service Requested" on the envelope. Refer to pricing sheet for envelope type requirements.

The Contractor shall process the PBP data and mail the letter with a perforation on the bottom portion, in the required format, within one business day, from the date of receipt and shall be postmarked and delivered to the Post Office no later than the next business day.

7.0 LETTERS

CFX will transmit data electronically daily to the Contractor for printing and processing. Contractor will transmit address verification results to CFX including Undeliverable/Bad Addresses which will be updated and resent to Contractor for processing of file.

The scope of work involves receiving and processing E-PASS and Violation Enforcement data in electronic format and processing the letter format required by CFX. The Contractor shall print, insert and mail the letters. Letter form shall be perforated above the remittance section for any letter that requires submission.

7.1 Letter Types - The scope of work includes letters for E-PASS and VES. The following letters may be perforated where applicable and are printed and mailed daily, weekly, monthly or as needed.

- E-PASS Reclaimed Revenue - Daily
- E-PASS Credit Card Expiration (Perforated) - Monthly
- E-PASS Auto-Replenishment (Perforated) - Daily
- E-PASS Image Toll - Monthly
- VES Final Notice (Perforated) - Daily

7.2 Paper and Envelope Standards

- **Paper**

E-PASS - Standard white paper with a black and white logo.

Central Florida Expressway Authority (CFX) - Standard white paper with a black and white logo.

- **Envelopes**

E-PASS - Standard envelope, one window on left hand side, with black and white logo and return address.

Central Florida Expressway Authority (CFX) - Standard envelope, one window on left hand side, with black and white logo and return address.

Central Florida Expressway Authority (CFX) - Standard Return Address envelope.

Refer to Toll Operations Printing and Mailing Services Pricing Sheet for full description of material type requirements.

7.3 Production

7.3.1 Adapt print format for high-speed printing, simplex and duplex formats. Maintain throughput capability of at least 4,000 letters per hour with growth on existing equipment of up to 7,000 per distribution hour.

7.3.2 Contractor shall provide daily CFX's IT department via an approved and acceptable format of all undeliverable statements and letters processed through NCOA with bad addresses for proper handling.

8.0 OPERATIONS PLAN

The Contractor shall submit as part of the RFP an Operations Plan that addresses Quality Assurance (QA) and Standard Operating Procedures on how the services required will be provided and maintained. The plan, at a minimum, shall address how the Contractor will perform and provide the required services including how the Contractor will assure security of CFX data. The plan shall be updated as needed and show the personnel, computers, software, printing related equipment, facilities, and other support items needed for completion of the work.

9.0 TRANSITION

The Transition period shall commence upon Board approval and award. Contractor should work expeditiously to identify and resolve any potential concerns between Contractor and CFX prior to the effective contract date of July 1, 2020.

Prior to the start of the contract the Contractor shall attend weekly scheduled Transition meetings to discuss technical requirements, invoicing requirements, backup documentation requirement including reports and new/future action items. Meetings will be held at the CFX headquarters with CFX and Contractor's designees.

Through the terms of the contract, Contractor shall track and advise CFX on the amount of material available and that will be reordered. To avoid a surplus of material, any required purchase for materials during the last year of the contract will require CFX approval. The Contractor shall also submit annually templates of each type of envelope in use for any required revisions. At the end of the contract, any remaining material may be transferred to and accepted by the new Contractor. Unused amount of materials may be invoiced at cost when the material was purchased plus overhead by existing Contractor. CFX will submit authorization to dispose of any unused material by the Contractor if the amount of the material is minimal.

10.0 CONTINGENCY PLAN

The Contractor shall submit as part of the RFP a Contingency Plan for ensuring continued production if equipment and facility is not functional. The plan shall list all

redundant capabilities, e.g., more than one printer, more than one intelligent inserter. The plan shall also address disaster recovery for fire, flood, hurricane or other damage to production facilities, and utility services failure. Contractor shall inform CFX if their systems are breached and if CFX data is compromised or accessed without authorization. The Contingency Plan shall be updated on an annual basis and provided to CFX.

11.0 IN-HOUSE FACILITY

All printing, mail processing, inserting, sorting, packaging of mail, and affixing of postage shall be handled by the Contractor “in-house” and no part shall be subcontracted. The Contractor’s production facilities shall be located within a 35-mile radius of the CFX Headquarters Building. This requirement is necessary to ensure that if there is a technical problem with the delivery of a time sensitive electronic file, the file can be copied to a compact disc or flash drive and immediately hand delivered in a timely manner to the Contractor’s facility. CFX reserves the right to inspect the Contractor’s facilities, at any time, upon 24 hours prior notice to the Contractor.

12.0 REPORTS

The Contractor shall provide production reports for each component invoiced with the postage amount used for the month. The reports shall support the invoice issued by the Contractor and provide detailed and summary data.

It is the financial responsibility of the Contractor to provide accurate invoices and accompanying reports for processing. CFX shall not be held accountable for any financial billing discrepancies identified after an invoice is processed.

Reports required shall be formatted in a Microsoft Word and or Excel format, and CFX shall be given a hard copy, if desired or an electronic copy of each to the respective department(s). The reports issued by the Contractor shall provide detailed and summary data to the Contract Manager or designee.

12.1 E-PASS Statement – Manager, E-PASS & Plaza Operations

Print job shall be categorized by document type and date submitted. The production reports shall also identify all exceptions where a letter failed to print or mail, with an explanation for the exception and is to be transmitted electronically.

12.2 Uniform Traffic Citations, Pay By Plate, Pay By Plate Final Notice – Manager, E-PASS & Plaza Operations and VES Manager

Print jobs shall be categorized by document type, date order and submitted daily. The production reports shall also identify all exceptions where a letter

failed to print or mail, with an explanation for the exception and is to be transmitted electronically daily.

12.3 E-PASS Letters – Manager, E-PASS & Plaza Operations

Print jobs shall be categorized by letter type, date order and submitted daily. The production reports shall also identify all exceptions where a letter failed to print or mail, with an explanation for the exception and is to be transmitted electronically daily.

12.4 E-PASS and VES Postage – Manager, E-PASS & Plaza Operations and VES Manager

With submission of invoice, postage report shall identify monthly amount used. Also included as part of the report is the daily or monthly USPS postage statement for first class mail that lists the number of pieces, rate and postage affixed.

13.0 TRANSMITTAL TO CFX

Daily the Contractor shall send immediate confirmation for each file receipt and electronically send a final transmittal to CFX that lists the amount of each file transmittal printed and mailed. Transmittal shall also be electronically mailed to a distribution group at E-PASS which will be provided at the beginning of the project.

14.0 ADDITIONAL SERVICES

Additional services outside the scope of the Contract shall be negotiated and the resulting compensation for such services shall be implemented by a formal written agreement from CFX in accordance with the Contract. Such work shall not be performed or paid for until executed by CFX and the Contractor. Contractor agrees to assist CFX with Special Request or as needed for any audit activities conducted by internal/external auditors.

15.0 DISCLAIMER – NO GUARANTEE

Scope of Work outlined is not guaranteed and may be modified from time to time. CFX does not guarantee that all 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. CFX, at its option, may elect to have any of the services set forth herein performed by other Contractors or Authority staff.

END OF SCOPE OF SERVICES

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

TO: All Planholders of Record
FROM: Aneth O. Williams, Director of Procurement
DATE: October 23, 2019
SUBJECT: Toll Operations Printing and Mailing Service;
Contract No. 001604 – Addendum No. 1

This Addendum forms a part of the Contract Documents and modifies the original bidding documents dated October 2019, as noted below. Acknowledge receipt of this Addendum in the space provided on the Proposal form. Failure to do so may subject the bidder to disqualification. This Addendum consists of 2 pages and the following attachments: CFX Contract 001085 Pricing Sheet.

CHANGES TO THE SCOPE OF SERVICES

1. Scope of Services, Subsection 2.3, Coding Accuracy Support System (CASS) is hereby **amended** by adding the text that is underlined and deleting the text that is stricken as follows:

“**Coding Accuracy Support System (CASS)** - The Contractor shall be Coding Accuracy Support System (CASS) certified or have the capability of CASS-certifying CFX files. All data records received from CFX for all printing must be run through this process. The CASS process is necessary to meet the U.S. Postal service’s requirements for automated postage discounts. The Contractor shall take the address information for each data record and process it through this program. The program shall standardize and update the street information, city, state, and zip code to match the Post Office’s national database of address information. The program shall also append the +4 digits to the end of the zip code and create the ~~POSTNET barcode~~ USPS’ IMb (Intelligent Mail Barcode) required by the Post Office. All the data records shall be sorted into the correct station order for the Post Office. The Contractor shall provide CASS certification for each mailing.”

RESPONSES TO QUESTIONS RECEIVED

2. The following questions was received from a potential bidder of record. CFX’s response follows the questions.

Q001: You indicate there is a 24-hour turn-around time from receiving data. What time is data to be received for the projects listed? If data is not received until after 1pm on a Monday (for example), would the project be allowed to mail on Wednesday?

R: Data files are transmitted at different time intervals, typically before noon. Data received after 1 PM is required to be mailed by the next day business day.

Q002: If we are not responsible for financial transactions, is the Surety Bond still required?

R: Yes, see the Performance and Payment Bond (PPB-1 – PPB-4) for details.

Q003: If a vendor quotes with exceptions, are they disqualified from consideration?

R: See Proposal Submittal Requirements, Section 1.8.6, Contract Provisions.

Q004: Are you able to provide the breakdown of TC delivers pricing from the current contract?

R: See attached CFX Contract 001085 Pricing Sheet.

Q005: Please confirm under Scope of Services, 2.3, Coding Accuracy Support System (CASS) that USPS' IMb (Intelligent Mail Barcode) will be used which replaced the POSTNET barcode. It appears this verbiage is not the current nomenclature used by USPS.

R: See changes to Scope of Services.

Q006: Please clarify the Mobilization and Transition Plan scoring of Proposals. This is under Proposal Submittal Requirements, 4.2, Scoring by the Committee.

R: See Proposal Submittal Requirements, Section 3.1 E., Mobilization and Transition Plan.

END OF ADDENDUM NO. 1

E.1.

Chairman's Report

**THERE ARE NO
BACKUP MATERIALS
FOR THIS ITEM**

E.2.


Treasurer's Report

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

MEMORANDUM

TO: CFX Board Members

FROM: Michael Carlisle, Director of Accounting and Finance

DATE: November 22, 2019 

RE: October 2019 Financial Reports

Attached please find the October 2019 Financial Reports. Please feel free to contact me if you have any questions or comments with regard to any of these reports.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS
AND RELATED DOCUMENTS
FOR THE MONTH ENDING OCTOBER 31, 2019 AND YEAR-TO-DATE**

	FY 20 MONTH ACTUAL	FY 20 MONTH BUDGET	FY 20 YEAR-TO-DATE ACTUAL	FY 20 YEAR-TO-DATE BUDGET	FY 20 YEAR-TO-DATE VARIANCE	FY 20 YEAR-TO-DATE % VARIANCE	FY 19 - 20 YEAR-TO-DATE COMPARISON
REVENUES							
TOLLS*	\$ 43,565,542	\$ 39,972,285	\$ 162,238,406	\$ 159,321,621	\$ 2,916,785	1.8%	6.5%
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	\$ 912,112	822,005	3,380,385	2,778,925	601,460	21.6%	34.9%
TRANSPONDER SALES	\$ 76,097	62,246	303,193	253,576	49,618	19.6%	149.9%
OTHER OPERATING	\$ 134,187	68,379	518,847	238,834	280,012	117.2%	49.9%
INTEREST	\$ 666,441	457,189	3,398,424	2,382,874	1,015,550	42.6%	149.7%
MISCELLANEOUS	\$ 60,864	60,845	249,966	243,380	6,586	2.7%	-33.7%
TOTAL REVENUES	\$ 45,415,243	41,442,950	170,089,221	165,219,210	4,870,012	2.9%	8.3%
O M & A EXPENSES							
OPERATIONS	\$ 5,802,346	6,476,721	16,900,317	18,442,706	1,542,389	8.4%	10.2%
MAINTENANCE	\$ 1,818,304	1,972,982	3,676,466	4,088,898	412,432	10.1%	20.1%
ADMINISTRATION	\$ 714,210	776,284	2,382,487	2,638,359	255,872	9.7%	16.7%
OTHER OPERATING	\$ 24,723	228,483	31,772	285,604	253,832	88.9%	-90.0%
TOTAL O M & A EXPENSES	\$ 8,359,583	9,454,470	22,991,042	25,455,567	2,464,525	9.7%	10.7%
NET REVENUES BEFORE DEBT SERVICE	\$ 37,055,660	31,988,479	147,098,179	139,763,643	7,334,537	5.2%	7.9%
COMBINED NET DEBT SERVICE	\$ 15,223,317	15,250,757	60,574,180	60,995,847	421,667	0.7%	8.3%
NET REVENUES AFTER DEBT SERVICE	\$ 21,832,343	\$ 16,737,723	\$ 86,523,999	\$ 78,767,796	\$ 7,756,204	9.8%	7.6%

* All Plazas had tolls suspended in FY 20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19

The monthly Treasurer's Report is provided as interim information for management's use. It is prepared on a modified cash basis and has not been audited, nor should it be deemed final. For audited financial statements, please see CFX's Comprehensive Annual Financial Reports.

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
SUMMARY OF OPERATIONS, MAINTENANCE AND ADMINISTRATION
COMPARISON OF ACTUAL TO BUDGET FOR FISCAL YEAR 2019
FOR THE MONTH ENDING OCTOBER 31, 2019 AND YEAR-TO-DATE**

	<u>FY 2020 ACTUAL</u>	<u>FY 2020 BUDGET</u>	<u>VARIANCE</u>	<u>FY 20 YEAR-TO-DATE % VARIANCE</u>
Operations	\$ 16,900,317	\$ 18,442,706	\$ 1,542,389	8.4%
Maintenance	3,676,466	4,088,898	412,432	10.1%
Administration	2,382,487	2,638,359	255,872	9.7%
Other Operating	<u>31,772</u>	<u>285,604</u>	<u>253,832</u>	<u>88.9%</u>
Total O M & A	\$ 22,991,042	\$ 25,455,567	\$ 2,464,525	9.7%
 Capital Expenditures				
Operations	\$ -	\$ -	-	0.0%
Maintenance	30,086	10,000	(20,086)	-200.9%
Administration	<u>-</u>	<u>5,000</u>	<u>5,000</u>	<u>100.0%</u>
Total Capital Expenditures	\$ 30,086	\$ 15,000	\$ (15,086)	-100.6%

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**Central Florida Expressway Authority
Operations - Comparison of Actual to Budget
For the Four Months Ending October 31, 2019**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
Toll Operations	185,106	185,964	859	0.46%
Image Review	2,999,620	3,153,700	154,080	4.89%
Special Projects	23,300	56,335	33,035	58.64%
Information Technology	1,439,679	1,446,509	6,830	0.47%
E-PASS Service Center	5,740,640	6,635,757	895,117	13.49%
E-PASS Business Services	46,081	49,931	3,851	7.71%
Public Outreach/Education	369,385	383,025	13,640	3.56%
Subtotal CFX	<u>10,803,810</u>	<u>11,911,222</u>	<u>1,107,412</u>	<u>9.30%</u>
Plazas	6,096,507	6,531,484	434,977	6.66%
Subtotal Toll Facilities	<u>6,096,507</u>	<u>6,531,484</u>	<u>434,977</u>	<u>6.66%</u>
Total Operations Expenses	<u>16,900,317</u>	<u>18,442,706</u>	<u>1,542,389</u>	<u>8.36%</u>



**Central Florida Expressway Authority
Maintenance - Comparison of Actual to Budget
For the Four Months Ending October 31, 2019**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
Maintenance Administration	760,609	877,285	116,675	13.30%
Traffic Operations	641,036	784,479	143,443	18.29%
Routine Maintenance	2,304,907	2,437,134	132,227	5.43%
Total Maintenance Expenses	<u>3,706,552</u>	<u>4,098,898</u>	<u>392,346</u>	<u>9.57%</u>



**Central Florida Expressway Authority
Administration - Actual to Budget by Cost Center
For the Four Months Ending October 31, 2019**

	<u>YTD Actual</u>	<u>YTD Budget</u>	<u>Budget Variance</u>	<u>Variance Percentage</u>
General	274,664	279,042	4,377	1.57%
Administrative Services	677,795	727,831	50,037	6.87%
Communications	201,092	205,186	4,093	1.99%
Human Resources	64,962	105,894	40,931	38.65%
Supplier Diversity	59,774	68,660	8,887	12.94%
Accounting	494,675	527,205	32,531	6.17%
Construction Administration	18,262	20,393	2,131	10.45%
Risk Management	0	0	0	0.00%
Procurement	152,261	186,020	33,759	18.15%
Legal	282,376	328,144	45,768	13.95%
Internal Audit	28,620	47,000	18,380	39.11%
525 Magnolia	10,128	9,073	(1,055)	-11.63%
Engineering	17,778	20,689	2,911	14.07%
Records Management	100,100	118,223	18,122	15.33%
Grand Total Expenses	<u><u>2,382,487</u></u>	<u><u>2,643,359</u></u>	<u><u>260,872</u></u>	<u><u>9.87%</u></u>

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS
PREVIOUS YEAR BUDGET TO ACTUAL COMPARISON
FOR THE MONTH ENDING OCTOBER 31, 2019 AND YEAR-TO-DATE**

	FY 20 YEAR-TO-DATE ACTUAL	FY 20 YEAR-TO-DATE BUDGET	FY 20 YEAR-TO-DATE VARIANCE	FY 19 YEAR-TO-DATE ACTUAL	FY 19 YEAR-TO-DATE BUDGET	FY 19 YEAR-TO-DATE VARIANCE	YEAR-TO-DATE VARIANCE COMPARISON
REVENUES							
TOLLS*	\$ 162,238,406	\$ 159,321,621	\$ 2,916,785	\$ 152,389,507	\$ 150,260,581	\$ 2,128,926	\$ 787,859
FEES COLLECTED VIA UTN/UTC'S AND PBP'S	3,380,385	2,778,925	601,460	2,506,215	2,092,612	413,603	187,857
TRANSPONDER SALES	303,193	253,576	49,618	121,350	89,259	32,091	17,527
OTHER OPERATING	518,847	238,834	280,012	346,188	347,001	(813)	280,825
INTEREST	3,398,424	2,382,874	1,015,550	1,361,163	940,000	421,163	594,387
MISCELLANEOUS	<u>249,966</u>	<u>243,380</u>	<u>6,586</u>	<u>376,958</u>	<u>358,529</u>	<u>18,429</u>	<u>(11,843)</u>
TOTAL REVENUES	170,089,221	165,219,210	4,870,012	157,101,381	154,087,982	3,013,399	1,856,613
O M & A EXPENSES							
OPERATIONS	16,900,317	18,442,706	1,542,389	15,341,000	16,495,840	1,154,840	387,549
MAINTENANCE	3,676,466	4,088,898	412,432	3,061,390	3,784,304	722,914	(310,482)
ADMINISTRATION	2,382,487	2,638,359	255,872	2,041,785	2,470,380	428,595	(172,723)
OTHER OPERATING	<u>31,772</u>	<u>285,604</u>	<u>253,832</u>	<u>317,993</u>	<u>357,839</u>	<u>39,846</u>	<u>213,986</u>
TOTAL O M & A EXPENSES	22,991,042	25,455,567	2,464,525	20,762,168	23,108,363	2,346,195	118,330
NET REVENUES BEFORE DEBT SERVICE	147,098,179	139,763,643	7,334,537	136,339,213	130,979,619	5,359,594	1,974,943
COMBINED NET DEBT SERVICE	60,574,180	60,995,847	421,667	55,916,730	56,261,397	(344,667)	766,334
NET REVENUES AFTER DEBT SERVICE	<u>\$ 86,523,999</u>	<u>\$ 78,767,796</u>	<u>\$ 7,756,204</u>	<u>\$ 80,422,483</u>	<u>\$ 74,718,222</u>	<u>\$ 5,704,261</u>	<u>\$ 2,051,943</u>

* All Plazas had tolls suspended in FY 20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19

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**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
CALCULATION OF NET REVENUES AS DEFINED BY THE BOND RESOLUTIONS
PREVIOUS YEAR COMPARISON
FOR THE MONTH ENDING OCTOBER 31, 2019 AND YEAR-TO-DATE**

	FY 20 MONTH ACTUAL	FY 19 MONTH ACTUAL	FY 19 - 20 SAME MONTH COMPARISON	FY 20 YEAR-TO-DATE ACTUAL	FY 19 YEAR-TO-DATE ACTUAL	FY 19 - 20 YEAR-TO-DATE COMPARISON
REVENUES						
TOLLS*	\$ 43,565,542	\$ 38,065,602	\$ 5,499,940	\$ 162,238,406	\$ 152,389,507	\$ 9,848,899
FEEES COLLECTED VIA UTN/UTC'S AND PBP'S	912,112	965,393	(53,281)	3,380,385	2,506,215	874,170
TRANSPONDER SALES	76,097	29,303	46,794	303,193	121,350	181,843
OTHER OPERATING	134,187	106,366	27,821	518,847	346,188	172,659
INTEREST	666,441	432,746	233,695	3,398,424	1,361,163	2,037,261
MISCELLANEOUS	60,864	86,479	(25,615)	249,966	376,958	(126,992)
TOTAL REVENUES	45,415,243	39,685,889	5,729,354	170,089,221	157,101,381	12,987,840
O M & A EXPENSES						
OPERATIONS	5,802,346	5,064,048	738,298	16,900,317	15,341,000	1,559,317
MAINTENANCE	1,818,304	1,579,900	238,404	3,676,466	3,061,390	615,076
ADMINISTRATION	714,210	543,017	171,193	2,382,487	2,041,785	340,702
OTHER OPERATING	24,723	233,448	(208,725)	31,772	317,993	(286,221)
TOTAL O M & A EXPENSES	8,359,583	7,420,413	939,170	22,991,042	20,762,168	2,228,874
NET REVENUES BEFORE DEBT SERVICE	37,055,660	32,265,476	4,790,184	147,098,179	136,339,213	10,758,966
COMBINED NET DEBT SERVICE	15,223,317	14,007,103	1,216,214	60,574,180	55,916,730	4,657,450
NET REVENUES AFTER DEBT SERVICE	\$ 21,832,343	\$ 18,258,373	\$ 3,573,970	\$ 86,523,999	\$ 80,422,483	\$ 6,101,516

* All Plazas had tolls suspended in FY 20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19

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E.3.

Executive Director's Report

**Executive Director Report
December 2019**

DASHBOARD

Wrong Way Driving Program

In October, there were 18 wrong way driving detections system-wide, with 16 of the 18 detections resulting in documented turn arounds. Details of the remaining events are listed below:

SR 414 WB Exit 9 at US 441, Tuesday 10/8/19 2:36 AM

A white SUV was observed traveling on the ramp in the wrong direction. The Regional Traffic Management Center observed the vehicle entering the mainline and turn in the correct direction of travel. FHP was notified. There were no citations or crashes associated with this event.

SR 408 WB Exit 19 at Dean Rd, Monday 10/28/2019 6:05 AM

A black truck was observed traveling up the ramp on the grass shoulder in the wrong direction. The Regional Traffic Management Center notified FHP and the Road Rangers. There were no citations or crashes associated with this event.

CUSTOMER SERVICE

Enterprise Holdings

CFX met with Enterprise Holdings (Enterprise, National and Alamo Rental Car) on November 19, 2019 to discuss the successes and lessons learned from the Visitor Toll Pass Program. Enterprise Holdings comprises 44% of the rental car market at the Orlando International Airport. A follow-up meeting is planned for January to explore next steps and additional partnerships with Enterprise.

Florida Department of Transportation

Chairman Madara and I met with FDOT Secretary Kevin Thibault and Turnpike Executive Director Nicola Liquori on November 15, 2019 to discuss Central Florida toll road management. Secretary Thibault and Executive Director Liquori expressed a willingness to work with CFX to provide a more consistent and seamless customer experience on SR 417, SR 429 and SR 528 through signage, expressway configurations, and customer service programs. A meeting is planned for January to begin detailed discussions on these issues.

TRANSPORTATION PARTNERSHIPS

Poinciana Parkway

CFX purchased the Poinciana Parkway from Osceola County on December 5, 2019. The Poinciana Parkway is now a part of the CFX expressway system. Selection of design consultants for the widening and extension of Poinciana Parkway will begin in early 2020.

Virgin Trains Update

There have been scheduling conflicts with Virgin Trains representatives and FDOT officials for technical meetings this past month. CFX will continue to work with the Florida Department of Transportation and local transportation leaders to determine next steps for the Orlando to Tampa Virgin Train service. Track construction from Brevard County to the Orlando International Airport continues to progress.

CFX Industry Forum

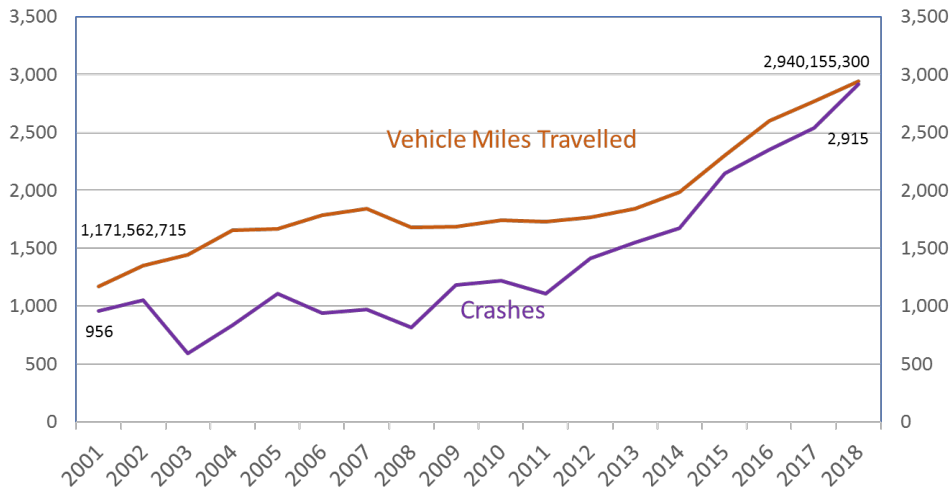
The Central Florida Expressway Authority 2020 Industry Forum will be held the morning of January 9, 2020 at the CFX headquarters building. Project procurement opportunities for the upcoming year will be presented.

SAFETY

Florida Highway Patrol

The Florida Highway Patrol has had eight troopers (one Sergeant and 7 troopers) dedicated to the CFX system since 2000. Since that time, traffic has more than doubled and crashes have tripled.

**ANNUAL VEHICLE MILES TRAVELLED AND REPORTED
CRASHES ON THE CFX SYSTEM
(With 8 Dedicated FHP Troopers)**



Two FHP troopers patrol the CFX system from 6:00 am to 10:00 pm, 7 days a week. The budget for the CFX FHP troop is approximately \$1.2 million a year.

CFX staff anticipates a request to add another 8 FHP troopers to the CFX system for the FY 2020/2021 budget year to improve FHP crash response times. Governor Ron DeSantis has agreed to include the additional positions in the Governor’s proposed budget request for FY 2020/2021, which is anticipated to be reimbursed by CFX.

Road Ranger Program

CFX Road Ranger service began as a shared service with Florida's Turnpike in 2001 with 5 trucks during peak hours. In 2002, the hours were expanded from 6:00 am to 8:00 pm, 7 days/week. In September 2007, one additional truck was added. In January 2019, CFX discontinued shared service with the Turnpike and funded 6 trucks exclusively for the CFX system from 6:00 am to 10:00 pm, 7 days/week.

The Road Ranger Program helps keep the expressways clear of debris, provides free roadside assistance to stranded motorists, and assists first responders and FHP with traffic management during crashes. Approximately \$1.7 million is budgeted annually for the Road Ranger Program. There has been a 75% increase in CFX vehicle miles travelled since 2008 and CFX has provided the additional Road Ranger service hours for our customers as traffic has increased.

CURRENT ROAD RANGER SAFETY SERVICE PATROL

- 6 TRUCKS
- 6 A.M. – 10 P.M.
- 7 DAYS A WEEK – 365 DAYS/YEAR
 1. **SECTOR 1** (I-DRIVE – ALOMA)
 2. **SECTOR 2** 528 (BOGGY CREEK – 520)
 3. **SECTOR 3** 408 (EAST 50 – WEST 50)
 4. **SECTOR 4** 429 (SIEDEL – CR 437A)
 5. **SECTOR 5** WEKIVA PARKWAY, 414, 453,451



PRESENTATIONS

November 22: Florida Automated Vehicles Summit

MEETINGS

November 18: Osceola Parkway PD&E Environmental Advisory Group
November 18: Osceola Parkway PD&E Project Advisory Group
November 21: Florida Automated Vehicle Partnership
November 22: I-4 Ultimate Agency Coordination
November 25: District 5 Regional Traffic Management Center Tour
November 26: Florida Automated Vehicle Summit 2020 Venue
November 27: SR 414 Direct Connect
December 4: MetroPlan Community Advisory Committee
December 5: MetroPlan Municipal Advisory Committee
December 5: LYNX Governing Board
December 5: District 2 Orange County Transportation Town Hall
December 6: MetroPlan Technical Advisory Committee
December 10: District 1 Orange County Transportation Town Hall

December 11: MetroPlan Governing Board
December 11: Lake Sumter MPO Governing Board

EVENTS

November 20-22: 2019 Florida Automated Vehicles Summit
December 11: Seminole Chamber Lunch & Learn

PERFORMANCE DASHBOARD

OCTOBER 2019

Fiscal year runs from July 1-June 30

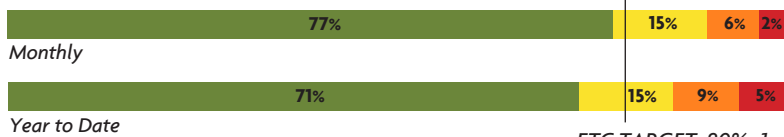
CUSTOMER SERVICE

Service Center	Activity		Monthly Avg. Wait Time	
	Actual	6 mo. Avg	Actual	Target
Service Center	8,089	7,985	3:30	<5m

SERVICE CENTER: MINUTE INTERVALS <5 ■ 5-6 ■ 6-7 ■ 7-8 ■ 8-9 ■ 9+ ■

Call Center	Actual	6 mo. Avg	Monthly Avg. Wait Time	Target
Call Center	116,188	106,136	0:45	<1m

CALL CENTER: % MINUTE INTERVALS <1 ■ 1-3 ■ 3-5 ■ 5+ ■

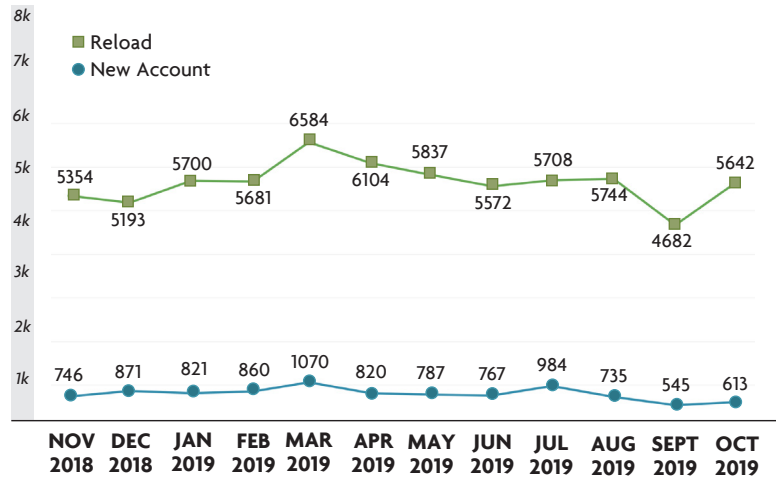


WRONG WAY DRIVING (WWD)

Month	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
Total Vehicles Detected	14	10	16	14	14	20	14	18
Documented Turn Arouds	10	10	15	13	14	18	13	16

RELOAD CUSTOMER SERVICE LANE ACTIVITY

Monthly averages: 802 E-PASS sales and 5,650 E-PASS account reloads



PROGRESS OF MAJOR CONSTRUCTION PROJECTS

	Contract (millions)	Spent (millions)	% Time	% Spent	VAR	Contract Completion Date
SR 408/SR 417 Interchange (Phase II)	\$67.9	\$63.0	86%	93%	█	March 2020
SR 408 Widening from SR 417 to Alafaya Trail	\$78.8	\$76.0	98%	97%	█	December 2019
SR 417 Widening from Econlockhatchee to Seminole Co.	\$44.4	\$31.0	65%	69%	█	June 2020
Toll System Replacement	\$54.4	\$31.3	72%	58%	█	July 2021

LEGEND: % Time - % Spent ≤ 10 █ 11-20 █ ≥ 21 █

FINANCIALS

FINANCIALS

FY to Date	Actual	Budget	VAR
Total Revenue	\$170.1	\$165.2	3% █
OM&A Expenses	\$23.0	\$25.5	10% █
Net Revenue	\$86.5	\$78.8	10% █

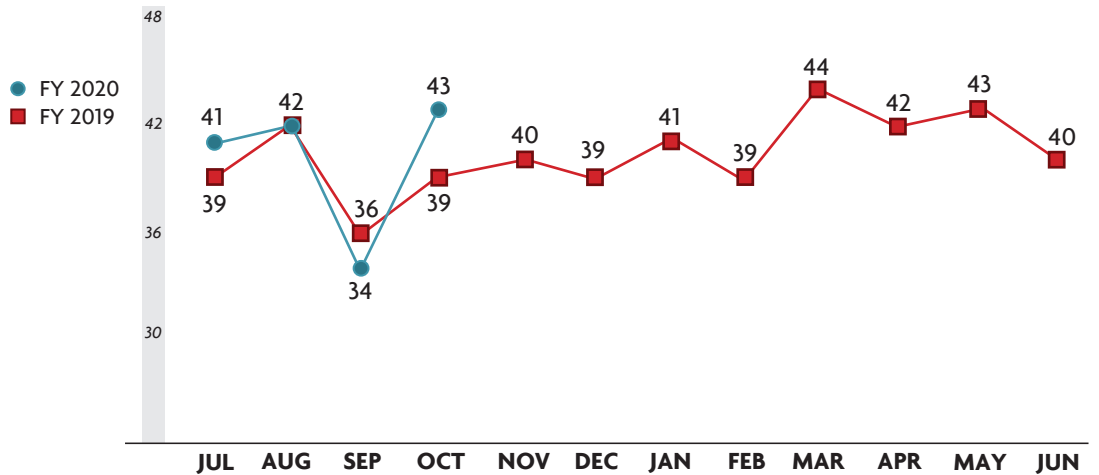
LEGEND: >/= 0 █ -0.1 to -10 █ </= -10 █

DEBT SERVICE

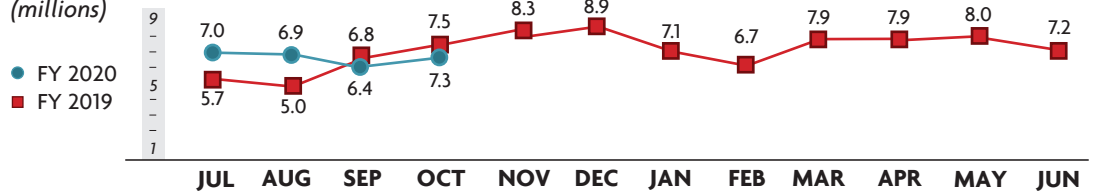
FY to Date	Actual	Budget
Senior Lien	2.34	2.31 █
Subordinate Lien	2.24	2.21 █

LEGEND: >1.45 █ >1.21 to 1.44 █ </= 1.2 █

TOTAL REVENUE TRANSACTIONS ON CFX SYSTEM (millions)



UNPAID IN LANE TRANSACTIONS (millions)



*All Plazas had tolls suspended in FY 20 due to Hurricane Dorian from the afternoon of 9/1/19 through 9/5/19.

F. 1.

The logo for the Central Florida Expressway Authority is centered in the upper portion of the image. It consists of a white rectangular box with two horizontal orange bars, one above and one below the text. The text is arranged in four lines: 'CENTRAL' and 'FLORIDA' in black, 'EXPRESSWAY' in orange, and 'AUTHORITY' in black. The background of the entire slide is a photograph of a multi-level highway interchange with concrete overpasses and a grassy embankment under a clear blue sky.

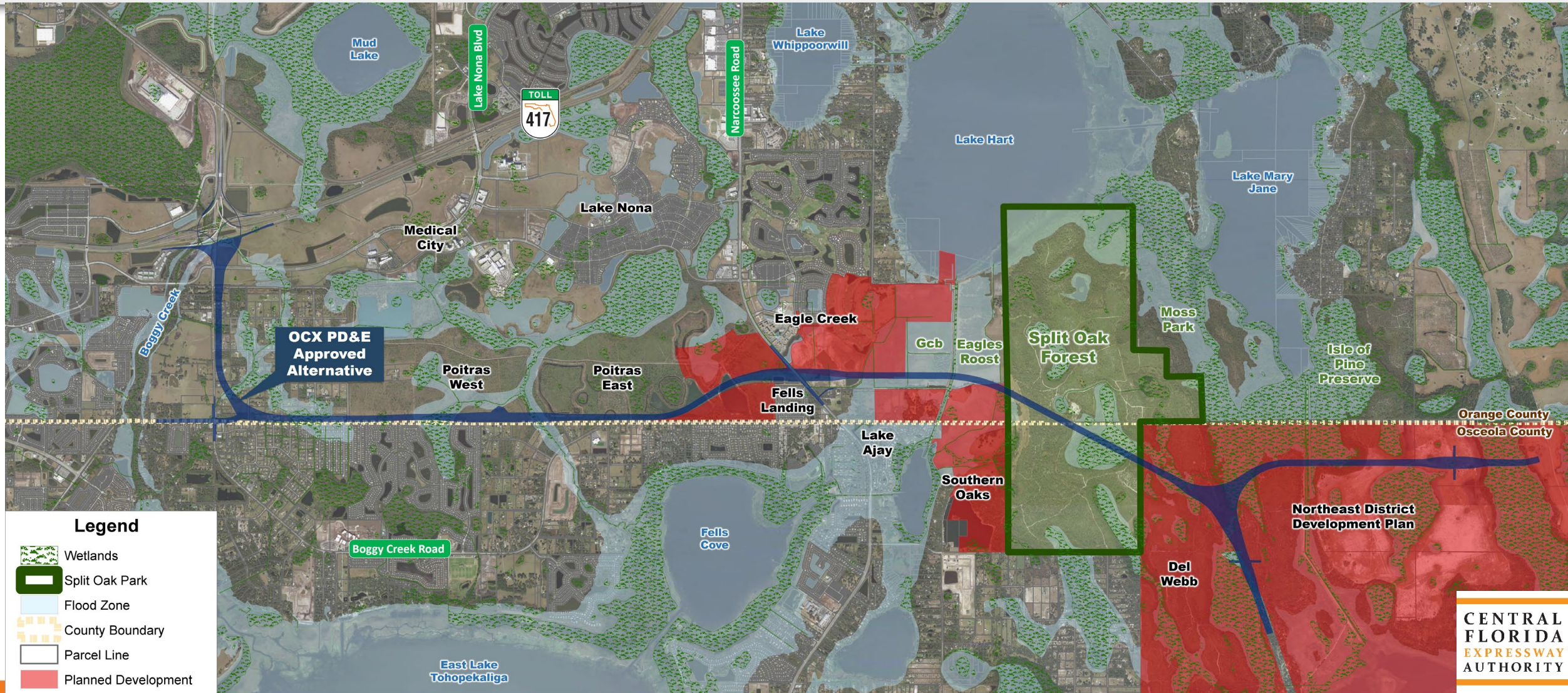
**CENTRAL
FLORIDA
EXPRESSWAY
AUTHORITY**

Osceola Parkway Extension Project Development & Environment Study Re-evaluation

Glenn Pressimone, Chief of Infrastructure and Dan Kristoff, RS&H

— December 12, 2019 —

Osceola County Expressway Authority (OCX) Approved PD&E Study Alternative



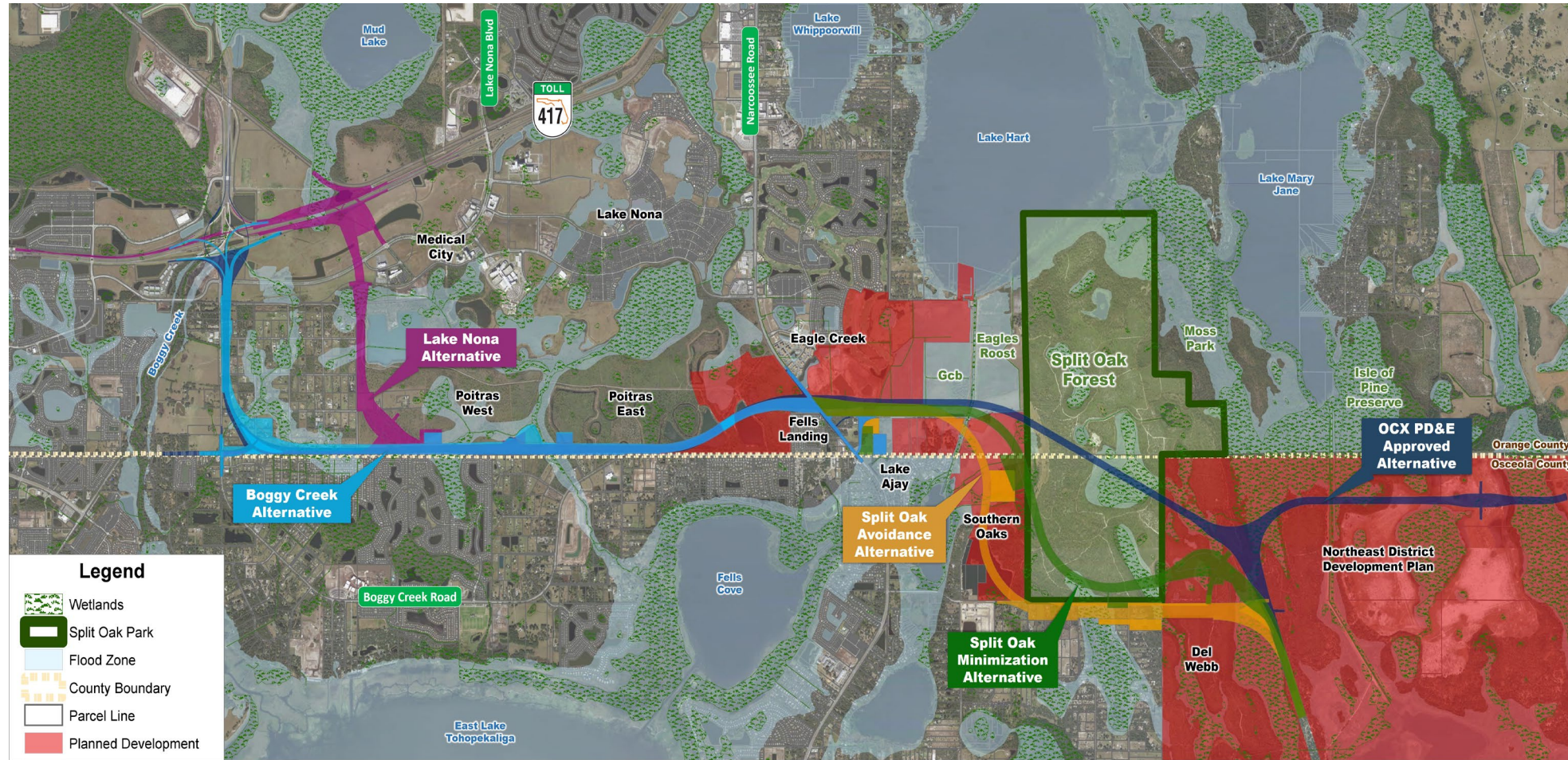
Re-Evaluation Alternatives Considered

West Segment

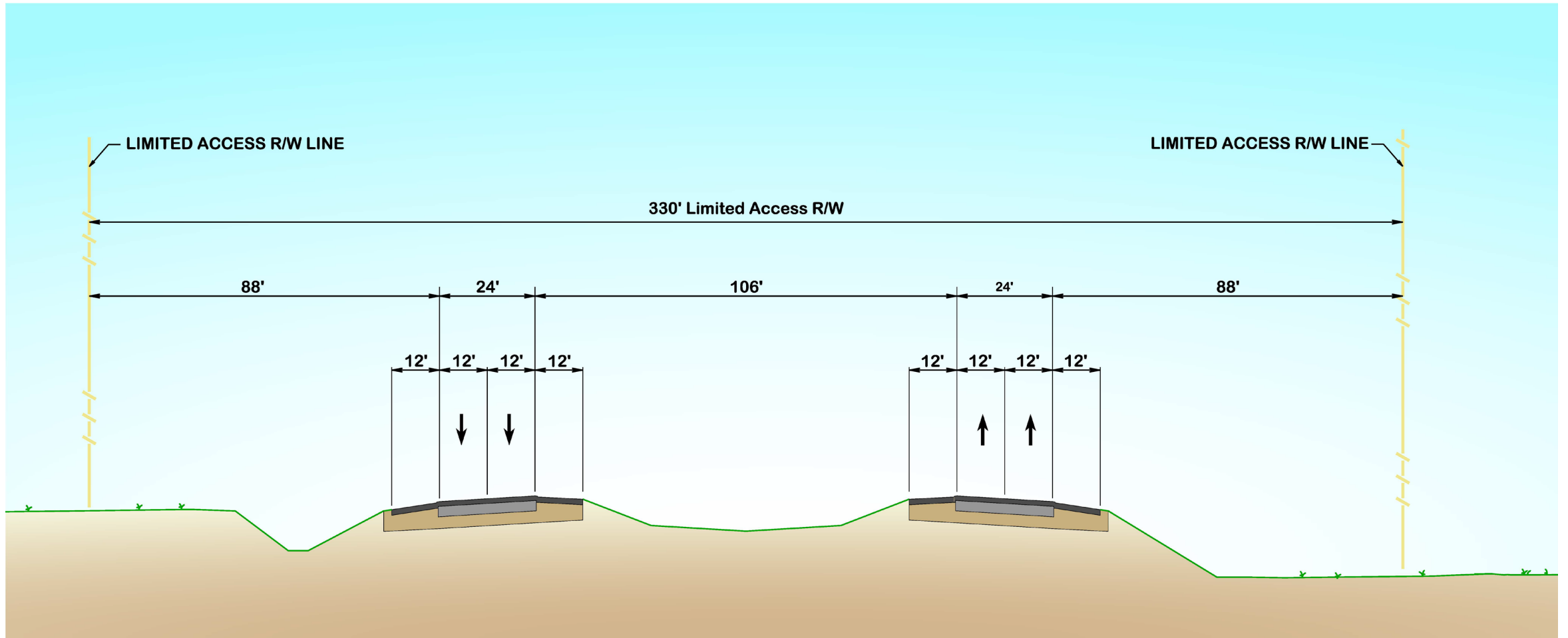
- Boggy Creek
- Lake Nona

East Segment

- Split Oak Avoidance
- Split Oak Minimization

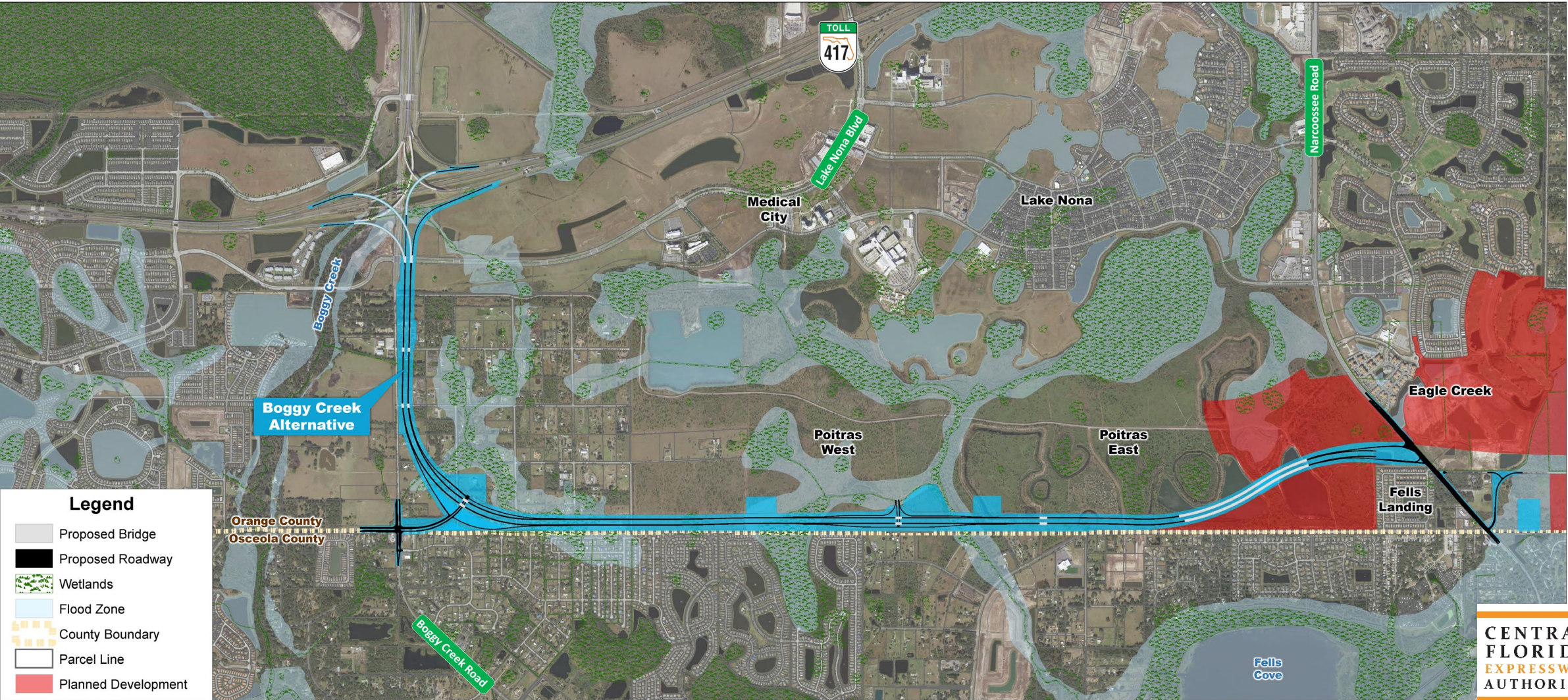


Typical Section



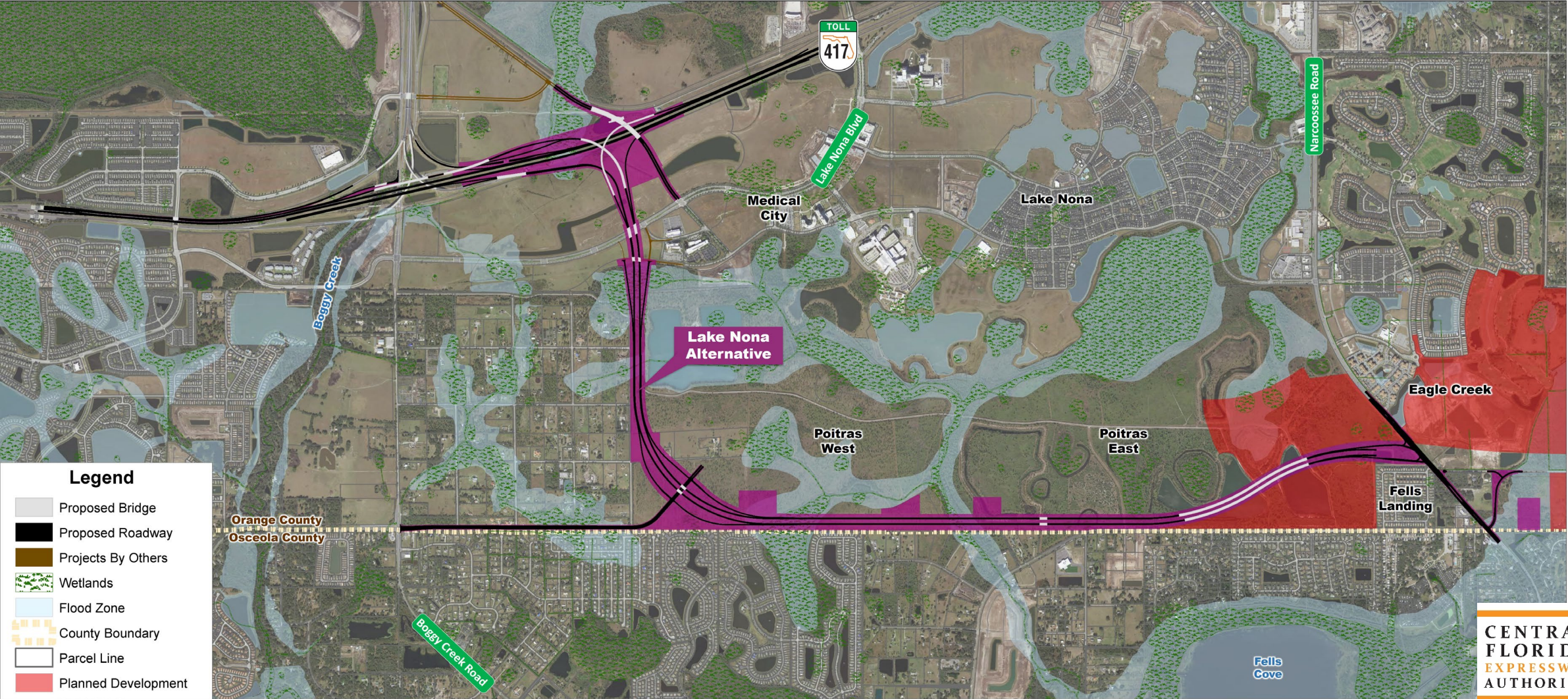
Osceola Parkway Extension

West Segment – Boggy Creek Alternative



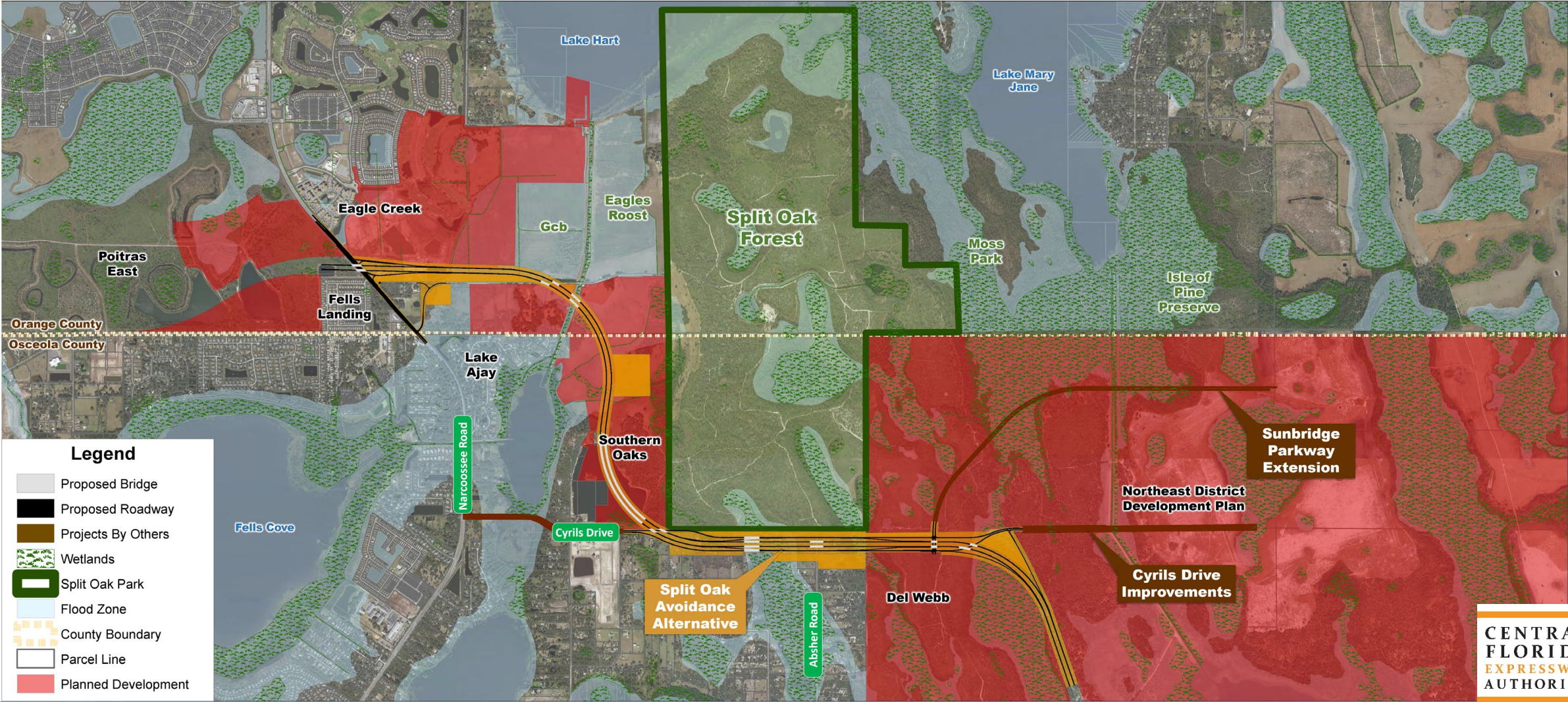
Osceola Parkway Extension

West Segment – Lake Nona Alternative



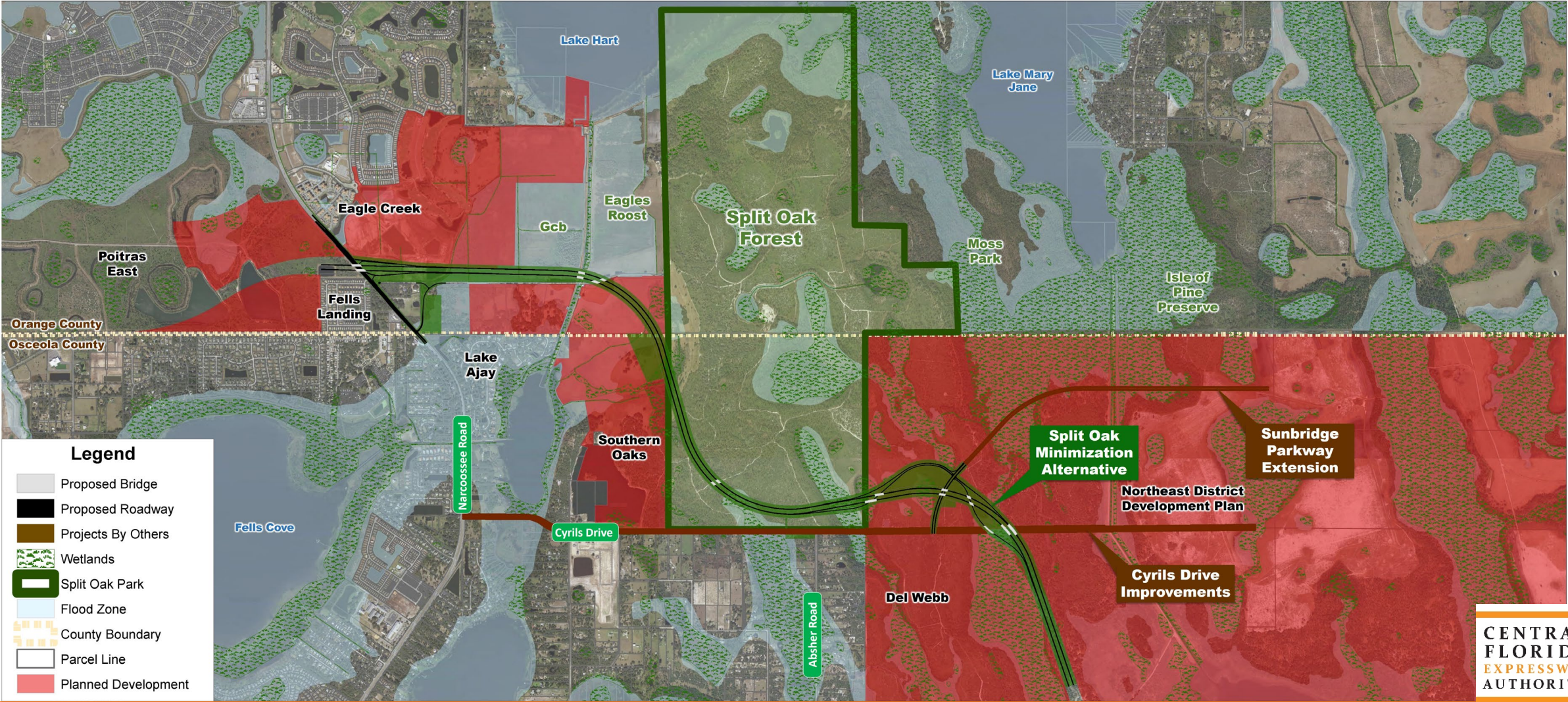
Osceola Parkway Extension

East Segment – Split Oak Avoidance Alternative



Osceola Parkway Extension

East Segment – Split Oak Minimization Alternative



CFX Public Involvement

Concept, Feasibility & Mobility Study

- 6 Public Meetings - Attendance: 1,300+
- 2 Project Advisory Group Meetings
- 2 Environmental Advisory Group Meetings
- More than 4 Split Oak Working Group Meetings
- Numerous Project Stakeholders, HOA and Elected Officials meetings/briefings

PD&E Study Re-Evaluation

- Presentations, briefings and meetings:
 - Project Stakeholders, HOAs, local and state officials
 - Orange and Osceola County Commissioners
- Project Advisory Group - Nov. 18
- Environmental Advisory Group - Nov. 18
- Public Workshop - Nov. 19



CFX Public Workshop



Attendance: 433

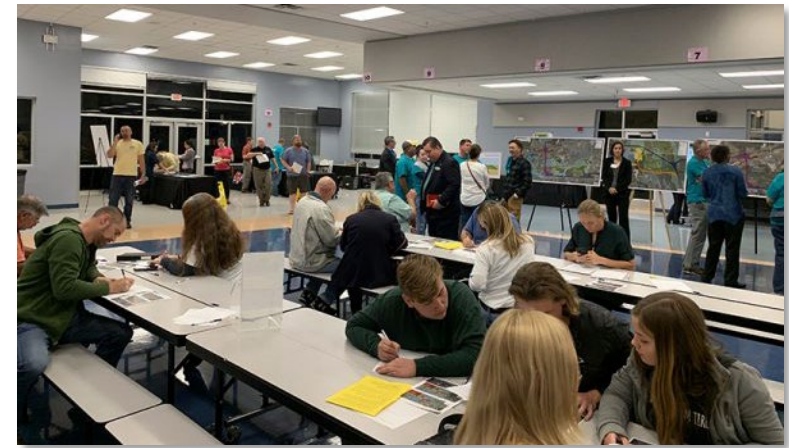
Comments 293

180 support

92 opposed

21 other

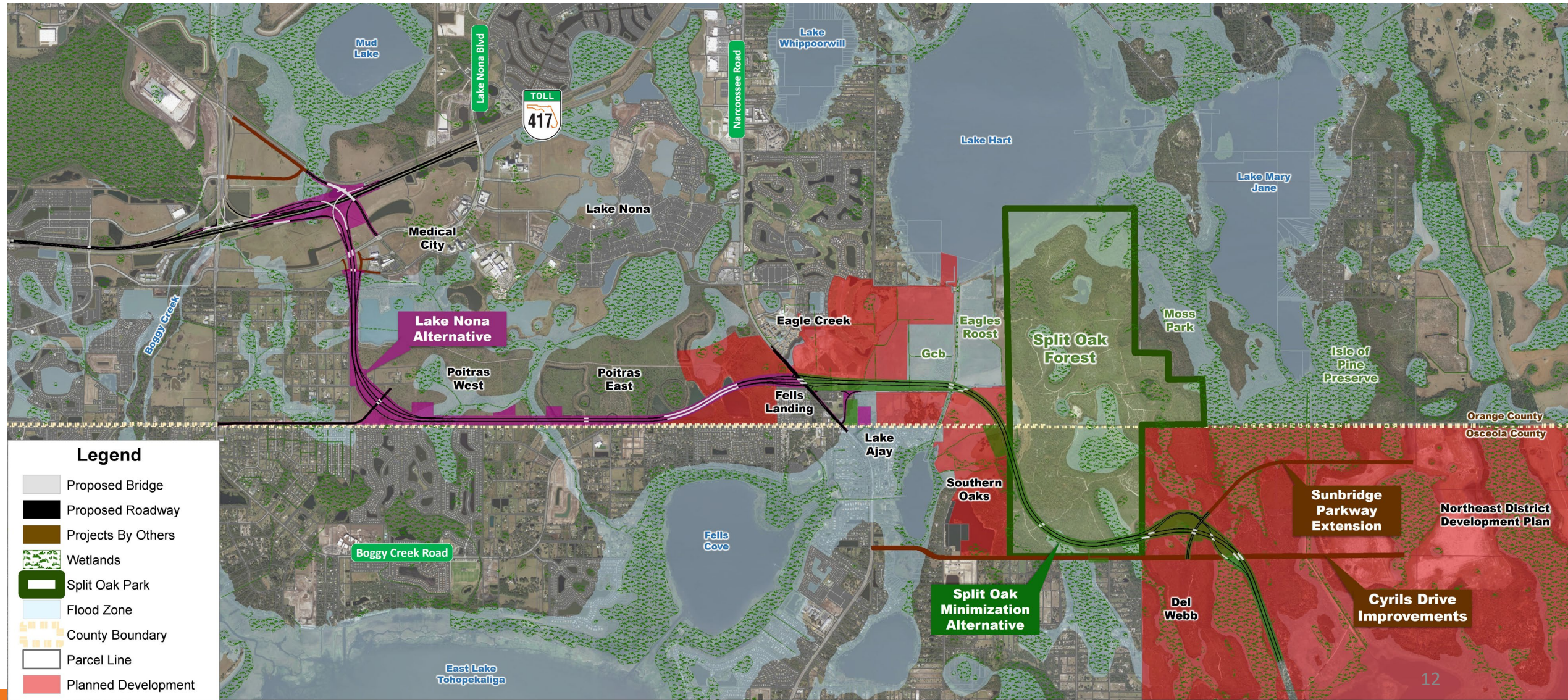
Period of Nov. 19 - 30, 2019



Working Group Request for Commitments

- Relocate water treatment plant.
- Move alignment farther south and west to:
 - + Lessen loss of good habitat
 - + Distance it from scrub jay area
 - + Protect ability to manage land by prescribed burns
- Ensure access to the Florida National Scenic Trail through the corridor and Moss Park.
- Have reputable land trust or government agencies hold conservation property and restrict its future use through recorded conservation easements.
- Prevent third-party conservation offer from diminishing Tavistock's and Deseret Ranches' mitigation requirements.
- Provide matching acreage for the mitigation credits that were sold for gopher tortoise habitat.
- Ensure dedicated land is of high quality to replace SOFWEA land impacted by roadway.
- Incorporate the 102-acre pine area off Lake Mary Jane Road into the conservation picture.
- Ensure the floodplain compensation area does not affect quality lands and does not destroy habitat.
- Break down uplands and wetlands in both impact area and remainder for each alternative.
- Assure linkage of Split Oak, Moss Park, Isle of Pines Preserve and the newly dedicated lands to regional wildlife corridors.
- Provide adequate funding for restoration and management dedicated land to ensure that impacted portions are returned and maintained as high quality habitat.

Preferred Alternative



Estimated Project Cost

Construction/Engineering/Administration

\$614,225,000

Right-of-Way

\$175,400,000

TOTAL ESTIMATED PROJECT COST

\$789,625,000

Note: Cost estimate for right-of-way based on terms of pending agreement

Viability of Preferred Alternative

Preferred Alternative	
Estimated Project Cost	\$789,625,000
Projected Toll Revenue and Partner Contributions	\$393,000,000
Viability Percentage	49.8%

Recommended Motion

Approval of the Osceola Parkway Extension PD&E Study Re-evaluation and the Preferred Alternative.

The image shows a multi-level highway interchange with concrete overpasses and support pillars. A dark SUV is driving on the ground level road. A grassy embankment is visible on the right side. The sky is clear and blue. The logo is centered in the upper half of the image, featuring the text 'CENTRAL FLORIDA EXPRESSWAY AUTHORITY' in a serif font, with 'EXPRESSWAY' in orange and the other words in black. The logo is framed by two horizontal orange bars.

**CENTRAL
FLORIDA
EXPRESSWAY
AUTHORITY**

F. 2.

The logo for the Central Florida Expressway Authority is centered in the upper portion of the image. It consists of a white rectangular box with two horizontal orange bars, one above and one below the text. The text is arranged in four lines: 'CENTRAL' and 'FLORIDA' in black, 'EXPRESSWAY' in orange, and 'AUTHORITY' in black. The background of the entire image is a photograph of a multi-level highway interchange with concrete overpasses and a grassy embankment under a clear blue sky.

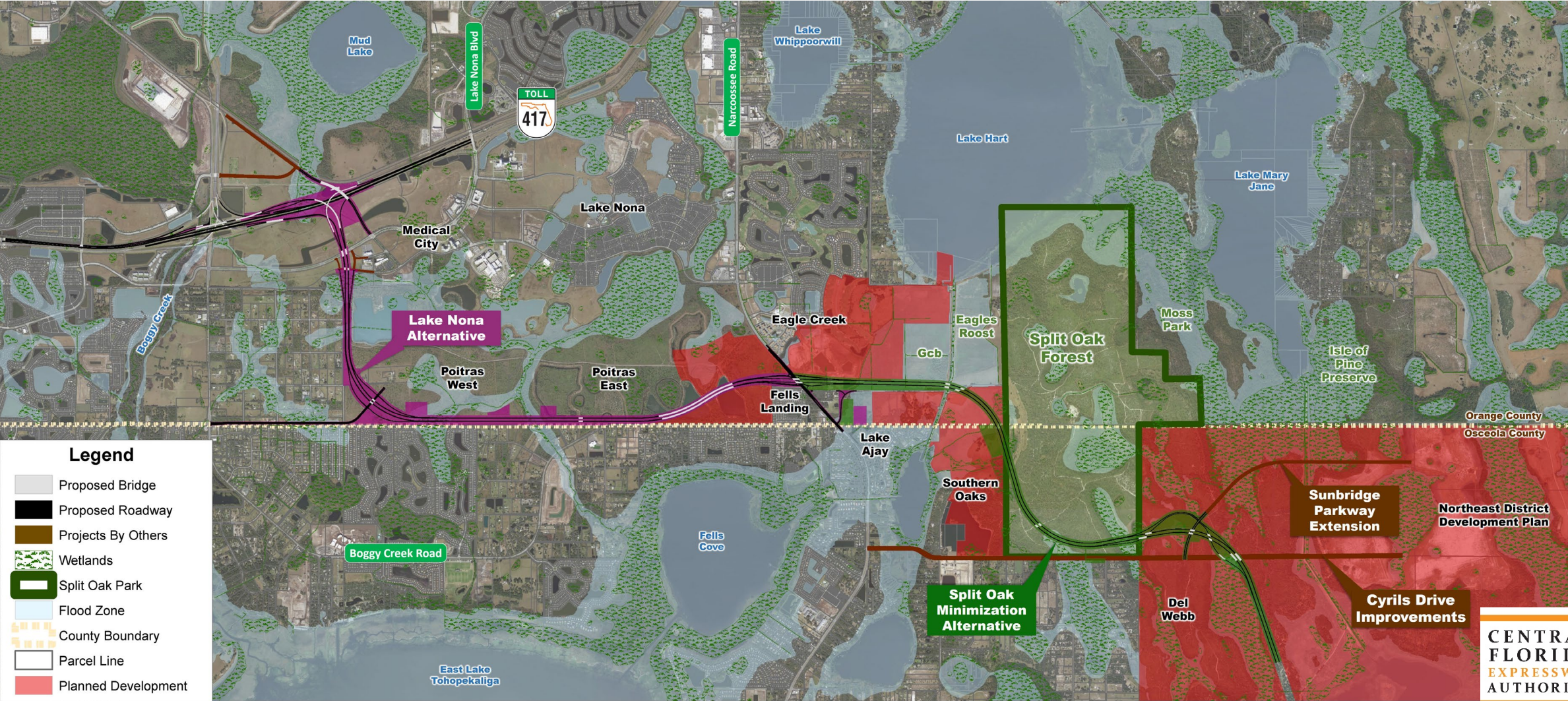
**CENTRAL
FLORIDA
EXPRESSWAY
AUTHORITY**

Osceola Parkway Extension Right-of-Way & Conservation Lands Agreements

Glenn Pressimone, Chief of Infrastructure

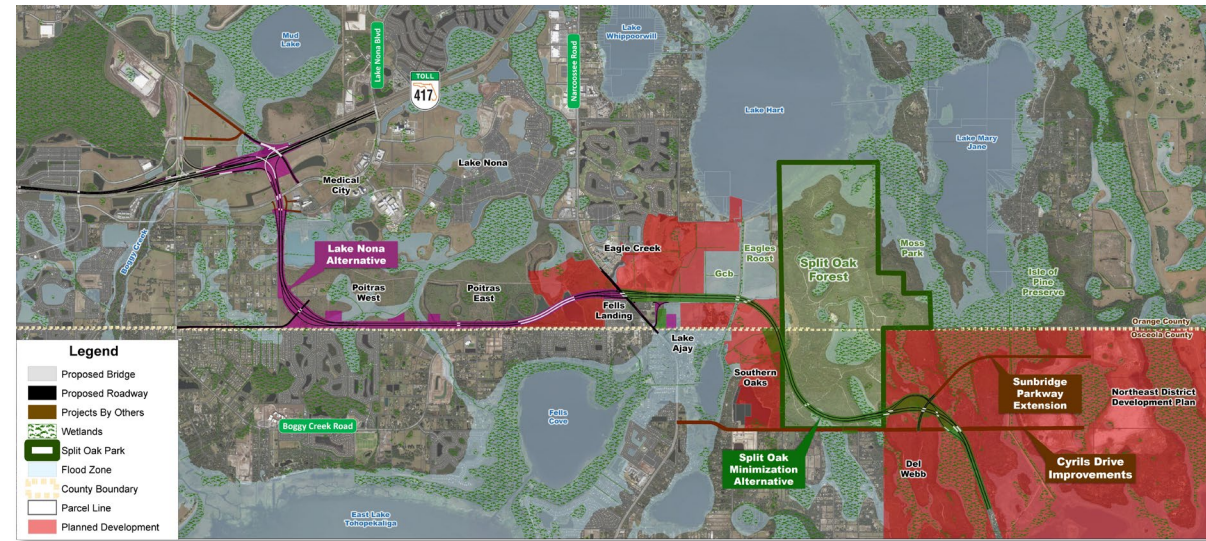
— December 12, 2019 —

Osceola Parkway Extension Preferred Alternative



HIGHLIGHTS: Right-of-Way Acquisition Agreement

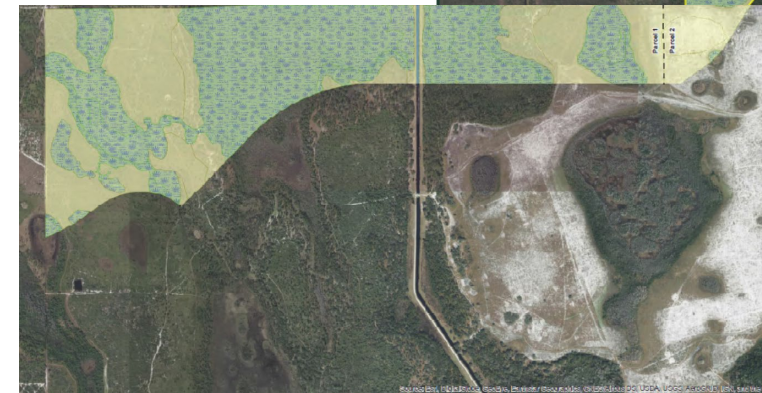
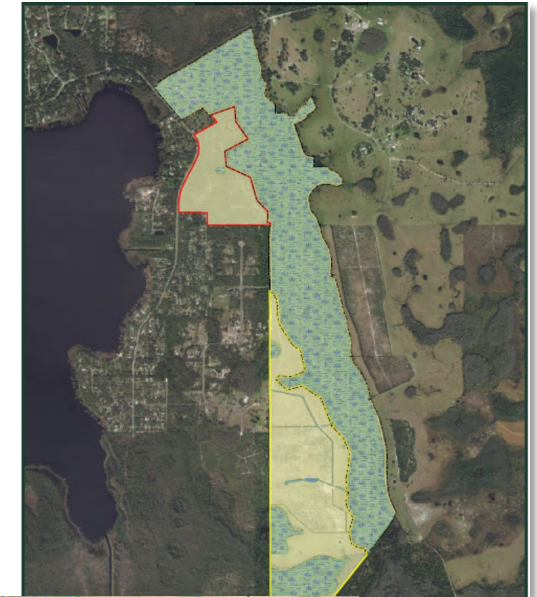
- CFX, Suburban Land Reserve, Inc. and Tavistock
- Provides for the purchase of approximately 480 acres of project right-of-way
- Purchase price of \$93 million
- Contingent upon:
 - Split Oak Minimization as the Preferred Alternative.
 - Closing of the Agreement to Convey Conservation Lands.



HIGHLIGHTS:

Agreement To Convey Conservation Lands

- CFX, Suburban Land Reserve, Inc. and Tavistock
- Donation and conveyance of approximately 1,550 acres of land to be put into conservation.
- Contingent upon:
 - Split Oak Minimization as the Preferred Alternative.
 - CFX securing final approvals for constructing and operating the Osceola Parkway Extension



Orange County

+/- 968 Acres

Legend

 Roberts Island Slough

 CS-1

 CS-2

Roberts Island Slough (Orange County)

 Uplands (42.18 ac)

 Wetlands (507.69 ac)


CS-1 (Orange County)


 Uplands (101.65 ac)

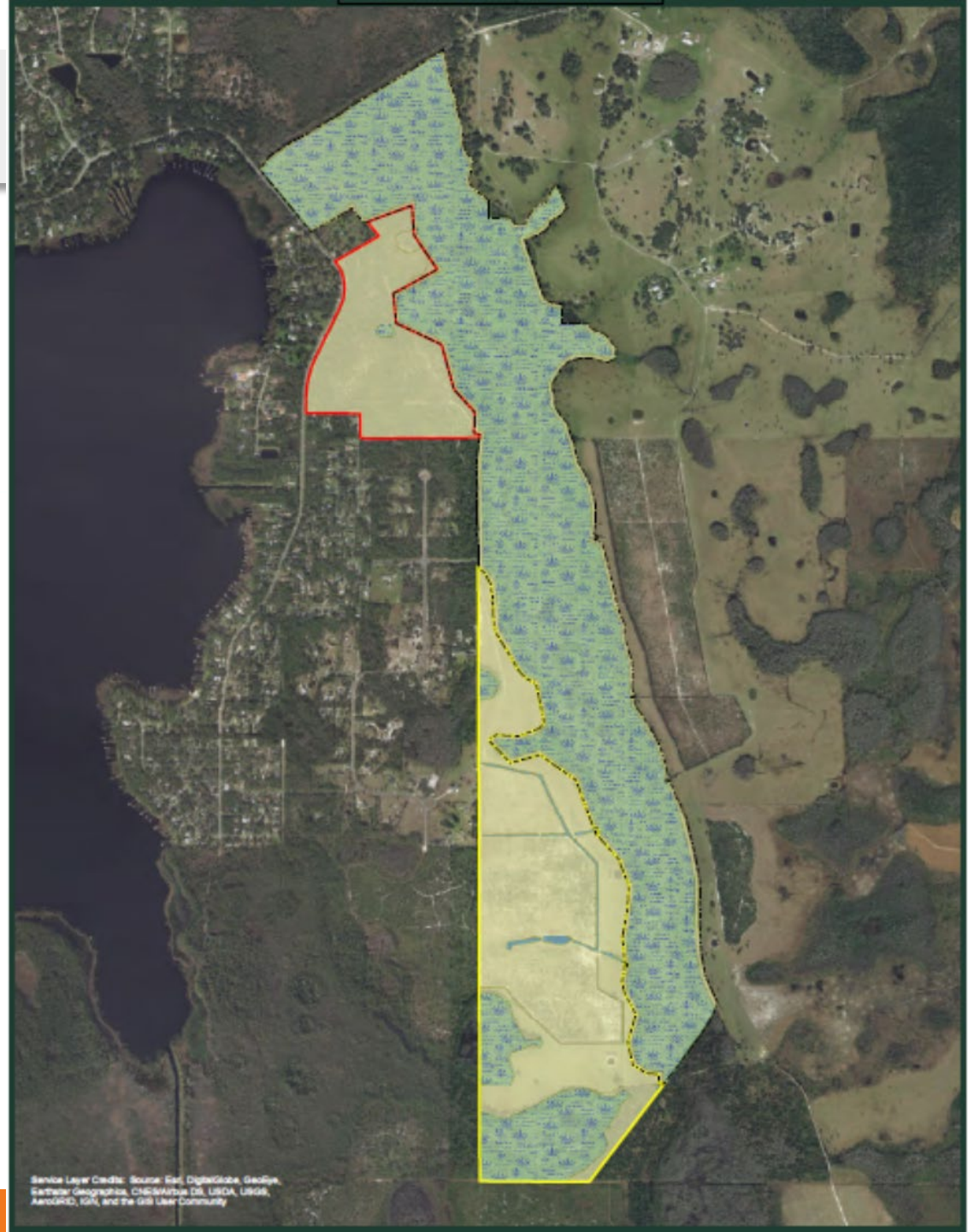
 Wetlands (1.13 ac)

CS-2 (Orange County)

 Uplands (239.97 ac)

 Wetlands (64.63 ac)

 Surface Waters (6.23 ac)



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNR/Airphoto DS, USDA, Landsat, AeroGRID, IGN, and the GIS User Community

Osceola County

+/- 582 Acres

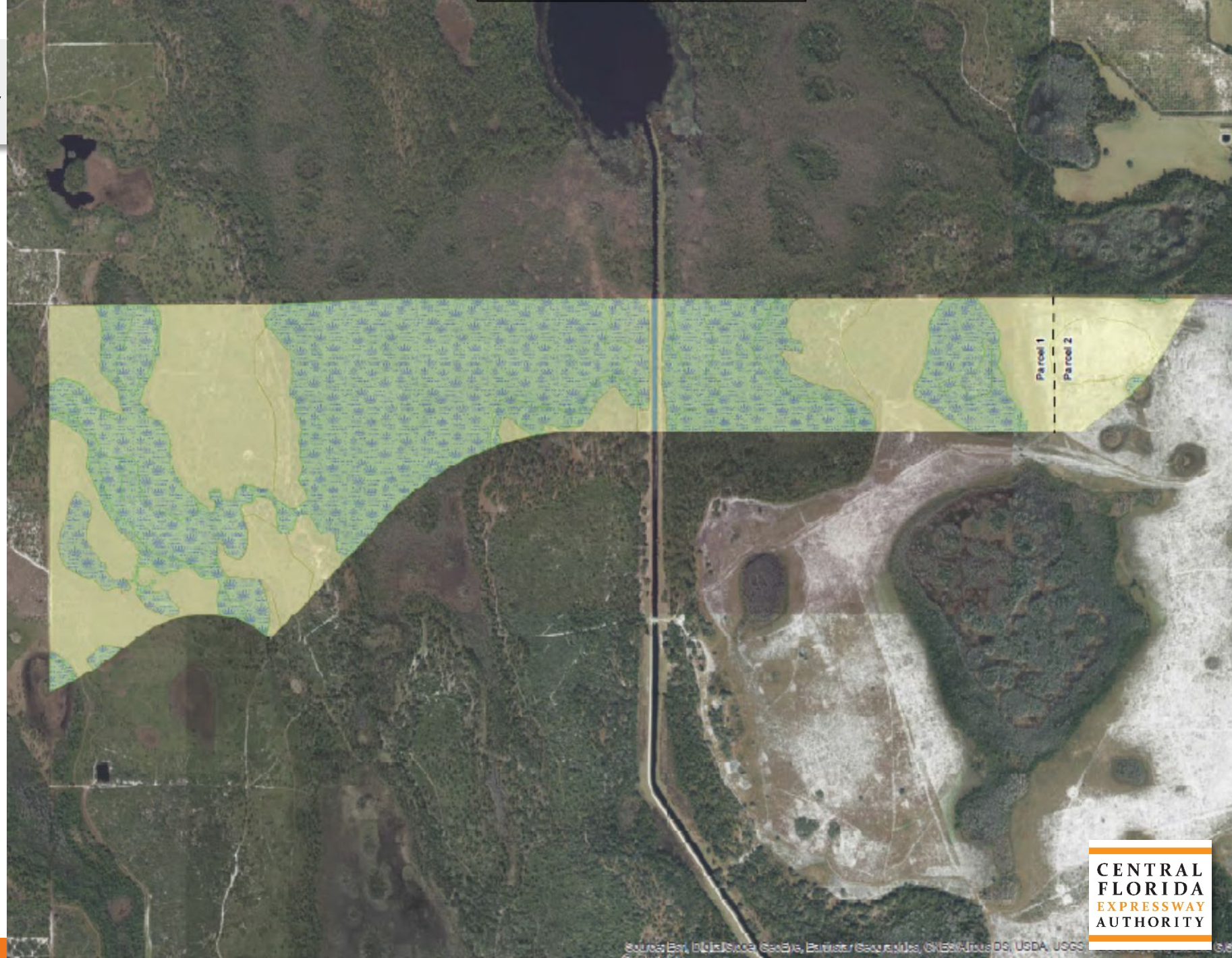
Legend

Parcel 1 (Osceola County)

- Uplands (219.02 ac)
- Wetlands (326.47 ac)
- Surface Waters (1.83 ac)

Parcel 2 (Osceola County)

- Uplands (34.02 ac)
- Wetlands (0.81 ac)



Narcoossee Road

Existing Conservation Area
3,985

Lake Mary Jane

Lake Hart

Orange County
Dedicated
Conservation Land
+/- 968 AC

Total Dedicated
Conservation Land
1,550 AC

Orange County
Osceola County

Osceola County
Dedicated
Conservation Land
+/- 582 AC

Northeast District
Development Plan

Split Oak
Alternative

Cyrils Drive

Eagles
Roost

Split Oak
Forest

Moss Park

Isle of Pine
Preserve

Gcb

Eagle
Creek

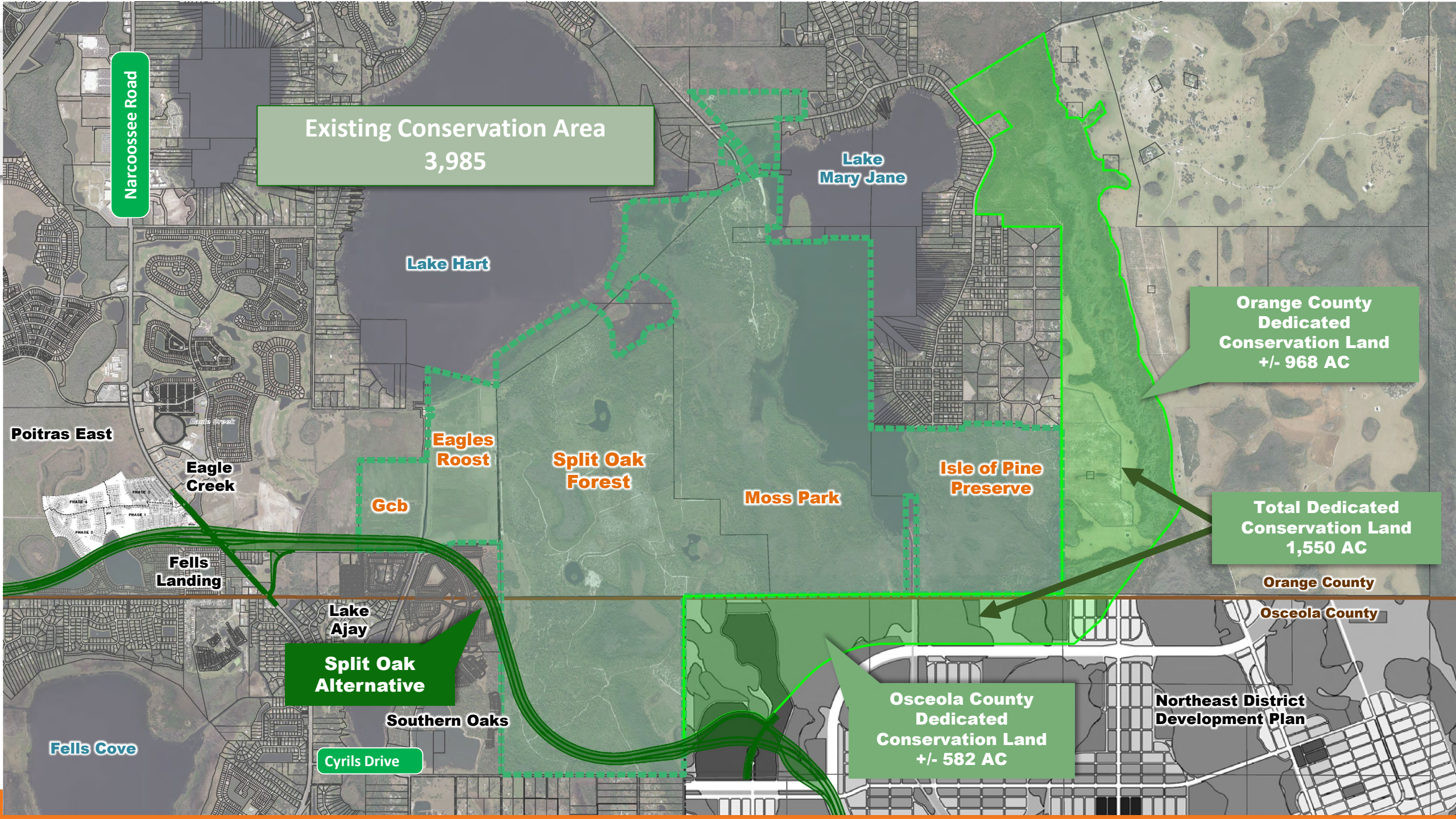
Fells
Landing

Lake
Ajay

Southern Oaks

Fells Cove

Postras East



Narcoosee Road

Resulting Conservation Area
5,375

Lake Mary Jane

Lake Hart

Orange County
Dedicated
Conservation Land
+/- 968 AC

Total Dedicated
Conservation Land
1,550 AC

Orange County
Osceola County

Osceola County
Dedicated
Conservation Land
+/- 582 AC

Northeast District
Development Plan

Split Oak
Alternative

Cyrils Drive

Eagles
Roost

Split Oak
Forest

Moss Park

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Preserve

Gcb

Eagle
Creek

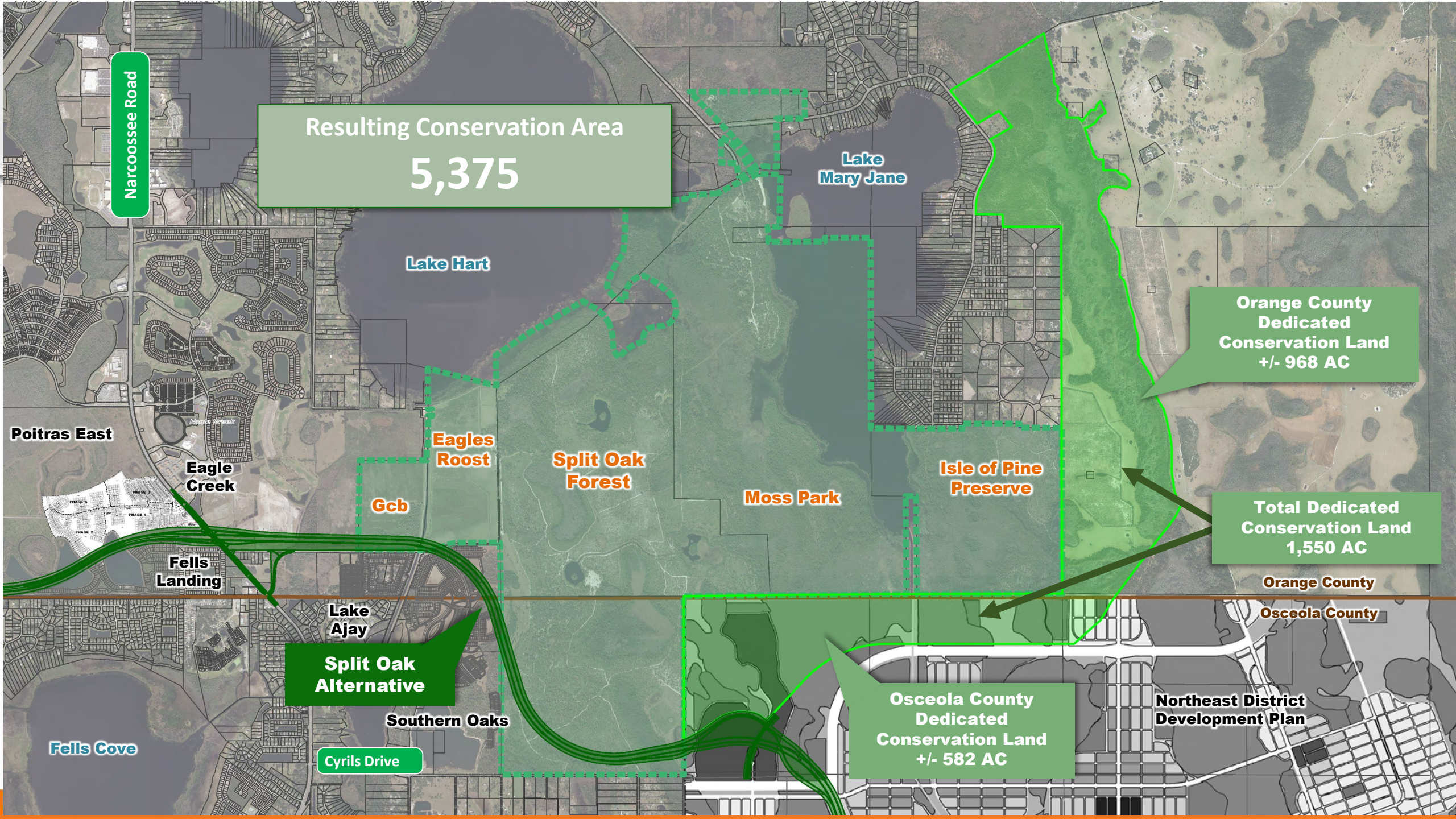
Fells
Landing

Lake
Ajay

Southern Oaks

Fells Cove

Postras East



Next Steps



Right of Way Acquisition

&

Conservation Land Dedication

PLANNING STUDIES

RESOLUTION

APPLICATION
to Florida Communities Trust

AGREEMENTS LEGALLY BINDING

Recommended Motion

Approval of the Right-of-Way Acquisition Agreement, the Agreement to Convey Conservation Lands and authorization to proceed into project production phases for the Osceola Parkway Extension.

The image shows a multi-level highway interchange with concrete overpasses and support pillars. A dark SUV is driving on the lower level of the road. To the right, there is a grassy embankment. The sky is clear and blue. A white rectangular box with orange horizontal bars at the top and bottom is centered in the upper half of the image, containing the text 'CENTRAL FLORIDA EXPRESSWAY AUTHORITY'.

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FLORIDA
EXPRESSWAY
AUTHORITY**

PROPOSED RIGHT OF WAY ACQUISITION AGREEMENT

Executive Summary

The proposed Right of Way Acquisition Agreement is between CFX, Suburban Land Reserve, Inc. (SLR) and the following Tavistock organizations: Lake Nona Land Company, LLC, Lake Nona Research I, LLC, Springhead North, LLC and TDCP, LLC.

SLR and Tavistock own 480 acres of the approximately 600 acres of right of way needed for the Osceola Parkway Extension Project.

SLR and Tavistock have agreed to sell the right of way to CFX for \$93 million, a price that is supported by CFX's PD&E right of way cost estimates. An appraisal of the property is currently being performed by CFX.

The proposed Right of Way Acquisition Agreement is contingent on the closing of the Conservation Lands Agreement.

The following things must take place before closing:

1. CFX agrees to design the Osceola Parkway Extension Project and a second phase of the SR 417 interchange that is known as the Ultimate Local Interchange. CFX agrees to build the Ultimate Local Interchange someday in the future when traffic demands require it. Prior to CFX beginning design, SLR and Tavistock will place a Special Warranty Deed into escrow containing an estimated description of the Property which will be updated and substituted upon completion of design.
2. CFX agrees to construct the Osceola Parkway Extension with the Split Oak Minimization Alternative and system-to-system interchange improvements at SR 417 together with the Medical City Drive bridge over SR 417.

Tavistock will be allowed to advance funds to CFX for the Osceola Parkway Extension design. Tavistock will also be allowed to advance funds (at their risk) to CFX to build the Medical City Drive Bridge over SR 417. Tavistock will be reimbursed if, and when CFX builds the Osceola Parkway Extension Project.

Tavistock may build a people mover transit system over SR 417 at Tavistock's expense in a location and configuration subject to CFX's prior written approval.

Tavistock may construct perpendicular utility crossings subject to CFX's standard policies and procedures. CFX is not responsible for reimbursing any costs associated with the people mover flyover or utilities crossings.

Closing on the conveyance of the property would occur within five (5) years of the effective date concurrent with the proposed Conservation Lands Agreement, subject to satisfaction of the contingencies. If the contingencies are not satisfied in that time, parties can negotiate in good faith to establish an extended period to satisfy the contingencies.

At the closing, SLR and Tavistock will deliver to CFX the deed conveying fee simple record title to its portion of the property, free and clear of all title matters except for the permitted exceptions.

PARCELS NO:

PROJECT NAME: OSCEOLA PARKWAY EXTENSION

RIGHT OF WAY ACQUISITION AGREEMENT

THIS RIGHT OF WAY ACQUISITION AGREEMENT (“Agreement”) is made as of the Effective Date (defined below) among **SUBURBAN LAND RESERVE, INC.**, a Utah corporation, (“SLR”) and **LAKE NONA LAND COMPANY, LLC**, a Florida limited liability company, **LAKE NONA RESEARCH I, LLC**, a Florida limited liability company, **TDCP, LLC**, a Florida limited liability company, and **SPRINGHEAD NORTH, LLC**, a Florida limited liability company (collectively, “Tavistock”), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and an agency of the state, under the laws of the State of Florida, with an address of 4974 Orl Tower Road, Orlando, Florida, 32807 (“CFX”). (SLR and Tavistock shall be referred to herein individually as an “Owner” and collectively as the “Owners”). (SLR, Tavistock and CFX are sometimes collectively referred to herein as the “Parties” and individually as a “Party”).

RECITALS:

Tavistock owns or controls the land located in Osceola County and Orange County, Florida, as more particularly described or depicted on **Exhibit “A-1”** through **Exhibit “A-4”** attached hereto and incorporated herein (the “Tavistock Property”). (**Exhibits “A-1”** through **“A-4”** identify which portion of the Tavistock Property belongs to or is controlled by each entity comprising Tavistock). SLR is the fee simple owner of, or controls a subsidiary that is fee simple owner of, or SLR has the enforceable and valid right to acquire, land located in Osceola County and Orange County, Florida, as more particularly described or depicted on **Exhibit “B”** attached hereto and incorporated herein (the “SLR Property”) (the Tavistock Property and the SLR Property are sometimes collectively referred to hereinafter as the “Property”). CFX anticipates construction of a proposed expansion of CFX’s limited-access expressway system being an extension of the Osceola Parkway (sometimes referred to hereinafter as the “Extension” or the “Project”). Owners and CFX have separately made and entered into that certain Agreement to Convey Conservation Lands having an effective date on or about the Effective Date of this Agreement (the “Conservation Lands Agreement”), whereby Tavistock and SLR have agreed to convey their interests in certain Conservation Lands (as defined in the Conservation Lands Agreement) to offset potential impacts of the potential Split Oak Alignment for the Extension. CFX has identified the Property as a necessary right of way for future construction and maintenance of the Project, and CFX desires to acquire from Owners the fee simple interest, in and to, the Property and, the Owners desire to convey the Property, in lieu of condemnation, to CFX.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements herein set forth, and other good and valuable consideration, CFX and Owners hereby covenant and agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Definitions.** Capitalized terms used in this Agreement (except in headings) shall have the meanings that appear where the terms are first set forth in quotation marks. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Conservation

Lands Agreement. All of the defined terms contained in this Agreement may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition, and when used in the singular any of the objects, persons, and the like included in the definition. In addition to all other defined terms contained in this Agreement, the terms listed below, except as the context may require otherwise, shall have the meanings provided therefor:

- a. "Split Oak Alignment" shall mean that portion of the Extension that requires the Property as depicted on Exhibits "A-1" through "A-4", Exhibit "B", and Exhibit "D-1" attached hereto.
- b. "Lake Nona Revised Interchange" shall mean the System-to-System Interchange and Medical City Bridge over S.R. 417 (the "Medical City Bridge") as depicted on Exhibit "D-4" attached hereto and incorporated by reference.
- c. "Laws" shall mean the codes, ordinances, rules, regulations, policies, standards and requirements of any federal, state or local governmental or quasi-governmental authority having jurisdiction over the matters and projects contemplated in this Agreement.
- d. "Ultimate Local Interchange" shall mean the interchange included in the Split Oak Alignment consisting of the Lake Nona Revised Interchange and the associated east and west frontage roads that are depicted on Exhibit "D-5".
- e. "People Mover Flyover" shall mean the proposed potential flyover over the Ultimate Local Interchange for a people-mover transit system which, if developed, shall be designed, permitted and constructed by Tavistock, at its expense, subject to the review and approval of CFX, not to be unreasonably denied.
- f. "Permits" shall mean all permits, approvals, development orders, and other consents and authorizations of governmental authorities required for construction of the Split Oak Alignment, the Ultimate Local Interchange, the Medical City Bridge, the People Mover Flyover or any applicable component or portion thereof, in accordance with the Plans and with applicable Laws.
- g. "Plans" shall mean the design, engineering, and construction plans, right-of-way maps, parcel sketches, legal descriptions, specifications, surveys, estimates of costs, construction schedules, and bid-ready documents for construction of the Split Oak Alignment, which includes without limitation the Ultimate Local Interchange, the Medical City Bridge, or any applicable component or portion thereof.
- h. "System to System Interchange" shall mean the interchange included in the Split Oak Alignment connecting the Split Oak Alignment and SR 417 in the configuration depicted on Exhibit "D-2" attached hereto and incorporated by reference.
- i. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Conservation Lands Agreement.

3. **Property.** The Property as described or depicted on **Exhibit “A-1”** through **Exhibit “A-4”** and **Exhibit “B”** attached hereto depict the Tavistock Property and SLR Property required for the Split Oak Alignment, including drainage and other improvements and facilities appurtenant thereto (“Extension Right of Way”). CFX will consult with the Owners in establishing the final legal description of the Property. CFX, at its expense, shall prepare legal descriptions of the Property subject to review and approval by each affected Owner, such approval not to be unreasonably withheld, conditioned or delayed. The legal descriptions shall be prepared in accordance with the Section below titled “Survey.”
4. **Agreement to Convey.** Owners agree to convey to CFX and CFX agrees to acquire from Owners the Property, in lieu of condemnation, in the manner and upon the terms and conditions hereinbelow set forth in this Agreement.
5. **Conveyance of Extension Right of Way.**
 - a. Subject to the terms and conditions set forth in this Agreement, in consideration for conveyance of the Property, CFX shall pay to Owners at Closing, and only in the event of Closing, the sum of Ninety-Three Million and No/100 United States Dollars (\$93,000,000.00) (the “Purchase Price”) in the form of a federal wire transfer of immediate funds, subject to appropriate credits, adjustments and prorations provided below.
 - b. The Purchase Price is premised upon the Property being comprised of approximately between 475.5 and 480.5 acres in the aggregate and each Owner’s portion of the Property being approximately the same amount of acres as depicted in **Exhibits “A-1”** through **Exhibit “A-4”** and **Exhibit “B”**. If the final legal description requires more than 480.5 acres in the aggregate from the Property described in **Exhibits “A-1”** through **Exhibit “A-4”** and **Exhibit “B”** than is described or depicted on the applicable Exhibit (“Additional Property”), then the Parties shall mutually agree upon the proper upward adjustment to the Purchase Price. If the final legal description requires less than 475.5 acres in the aggregate from the Property described in **Exhibits “A-1”** through **Exhibit “A-4”** and **Exhibit “B”** (the “Acreage Reduction Property”), then the Parties shall mutually agree upon the proper downward adjustment to the Purchase Price.
 - c. If within thirty (30) days after approval of the final legal description the parties cannot mutually agree to the adjustment of the Purchase Price pursuant to Paragraph 5.b. above, the value of the Additional Property and/or the Acreage Reduction Property, as applicable, shall be determined by appraisal by a qualified appraiser meeting the requirements set forth below as selected by CFX (the “CFX Appraiser”). The CFX Appraiser shall proceed to determine the then fair market value of the Additional Property and/or the Acreage Reduction Property, as applicable, and shall provide CFX and Owners with a copy of such appraisal within thirty (30) days. If Owners are not satisfied with the CFX Appraiser’s appraisal, Owners, within thirty (30) days after receipt of such appraisal, shall notify CFX of Owners’ selection of a second appraiser (“Owners’ Appraiser”). Within thirty (30) days after selection of the Owners’ Appraiser, Owners shall furnish CFX with the Owners’ Appraiser’s appraisal. If Owners do not so select a second appraiser and notify CFX of such selection within such thirty (30) day period and/or do not deliver the Owners’

Appraiser's appraisal to CFX within thirty (30) days after selection of the Owners' Appraiser, the CFX Appraiser's appraisal shall be conclusive as to the then fair market value of the Additional Property and/or the Acreage Reduction Property, as applicable. If an Owners' Appraiser is so selected, the CFX and Owners' Appraisers shall meet within fifteen (15) days after the Owners' Appraiser has completed its appraisal and, if the CFX and Owners Appraisers cannot agree, within fifteen (15) days after such meeting, on the then fair market value of the Additional Property and/or the Acreage Reduction Property, as applicable, then the CFX and Owners' Appraisers shall select a qualified third appraiser (the "Review Appraiser") to provide a review appraisal with respect to the CFX Appraiser's appraisal and the Owners' Appraiser's appraisal. (If the CFX and Owners' Appraisers cannot agree upon a Review Appraiser within fifteen (15) days, Owners shall select an independent Review Appraiser from the CFX's list of approved appraisers). The Review Appraiser shall determine the fair market value, which may not exceed the highest appraisal or be less than the lowest appraisal by the CFX and Owners' Appraisers but shall not be based on the average of the two appraisals. The Fair Market Value as determined by the Review Appraiser shall be conclusive. Each Party shall pay the fees and expenses of each appraiser appointed by such Party, and the fees and expenses of the Review Appraiser and all other appraisal-related expenses, if any, shall be borne by CFX. Any appraiser designated to serve in accordance with the provisions of this Agreement shall be designated as an "MAI" appraiser by the American Institute of Real Estate Appraisers or shall be comparably qualified to appraise, and be experienced in appraisal of, right-of-ways, land corridors, and residential and commercial real estate, shall be disinterested and shall have been actively engaged in the appraisal of real estate in the Orange County and Osceola County area for a period of not less than five (5) years immediately preceding his or her appointment.

6. **CFX's Right of Inspection.** CFX shall at all times before Closing (defined below) have the privilege of going upon the Property with its agents and engineers as needed to inspect, examine, survey and otherwise undertake those actions which are reasonable and necessary to determine the suitability of the Property for the Project. CFX shall enter the Property at its sole risk, and CFX hereby releases Owners from any claims relating to the physical condition of the Property or to the entry thereon by CFX. CFX shall exercise its rights hereunder so as to minimize damage to the Property and to avoid materially adverse impact on Owners' uses thereof while allowing CFX, its assignee or designee, to obtain the necessary information.
 - a. **Inspection for Hazardous Substances.** CFX may, in its sole discretion and at its sole cost and expense, conduct a Phase I Environmental Site Assessment of the Property (a "Phase I") to determine the likelihood of the Property's containing hazardous or toxic substances, wastes, materials, pollutants or contaminants. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state, or federal Law pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA," or state superlien or environmental clean-up statutes

(all such Laws being referred to collectively as "Environmental Laws"). In the event CFX determines in its discretion the Phase I report is not satisfactory, CFX may terminate this Agreement, with the Parties thereby being relieved of all further obligations hereunder, excluding those obligations the Parties agree survive termination. CFX shall not conduct a Phase II Environmental Site Assessment, or any other environmental review more intrusive than the Phase I, (a "Follow-up Assessment") without first obtaining Owners' written consents, which consents Owners shall have the unconditional right to refuse. If Owners elect to allow a Follow-up Assessment, the scope and other details thereof shall be subject to Owners' prior written approval exercised in Owners' sole discretion. Further, if Owners authorize a Follow-up Assessment, Owners shall have the right in its discretion to elect to perform the Follow-up Assessment (in lieu of CFX's doing so), still at CFX's cost. If Owners so elect to perform the Follow-up Assessment, Owners shall have the right in its discretion to keep confidential, even from CFX, the results thereof. If Owners elect to keep those results confidential from CFX, then CFX shall have the right to terminate this Agreement at any time within thirty (30) days after receipt of Owners' notice of election to keep the results of the Follow-up Assessment confidential. In the event of such a termination, the Parties will be relieved of their respective obligations under this Agreement other than those obligations the Parties agree survive such a termination. (If CFX fails within the permitted 30-day period to elect to terminate this Agreement, CFX shall have forfeited the right to terminate.)

- b. Payment for Inspections. CFX shall pay for all work and inspections performed by CFX or on its behalf on or in connection with the Property, and shall not permit the filing of any lien against the Property (or any portion thereof) in favor of any contractor, materialman, mechanic, surveyor, architect, engineer, laborer, or any other lienor performing services or supplying materials to the Property on CFX's behalf or at CFX's request. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.

- c. Protection of Owners. CFX shall cause its contractors performing work on the Property, to maintain a policy or policies of commercial general liability insurance, with a combined single limit of not less than \$1,000,000 and \$2,500,000 in the aggregate protecting Owners from claims, actions, losses, and liability relating to entries by or on behalf of CFX onto the Property. This policy shall name Owners and its officers, directors, employees, and agents as additional insureds. This policy shall be underwritten by an insurance company meeting Owners' reasonable approval. CFX or its contractors shall deliver to Owners a certificate or other evidence of such insurance before entering onto, or causing entry by another onto, the Property. CFX, as a condition to its exercise of its right of entry, agrees to protect and indemnify Owners with respect to liens, claims, expenses, damages, losses, obligations, and liabilities resulting from the exercise by CFX, or any of its agents, of this right of entry. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, CFX may self-insure for general liability with coverage limits as set forth in Section 768.28, Florida Statutes, and shall provide an affidavit or

certificate of insurance evidencing self-insurance commercial insurance for up to sovereign immunity limits and Owners agree to accept such insurance with regard to CFX. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.

7. **Evidence of Title.** No later than ninety (90) days before Closing, CFX may obtain, at CFX's sole cost and expense, a commitment or commitments for a policy of Owner's Title Insurance (collectively, the "Commitment") which shall be written on a nationally recognized title company of CFX's choosing (the "Title Company"). The Commitment shall bind the Title Company to deliver to CFX, a policy of Owner's Title Insurance which shall insure CFX's title to the Property in an amount equal to the Purchase Price. CFX will deliver copies of the Commitment and all documents constituting the exceptions referred to in the Commitment to each affected Owner.
- a. **Review of Title.** Owners shall cooperate in good faith with CFX for its investigation of any title exception matters shown on the Commitment. CFX shall have thirty (30) days from the date of receipt of the later of the Commitment or the Survey (as defined below) to examine same and provide written notice to Owners of any title defects, a title defect being a matter which would render title unmarketable or render the Property unsuitable, in CFX's sole discretion, for the Project.
- b. **Remedying Title Defects.** The affected Owners shall each have thirty (30) days from receipt of the written notice to remove title defect(s) on each Owner's affected portion of the Property (if the applicable Owner in its sole discretion elects to undertake such removal), and if any Owner is unsuccessful in removing, or elects not to remove, same within said time period, CFX shall have the option as its sole and exclusive remedies of: (i) accepting title as it then is without reduction in Purchase Price; or (ii) terminating this Agreement, whereupon each Party shall then be released of all further obligations hereunder, excluding those obligations the Parties agree survive such a termination. Owners shall have no obligation to, and in its sole discretion may elect not to, undertake removal of any or all title defects identified in CFX's notice of title defects. Owners' failure to correct a defect shall not constitute a default by Owners. This obligation does not obligate Owners to spend money to resolve said defects. In the event any of the foregoing time periods extend beyond the Closing Date, the Closing Date shall extend accordingly. Those matters reflected in the Commitment and Survey and accepted by CFX as provided in this Paragraph 7.b. shall be deemed "Permitted Exceptions."
8. **Survey.** Any time between the Effective Date of this Agreement and ninety (90) days before Closing, CFX shall have the Property surveyed at its sole cost and expense (the "Survey"). CFX may also, if it so elects, prepare a surveyor's sketch and description of the Property. Any conditions appearing on the Survey that render title unmarketable or preclude use of the Property for the Project, in CFX's sole discretion, shall be treated as title exceptions and may be objected to, cured, or not cured, as applicable, in accordance with the Section above titled "Evidence of Title". Upon request of CFX the legal description from such Survey or sketch

and description shall be substituted in the Deed conveying the Property at Closing, subject to Owners' reasonable approval of that legal description. No later than ninety (90) days before Closing, CFX shall provide each Owner with a complete and accurate legal description of its portion of the Property for review and approval within ten (10) days. If the Owners do not object to the legal description within said ten (10) day period, the legal description shall be deemed approved. Once approved by Owners, the legal description shall be included in the documents signed at Closing.

9. **Closing Date and Closing Procedures and Requirements.** The following provisions related to Closing shall control the manner of closing on the acquisition of the Property:

- a. **Closing Concurrent with Conservation Lands.** Unless otherwise subsequently agreed in writing by the Parties, the lands conveyed under this Agreement and the Conservation Lands Agreement will close concurrently. Accordingly, notwithstanding any conflicting provision of this Agreement, the Closing under this Agreement will close at the same time and place as the closing under the Conservation Lands Agreement. Neither Party shall be obligated to close on one of the agreements without closing at the same time on the other agreement.
- b. **Closing Date.** The closing of the conveyance contemplated under this Agreement (the "Closing") shall be held within ninety (90) days after satisfaction of the contingencies prescribed below in Section 11 titled "Contingencies" and of the Split Oak Contingencies (as defined in the Conservation Lands Agreement), but in any event not later than five (5) years after the Effective Date (defined below)(the "Outside Closing Date"), on a day and time mutually selected by the Parties (the "Closing Date"), at the offices of Burr & Forman or such other law firm as the Owners may mutually designate, which shall act as closing agent unless otherwise required in accordance with the requirements of the Final Approvals under the Conservation Lands Agreement. If the deadline for satisfying the contingencies under Section 11 of this Agreement is extended as provided in Section 11, the Outside Closing Date shall be extended for an equal period. Notwithstanding anything contained herein, Closing may occur by mail or courier. .
- c. **Delivery of Possession.** Owners shall surrender possession of the Property at Closing. Each Owner shall abandon and vacate its portion of the Property and shall remove all personal property not included in this transaction that such Owner intends to remove from the Property and for which CFX has not paid Owners as part of the Closing. Any personal property or fixtures left by Owners upon the Property after the Closing Date shall be presumed to be abandoned, and CFX will have the right to remove and destroy such property or fixtures without any responsibility or liability to Owners for any damages or claims whatsoever.
- d. **Prorating of Taxes and Assessments.** Each Owner shall pay all taxes, assessments and charges applicable to its portion of the Property for all years prior to the year of Closing. At Closing, each Owner will pay such Owner's pro rata share of all taxes and assessments levied for that year as of and through the date of Closing by applicable

taxing Governmental Authorities against the its portion of Property and shall comply with the provisions of Section 196.295, Florida Statutes.

- e. Closing Costs. At Closing, CFX shall pay: (i) the cost of recording the Deed (defined below); (ii) all costs pertaining to the Commitment, including, but not limited to, title insurance premiums for an Owner's Policy, title search fees, and the premiums for any endorsements requested by CFX; (iii) all costs of the Survey, if any. Each Party shall pay all fees and costs for the services of the Parties' respective attorneys for their representation in connection with this Agreement and the Closing. The Parties anticipate the conveyance of the Property will be exempt from documentary stamp taxes as a conveyance in lieu of condemnation. (See Section 12B-4.014(13), F.A.C.). If the Florida Department of Revenue or any authority with jurisdiction shall determine documentary stamp taxes must be paid on the conveyance of the Property, Owners shall pay the documentary stamp taxes at Closing.
- f. General Closing Documents. At Closing, each Owner, as applicable, shall provide CFX with the Deed(s) (defined below) or other instrument conveying interest in Property in accordance with the Final Approvals, Permits and all applicable Laws, closing statements, beneficial interest affidavit described in Section 286.23, *Florida Statutes*, as applicable (a copy of which is attached hereto as **Exhibit "C"**), and an owner's affidavit sufficient to allow the title company to delete applicable standard exceptions from the title policy (including as referenced in Section 627.7842, *Florida Statutes*). Each Owner shall provide at Closing an affidavit that such Owner is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time, which certificates shall include the applicable Owner's taxpayer identification number and address or a withholding certificate from the Internal Revenue Service stating that such Owner is exempt from withholding tax under FIRPTA on any consideration received by Owner in connection with this transaction. Each Party shall also sign and deliver such additional documents, and take such other actions, as may be necessary or appropriate to implement or perform provisions of this Agreement and allow the Title Company to insure CFX's title in and to the Property. Each closing document will be consistent with and will implement applicable provisions of this Agreement, and the form and content shall be subject to the reasonable approval of the Parties.

10. Conveyance. At the Closing, each Owner shall execute and deliver to CFX a Special Warranty Deed or deeds (the "Deed(s)") conveying fee simple record title to its portion of the Property, free and clear of all liens, mortgages, outstanding general and special assessments, tenancies, occupancies or other encumbrances except for the Permitted Exceptions. The Deeds will contain the following restrictive covenant limiting use of the Property:

"Use of the real property conveyed hereby ("Property") shall be restricted and limited to construction, maintenance, repair, replacement, and operation of an elevated, limited access highway. Concurrent with the highway (but not before or in lieu thereof), use of the Property may also include transit and other transportation uses, stormwater management ponds and facilities, and public utilities and communications facilities and other improvements and facilities appurtenant to the foregoing; provided, however, CFX shall not, without prior

written consent of the Grantor, authorize use of the Property for communications facilities providing service to any of Grantor's adjacent properties. The Property shall not be used for any other purposes or uses whatsoever. This restriction will run with title to the Property and be enforceable by Grantor and its successors in interest, and assigns, in perpetuity. The persons and entities from time to time entitled to enforce this restriction may do so by invoking all remedies at law and in equity, including without implied limitation specific performance and injunction."

11. Contingencies.

- a. Contingent on Conservation Lands Agreement. In the Conservation Lands Agreement, Owners have contracted to convey to CFX lands in Osceola County and Orange County Florida intended for conservation purposes. The Conservation Lands Agreement refers to those lands collectively as the "Conservation Lands" (which term has the same meaning in this Agreement).
 - i. Each Party's rights, interests, and obligations under this Agreement are expressly contingent on the performance and closing of the Conservation Lands Agreement. If the Conservation Lands Agreement is terminated, this Agreement shall also automatically terminate without any further action being required by the Parties. Further, a Party's default under the Conservation Lands Agreement shall also constitute a default under this Agreement; and a Party's default under this Agreement shall also constitute a default under the Conservation Lands Agreement.
 - ii. The Parties agree the closings under this Agreement and the Conservation Lands Agreement will be coordinated with each other and shall close concurrently. Accordingly, notwithstanding any conflicting provision of this Agreement, the Closing under this Agreement will close at the same time and place as the closing under the Conservation Lands Agreement. Neither Party shall be obligated to close on one of the agreements without closing at the same time on the other agreement.
- b. Requirement to Purchase and Construct Entire Split Oak Alignment. CFX shall have no right to purchase some of the Property without purchasing all of the Property.
 - i. If CFX purchases the Property, CFX shall construct the entire Split Oak Alignment as a complete project at the same time, from SR 417 (including the Lake Nona Revised Interchange) on the westerly end through to the easterly terminus approximately at the easterly extension of Cyrils Drive (as depicted on Exhibit "B"). CFX's right to acquire the Property shall be contingent on: (i) CFX's having approved the Split Oak Alignment; (ii) CFX's having secured from all applicable governmental authorities all final permits, approvals, consents, development orders, and other authorizations (collectively, "Permits") for constructing and operating the Split Oak Alignment in a complete project built at the same time; (iii) CFX's having finally resolved any challenges and appeals brought against those Permits and (iv) CFX's having notified Owners that it is prepared to advertise for

design for the Project. Upon receipt of such notice, Owners will promptly deliver the Deeds into escrow with the Closing Agent and notify CFX in writing. The Deeds placed in escrow shall include legal descriptions of the Property based on CFX's good-faith estimates of necessary right of way, as approved in writing by the Owners (such approval not to be unreasonably withheld, conditioned or delayed) and upon completion of design the final legal descriptions in the Deed shall be determined in accordance with Section 8 above. Upon receipt of notice of deposit of the Deeds in escrow, CFX will diligently proceed with the process to advertise for design of the Project and thereafter to let the contracts for the construction of the Split Oak Alignment with notice to proceed contingent upon Closing of the conveyance of the Property. If any of these contingencies is not satisfied on or before the Split Oak Contingencies Deadline prescribed in the Conservation Lands Agreement, then Owners or CFX will have the right to terminate this Agreement by delivering written notice of termination to the other Parties whereupon the Parties will have no further rights or obligations except those which expressly survive such a termination. Notwithstanding the foregoing, if despite good faith and diligent efforts the Parties are not in a position to satisfy the contingencies as of the Split Oak Contingencies Deadline prescribed in the Conservation Lands Agreement, CFX shall have the right upon written notice to Owners to extend the Split Oak Contingencies Deadline up to, but not more than, eighteen (18) months to a date that is mutually agreeable to CFX and Owners. If the Parties so elect to extend the Split Oak Contingencies Deadline pursuant to the Conservation Lands Agreement, the deadline for satisfying the contingencies prescribed above in this Section shall be extended for an equal period.

ii. CFX shall initially be responsible to construct only the Lake Nona Revised Interchange as depicted on **Exhibit "D-1"** and concurrently with construction of the rest of the Split Oak Alignment ("Initial Phase"). CFX shall also undertake reasonable good-faith efforts to expeditiously commence and complete design work for the Ultimate Local Interchange concurrently with design of that Initial Phase; provided, however, that notwithstanding anything contained herein, CFX shall not be obligated to commence design of the Project until it has obtained approval of the Split Oak Alignment and any Permits necessary to proceed with design and has finally resolved any challenges and appeals brought against those Permits. When CFX traffic analysis determines that either or both of the Lake Nona Boulevard exit off SR 417 and the Boggy Creek Road exit off SR 417 functions at a level of service ("LOS") rating of "D" or worse, CFX will place construction of the Ultimate Local Interchange into its Five-Year Work Plan with the highest priority for construction in accordance with CFX's standard policies and procedures. Notwithstanding anything to the contrary contained herein, CFX shall not be obligated to construct the People Mover Flyover.

c. Approval of Owners' and CFX Boards. Notwithstanding any apparently conflicting provision of this Agreement, although local or regional representatives of Owners

may have executed this Agreement, such execution shall be conditional and shall not bind Owners hereto until the respective Owner's applicable governing board or body ("Owner's Board") in its sole discretion shall have ratified and approved this Agreement. If an Owner's Board ratifies this Agreement, that Owner shall notify CFX in writing within fifteen (15) days after the Board meeting at which this Agreement was ratified, whereupon this Agreement shall be binding on that Owner in accordance with the terms hereof. Provided this Agreement is timely ratified by each Owner's Board, this Agreement shall continue in full force and effect, subject to the terms and provisions hereof. In the event an Owner's Board shall fail to ratify this Agreement within sixty (60) days after the Effective Date, this Agreement shall be deemed rejected by the Owner's Board. Within forty-five (45) days after receipt of written confirmation of all applicable Owner's Board approvals and ratifications of this Agreement, CFX shall present the Agreement for approval by the CFX Board and shall notify Owners in writing within fifteen (15) days after the Board meeting at which this Agreement was approved, whereupon this Agreement shall be binding upon all Parties. If this Agreement is rejected or deemed rejected by an Owner's Board or the CFX Board, this Agreement shall automatically be null and void and of no further force or effect and the Parties shall be released from all further obligations and liabilities hereunder.

12. Tavistock's Right to Advance Design of Interchange and/or Construct Medical City Bridge, People Mover Flyover and Utilities. Notwithstanding any other provision of this Agreement, Tavistock, or its successor in title, shall have the option, but not the obligation, as follows:

- a. Provided CFX has not yet commenced design work for the Ultimate Local Interchange concurrently with design of the Initial Phase as provided in Section 11.b.ii above, then Tavistock may, upon written notice to CFX, elect to advance design of the Ultimate Local Interchange. In the event that Tavistock exercises this option, Tavistock and CFX will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:
 - i. CFX shall contract for and oversee such design work to be paid by Tavistock on a pay-as-performed basis. At regular intervals not more than monthly, CFX shall provide Tavistock with detailed statements and invoices for the design work performed and Tavistock shall be responsible to pay such invoices.
 - ii. If Tavistock does not pay all such invoices in the agreed upon time period, CFX shall not be obligated to continue the design work but shall have the option to continue such design work on Tavistock's behalf and to recover the cost thereof from Tavistock and/or to offset and receive a credit against the Purchase Price at Closing for the cost of any unpaid design work.

- iii. Notwithstanding the foregoing, if Tavistock exercises this option and CFX ultimately proceeds to construct the Lake Nona Revised Interchange, but only in the event CFX proceeds to construction, then CFX shall reimburse Tavistock for the cost of design work advanced by Tavistock pursuant to this election.
- b. Upon completion of design of the Ultimate Local Interchange, Tavistock, upon written notice to CFX, may elect to advance construction of the Medical City Bridge by CFX. In the event that Tavistock exercises this option, Tavistock and CFX will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:
- i. CFX shall secure all Permits for its construction of the Medical City Bridge and all appurtenant improvements in accordance with the design and Plans therefor. CFX will then advertise for bids to construct the Medical City Bridge. Upon receipt and approval of the selected bid by CFX, then CFX shall notify Tavistock of all estimated capital costs of construction of the Medical City Bridge, including Permits, estimated costs of construction, construction engineering and inspection (“CEI”) services, plus any contract contingency amount. Tavistock shall provide CFX with a financial guarantee of all such capital costs in the form of an irrevocable letter of credit in favor of CFX or other guarantee in form and content acceptable to CFX in its sole discretion.
 - ii. Tavistock shall grant CFX such easements and other rights as may be reasonably necessary and appropriate to allow construction of the Medical City Bridge and appurtenant improvements to tie such improvements in with improvements on Tavistock’s adjoining property in form and content acceptable to CFX in its sole discretion.
 - iii. Upon satisfaction of the conditions in subparagraphs 12.b.i. and ii above, CFX will let construction of the Medical City Bridge and appurtenant improvements and shall thereafter diligently pursue such construction to completion in accordance with the Plans and all applicable Laws.
 - iv. CFX shall construct the Medical City Bridge and appurtenant improvements at Tavistock’s expense on a pay-as-performed basis. At regular intervals not more than monthly, CFX shall provide Tavistock with detailed statements and invoices for the construction work performed and Tavistock shall be responsible to pay such invoices.
 - v. If Tavistock does not pay all such invoices in the agreed upon time period, CFX shall not be obligated to continue the construction work but shall have the option to continue such on Tavistock’s behalf and to recover the cost thereof from Tavistock by drawing on Tavistock’s financial guarantee

and/or to offset and receive a credit against the Purchase Price at Closing for the cost of any unpaid construction work.

- vi. Notwithstanding the foregoing, if Tavistock exercises this option and CFX ultimately proceeds to construct the Lake Nona Revised Interchange, but only in the event CFX proceeds to construction, then CFX shall reimburse Tavistock for the capital costs of construction of the Medical City Bridge and appurtenant improvements.
- c. Tavistock shall also have the option, but not the obligation, at its expense, to elect to construct the People Mover Flyover in a location and configuration subject to CFX's prior written approval, not to be unreasonably withheld. In order to so elect to perform that construction, Tavistock shall provide written notice to CFX and shall provide any proposed Plans and Permit applications to CFX for review, comment and approval in accordance with CFX's design and construction standards prior to commencement of construction. After receipt of CFX's approval and all Permits, Tavistock shall promptly solicit bids for the construction of the People Mover Flyover or any portion thereof. In the event that Tavistock exercises this option, Tavistock and CFX will enter into a separate agreement or agreements that will implement, among other provisions, the following principles:
- i. Tavistock shall retain responsibility at its own expense to prepare the Plans and secure all Permits for its construction of the People Mover Flyover (even though CFX shall fully design and permit the Split Oak Alignment). Subject to CFX's review and approval in accordance with CFX standards and all applicable Laws, CFX shall grant to Tavistock such permits, air rights and other rights as may be necessary and appropriate to allow construction of the People Mover Flyover on or over the Property.
 - ii. On final approval of such Plans and Permits Tavistock will let construction of the People Mover Flyover for bid and will engage a contractor or contractors, subject to CFX's reasonable prior approval (the "Contractor"), under a stipulated sum construction contract. If CFX requires a financial guarantee pursuant to Section 255.05 Florida Statutes, instead of the bond prescribed by Section 255.05, Florida Statutes, Tavistock may provide a financial guarantee in the form of an irrevocable letter of credit in favor of CFX with a stated amount equal to the successful bid.
 - iii. The construction contract shall require construction of the People Mover Flyover in accordance with applicable CFX Standards, all applicable Laws, the Plans and the Permits. CFX shall be named as a third-party beneficiary of the Contractor's services and of all guaranties and warranties from the Contractor. The Contractor shall be required to provide liability and other insurance coverages complying with CFX's applicable insurance standards naming Tavistock and CFX as insureds.

- iv. Tavistock shall cause construction of the People Mover Flyover to be substantially completed, subject to delays caused by force majeure, within a mutually agreed period after commencement of construction. On completion of construction, Tavistock shall assign to CFX all contractor representations and warranties associated with construction of the People Mover Flyover and provide copies of same.
- v. Each month during the construction, the project engineer shall certify to Tavistock and CFX the progress of the construction of the People Mover Flyover (the "Engineer Certification"). The Engineer Certification shall include a statement that the completed portion of the work is consistent with the Plans and Permits. CFX shall have the right, but not the obligation to retain CEI services at Tavistock's expense and may inspect the progress of the any construction in accordance with its standard inspection process for such interchanges.
- vi. Tavistock shall submit any proposed project change or Change Order to CFX for approval, together with such explanatory documentation as CFX may request.
- vii. After completion of construction in accordance with the Plans and Permits, Tavistock or its designee will be obligated at its expense to maintain the People Mover Flyover. If Tavistock fails to timely perform its maintenance obligations, CFX may perform on said party's behalf and collect the cost thereof from Tavistock, as applicable.
- viii. Tavistock and its Contractor shall indemnify CFX against any claims, damages, loss or expense arising from Tavistock's exercise of its rights under the agreement or agreements.
- ix. Owners shall have the right from time to time, at their expense, to install and maintain utility crossings perpendicular to the SR 417 right of way or Osceola Parkway Extension right of way in locations and configurations subject to CFX's prior written approval, not to be unreasonably withheld, and pursuant to CFX's then standard right of way permits and procedures for utility crossings.
- x. The terms of the agreement or agreements will run with the land and be binding on the parties, their successors in interest or title, or assigns. Without limiting anything herein, the right to construct the People Mover Flyover shall survive the Closing and conveyance of the Property.

13. **Maintenance.** From and after the date hereof and until Closing, Owners will comply with and abide by all Laws affecting the Property and its use, and will cause no waste or material alterations of the Property. (Installation of underground utilities in accordance with Section 12.c.ix above shall be permitted, and shall not be deemed "material alterations".) From and after the date hereof, Owners shall not offer to sell or donate the Property to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the Property or any interest therein. As used herein, "Laws" shall mean, as

applicable, laws, statutes, ordinances, orders, regulations, permits, approvals, and other requirements of governmental or quasi-governmental authorities, including without limitation courts and tribunals.

14. **Warranties and Representations.** To induce CFX to enter into this Agreement and to acquire the Property, each Owner makes the following representations and warranties as of the Effective Date, as to its respective portions of the Property:

- a. Each Owner warrants and represents that there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting or relating to its portion of the Property, or relating to or arising out of the ownership of its portion of the Property, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality, unless such action has been commenced by CFX.
- b. Each Owner warrants and represents that it has the full right, power and authority to enter into and deliver this Agreement and to consummate the conveyance of its portion of the Property in accordance herewith, and to perform all covenants and agreements of such Owner hereunder.
- c. Each Owner warrants and represents that, to the Owner's actual knowledge, except as disclosed below in this subsection, there are no Hazardous Substances on or beneath the surface of its portion of the Property.
- d. Each Owner warrants and represents that, other than Owner, no person, firm or other legal entity has any right or option whatsoever to acquire such Owner's portion of the Property.
- e. Each Owner warrants and represents that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and does not constitute a violation or breach by such Owner of any provision of any agreement or other instrument to which such Owner is a party or to which such Owner may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued to such Owner.

All representations and warranties made herein are based on the actual, present knowledge of James L. Zboril on behalf of Tavistock and of David Cannon on behalf of SLR (collectively, the "Named Representatives"). Neither the actual, present conscious knowledge of any other individual or entity, nor the constructive knowledge of the Named Representatives or of any other individual or entity, shall be imputed to the Named Representatives.

15. **Acceptance AS-IS and Release.** Except as expressly set forth in this Agreement to the contrary, CFX is expressly purchasing the Property in its existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and, Owners have no obligation to determine or correct, or to compensate CFX for, any such facts, circumstances, conditions, or defects. Owners have

specifically bargained for the assumption by CFX of all responsibility thoroughly to investigate the Property and laws and regulations applicable to it, and all risk of adverse conditions. CFX is and will be relying strictly and solely upon its inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers. CFX assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property, and hereby releases Owners from, and disclaims any claims relating to, conditions on or facts or circumstances affecting, the Property that are not addressed in express warranties and representations of this Agreement. Except as expressly set forth in this Agreement to the contrary, Owners disclaim all warranties of any kind or nature whatsoever (including, without limitation, warranties of fitness for particular purposes), whether expressed or implied including, without limitation warranties with respect to the Property. Except as is expressly set forth in this Agreement to the contrary, CFX acknowledges that it is not relying on any representation of any kind or nature made by Owners or any of Owners' direct or indirect members, partners, shareholders, officers, directors, employees or agents with respect to the Property, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made.

16. Defaults.

- a. Owner Default. In the event that: (i) any of Owners' representations and warranties contained herein are not true and correct, or (ii) any Owner fails to perform in any of Owner's covenants and agreements contained herein within the time performance specified herein; CFX may exercise the following rights and remedies: (i) CFX shall have the right to terminate this Agreement, in which event the obligations of the parties under this Agreement shall be terminated (other than obligations which, by the terms of this Agreement, expressly survive the termination of the Agreement) and this Agreement shall be null and void; or (ii) pursue an action for specific performance of this Agreement against Owners (CFX acknowledges it has waived any right to pursue an action for damages against Owners, in the event of a default by any Owner); provided, however, that nothing contained in this subsection shall limit or prevent the CFX from exercising its power of eminent domain to acquire, by condemnation, title to the Property.
- b. CFX Default. In the event CFX fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by CFX under the terms and provisions of this Agreement, Owners shall be entitled to (i) exercise any and all rights and remedies specifically provided herein, including the right of specific performance; or (ii) terminate this Agreement. Owners hereby waive and release any right to pursue an action for damages against CFX. Notwithstanding the foregoing, Owners shall have the right to enforce CFX's express covenants in this Agreement to indemnify, defend, or hold harmless Owners. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Further, nothing contained herein shall be deemed a waiver of any of Owners' rights or remedies in the event CFX or another authority pursues an action in eminent domain against the Property or any portion thereof.

17. **Release of CFX.** The Parties acknowledge and agree CFX intends to obtain the Property for use in its limited-access expressway system. By execution of this Agreement, each Owner acknowledges and agrees that as of the date of Owners' execution and delivery of the deed, Owners shall thereby remise, release, acquit, satisfy, and forever discharge CFX, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Owners ever had, then have, or which any personal representative, successor, heir or assign of either Owner, thereafter can, shall or may have, against CFX, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with Owners' conveyance of the Property to CFX or the Project, including, without limitation, any claim for loss of access, air, light or view to Owners' remaining property, or other severance damages to Owners' remaining property, business damages, consequential damages, or any other damages, all from the beginning of the world to the day thereof. A covenant shall be contained in the deed acknowledging Owners' agreement to the foregoing, in which event if there is any conflict between the terms of the covenant in the deed and the terms of this Section, the terms of the covenant in the deed shall control.
18. **Notices.** Any notices or communications which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., by email) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

CFX:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 Orl Tower Road
Orlando, Florida 32807
Attn: Executive Director and General Counsel
Telephone: (407) 690-5000
Email: Laura.Kelley@cfxway.com

With a copy to:

NELSON MULLINS BROAD AND CASSEL
390 N. Orange Avenue
Suite 1400
Orlando, Florida 32801-1640
Telephone: (407) 839-4200
Attn: Richard N. Milian, P.A., Email: richard.milian@nelsonmullins.com
and Robert F. Mallett, L.L.C., Email: robert.mallett@nelsonmullins.com

Owner:

SUBURBAN LAND RESERVE, INC.
51 South Main Street, Suite 301
Salt Lake City, Utah 84111
Attn: R. Steven Romney and David Cannon
Telephone: (801) 321-7569
Email: sromney@slreserve.com and djc@slreserve.com

With Copy To:

KIRTON MCCONKIE
50 East South Temple
Suite 400
Salt Lake City, UT 84111
Attn: Robert Hyde and Loyal Hulme
Telephone: (801) 323-5913
Email: rhyde@kmclaw.com and lhulme@kmclaw.com

With Copy To:

BURR & FORMAN LLP
200 S. Orange Avenue, Suite 800
Orlando, Florida 32801
Attn: James R. Pratt, Esq.
Telephone: (407) 540-6655
Email: jpratt@burr.com

Owner:

LAKE NONA LAND COMPANY, LLC
6900 Tavistock Lake Boulevard, Suite 200
Orlando, Florida 32827
Attn: James L. Zboril, President
Telephone: (407) 816-6598
Email: jzboril@tavistock.com

With Copy To:

HOLLAND & KNIGHT LLP
200 South Orange Avenue, Suite 2600
Orlando, FL 32801
Attn: Sara Bernard, Esq.
Telephone: (407) 244-5162
Email: sara.bernard@hklaw.com

And:

LAKE NONA RESEARCH I, LLC
6900 Tavistock Lake Boulevard, Suite 200
Orlando, Florida 32827
Attn: James L. Zboril, President
Telephone: (407) 816-6598
Email: jzboril@tavistock.com

With Copy To:

HOLLAND & KNIGHT LLP
200 South Orange Avenue, Suite 2600
Orlando, FL 32801
Attn: Sara Bernard, Esq.
Telephone: (407) 244-5162
Email: sara.bernard@hklaw.com

And:

TDCP, LLC
6900 Tavistock Lake Boulevard, Suite 200
Orlando, Florida 32827
Attn: James L. Zboril, President
Telephone: (407) 816-6598
Email: jzboril@tavistock.com

With Copy To:

HOLLAND & KNIGHT LLP
200 South Orange Avenue, Suite 2600
Orlando, FL 32801
Attn: Sara Bernard, Esq.
Telephone: (407) 244-5162
Email: sara.bernard@hklaw.com

And:

SPRINGHEAD NORTH, LLC
6900 Tavistock Lake Boulevard, Suite 200
Orlando, Florida 32827
Attn: James L. Zboril, President
Telephone: (407) 816-6598
Email: jzboril@tavistock.com

With Copy To:

HOLLAND & KNIGHT LLP
200 South Orange Avenue, Suite 2600
Orlando, FL 32801
Attn: Sara Bernard, Esq.
Telephone: (407) 244-5162
Email: sara.bernard@hkllaw.com

or to such other address as any Party hereto shall from time to time designate to the other Party by notice in writing as herein provided. Notice given by or to the attorney representing a Party under this Agreement shall be deemed to have been duly given in accordance with this Section by or to the applicable Party.

19. **ISD Exemption.** The Property lies within the boundaries of the Sunbridge Stewardship District, a special and limited purpose independent special district established pursuant to the provisions of Chapter 189, Florida Statutes (the “ISD”). The ISD is an independent special district established pursuant to the provisions of Chapter 190, Florida Statutes, for the purpose of planning, designing, financing, constructing, installing, operating, and/or maintaining certain infrastructure, including water management systems, transportation and roadway improvements, landscaping, drainage facilities, potable water and sanitary sewer facilities, wetland mitigation, recreation and other infrastructure improvements lying within or outside the boundaries of the ISD, with the right to levy assessments in accordance with Sections 190.021 and 190.022, Florida Statutes (whether collected by Osceola County as part of its tax rolls or by the ISD directly). Prior to Closing, Owner shall, at Owner’s cost and expense, cause the ISD to adopt an amendment to the ISD’s assessment methodology to reflect that the Property shall be exempt from the payment of assessments so long as the real property is primarily used for the right-of-way purposes prescribed in the Deed (the “ISD Exemption”).

20. **General Provisions.** No failure of any Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either Party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by Owners and CFX. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective heirs, administrators, executors, personal representatives, successors and assigns. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or state or federal legal holiday, such time for performance shall be extended to the next business day. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement. The headings inserted at the beginning of each paragraph of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each paragraph. The Parties do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall

be executed and delivered by each Party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The Parties hereto agree that venue for any legal action authorized hereunder shall be in the courts of Osceola County, Florida. TIME IS OF THE ESSENCE OF THIS AGREEMENT AND EACH AND EVERY PROVISION HEREOF. All parties to this Agreement hereby acknowledge that CFX is an agency of State of Florida and therefore this Agreement is subject to all requirements of public contracts, including, without limitation, the terms of Sections 119.01, *et. seq.*, Section 20.055(5) and Section 287.133(1)(g) Florida Statutes, to the extent required by said statutes. The parties hereby agree to comply with this subsection of Florida Statutes.

21. **Owners.** Neither of SLR and Tavistock shall be liable under this Agreement except for the application of this Agreement to the portions of the Property they respectively either own or have the legal right to acquire, but shall be binding upon their successors and assigns. They are not jointly and severally liable under this Agreement.
22. **Counterparts.** This Agreement may be executed in multiple counterparts. The signature of any party to a counterpart shall be deemed to be the signature to, and may be appended to, any other counterpart. A party shall be bound by this Contract by executing a counterpart hereof, then transmitting the executed counterpart to the other parties via email in .pdf or similar format.
23. **Recording.** CFX agrees that he will not record, or permit to be recorded, this Agreement or any memorandum hereof; violation of this covenant by CFX shall constitute a default, and at Owners' option, this Agreement shall become null and void and all of the rights of CFX hereunder shall terminate.
24. **Further Assurances.** Owners and CFX will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by the other to carry out the intent and purposes of this Agreement.
25. **Severability.** This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable Laws. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
26. **Attorneys' Fees.** In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the predominately prevailing Party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration or bankruptcy, at trial or on appeal.

27. **Waiver of Jury Trial.** THE PARTIES VOLUNTARILY WAIVE A TRIAL BY JURY IN ANY LITIGATION OR ACTION ARISING FROM THIS AGREEMENT.
28. **Radon Gas.** Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
29. **Regarding Brokers, Finders, Etc.** Each Owner represents and warrants to CFX and CFX likewise represents and warrants to Owners, that they have neither dealt with, nor negotiated with, any broker, sales person or finder in connection with the conveyance of the Property to CFX, and each Party hereto agree to indemnify and hold the other Party harmless from any and all claims, demands, causes of action or other liabilities, and all costs and expenses (including reasonable attorneys' fees) incurred in defending against any claims arising from or pertaining to any other brokerage commission, fees, costs, or other expenses which may be claimed by any broker, sales person or entity arising out of any actions of CFX (as to the indemnity obligations of CFX) or arising out of any actions of Owners (as to the indemnity obligations of Owners).
30. **Effective Date.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the date as of which all Parties will have signed this Agreement, and the last to sign delivers a signed counterpart to the other Parties. CFX shall sign this Agreement after approval of all Boards as provided in Section 11.c. above.
31. **Schedules and Exhibits.** The following Schedules and Exhibits referenced elsewhere in this Agreement are attached hereto and incorporated by reference:

- a. **Exhibits "A-1"** through **"A-4"** Tavistock Property;
- b. **Exhibit "B"** SLR Property;
- c. **Exhibit "C"** Form Beneficial Interest Affidavit
- d. **Exhibit "D-1"** Split Oak Alignment
- e. **Exhibit "D-2"** Detail of west end of Split Oak Alignment
- f. **Exhibit "D-3"** Detail of east end of Split Oak Alignment
- g. **Exhibit "D-4"** Lake Nona Revised Interchange
- h. **Exhibit "D-5"** Ultimate Local Interchange

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed in their respective names as of the date first above written.

WITNESSES:

“CFX”

**CENTRAL FLORIDA
EXPRESSWAY AUTHORITY,**
a public corporation under the laws of the State of
Florida

Print Name: _____

By: _____

Print Name: _____

Title: _____

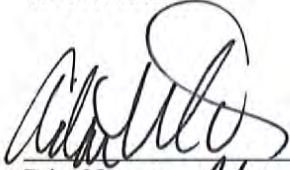
Date: _____

APPROVED AS TO FORM FOR EXECUTION BY
A SIGNATORY OF THE CENTRAL FLORIDA
EXPRESSWAY AUTHORITY
Legal Counsel: _____

By: _____

Date: _____

WITNESSES:



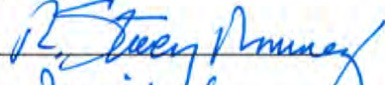
Print Name: Adam Mauchley



Print Name: JANET P. CHRISTENSEN

“SLR”



SUBURBAN LAND RESERVE, INC., a Utah corporation


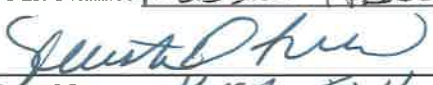
By: 

Title: President

Date: 10/25/19



WITNESSES:


Print Name: ROBERT ADAMS

Print Name: KRISTI TILTON


Print Name: ROBERT ADAMS

Print Name: KRISTI TILTON

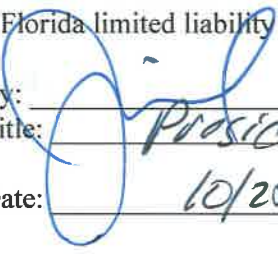

Print Name: ROBERT ADAMS

Print Name: KRISTI TILTON

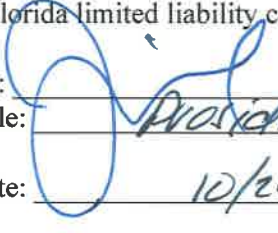

Print Name: ROBERT ADAMS

Print Name: KRISTI TILTON

"TAVISTOCK"

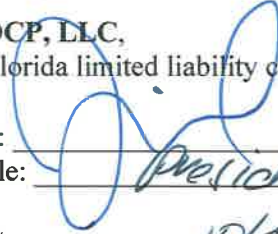
LAKE NONA LAND COMPANY, LLC,
a Florida limited liability company

By: 
Title: President
Date: 10/25/19

LAKE NONA RESEARCH I, LLC,
a Florida limited liability company

By: 
Title: President
Date: 10/25/19

TDCP, LLC,
a Florida limited liability company

By: 
Title: President
Date: 10/25/19

SPRINGHEAD NORTH, LLC,
a Florida limited liability company

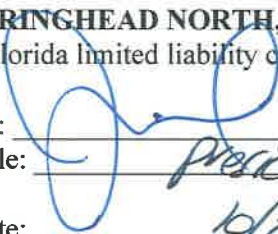
By: 
Title: President
Date: 10/25/19

Exhibit "A-1"

**Tavistock Property
(Lands owned by Lake Nona Land Company, LLC)**

[See Attached 1 Page]

Parcel ID No.	Address	Total Acres	Impacted Acres
22-24-30-0000-00-006	12903 Boggy Creek Rd Orlando, FL 32824	185.2 +/-	14.2 +/-
26-24-30-0000-00-014	13849 Boggy Creek Rd Orlando, FL 32827	286.4 +/-	52.3 +/-
36-24-30-0000-00-004	Narcoossee Road Orlando, FL 32827	250.9 +/-	8.3 +/-
26-24-30-0000-00-022	Lake Nona Blvd Orlando, FL 32827	19.7 +/-	5.8 +/-
23-24-30-0000-00-002	12749 Boggy Creek Rd Orlando, FL 32827	12.1 +/-	5.4 +/-
25-24-30-0000-00-008	7190 Lake Nona Blvd Orlando, FL 32827	13.6 +/-	0.2 +/-
19-24-31-0000-00-010	9901 Tavistock Lakes Blvd Orlando, FL 32827	293.6 +/-	0.3 +/-
Lake Nona Land Co LLC Total		1061.5 +/-	86.5 +/-

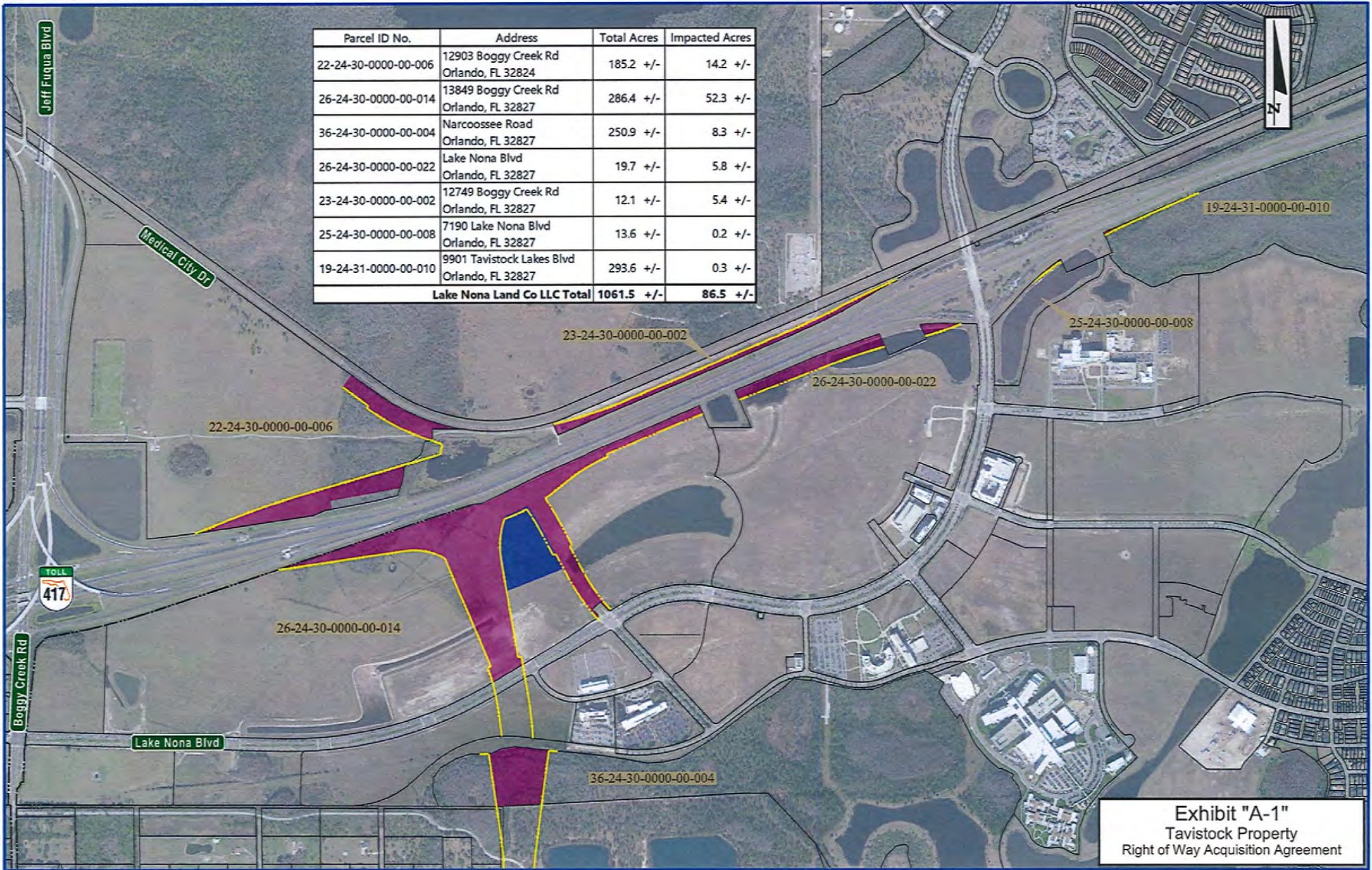


Exhibit "A-1"
Tavistock Property
Right of Way Acquisition Agreement

Exhibit "A-2"

**Tavistock Property
(Lands owned by Lake Nona Research I, LLC)**

[See Attached 1 Page]

Parcel ID No.	Address	Total Acres	Impacted Acres
26-24-30-0000-00-023	6376 Lake Nona Blvd Orlando, FL 32824	36.7 +/-	4.4 +/-
Lake Nona Research I LLC Total		36.7 +/-	4.4 +/-

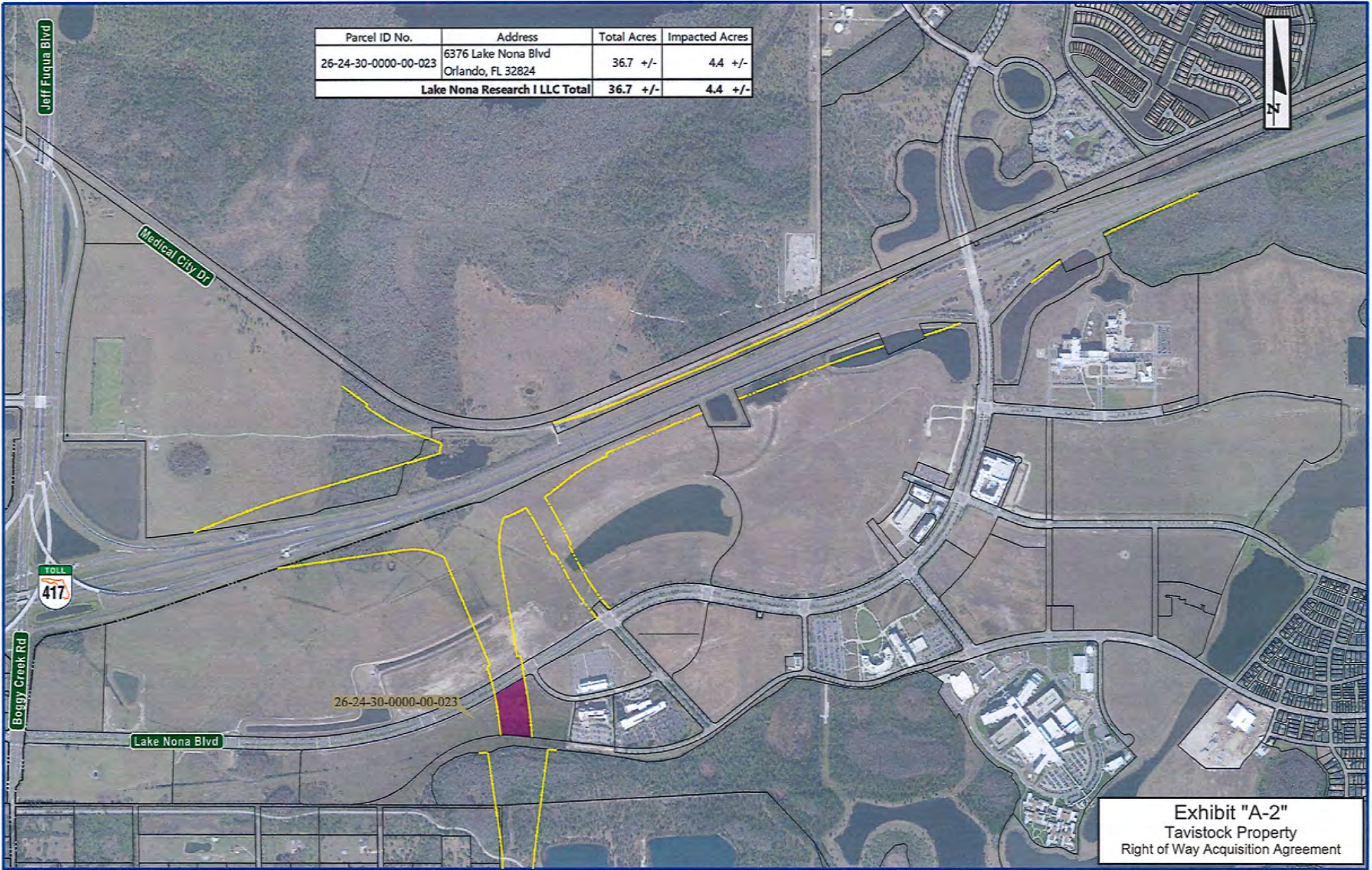


Exhibit "A-2"
Tavistock Property
Right of Way Acquisition Agreement

Exhibit "A-3"

**Tavistock Property
(Lands controlled by TDCP, LLC)**

[See Attached 1 Page]

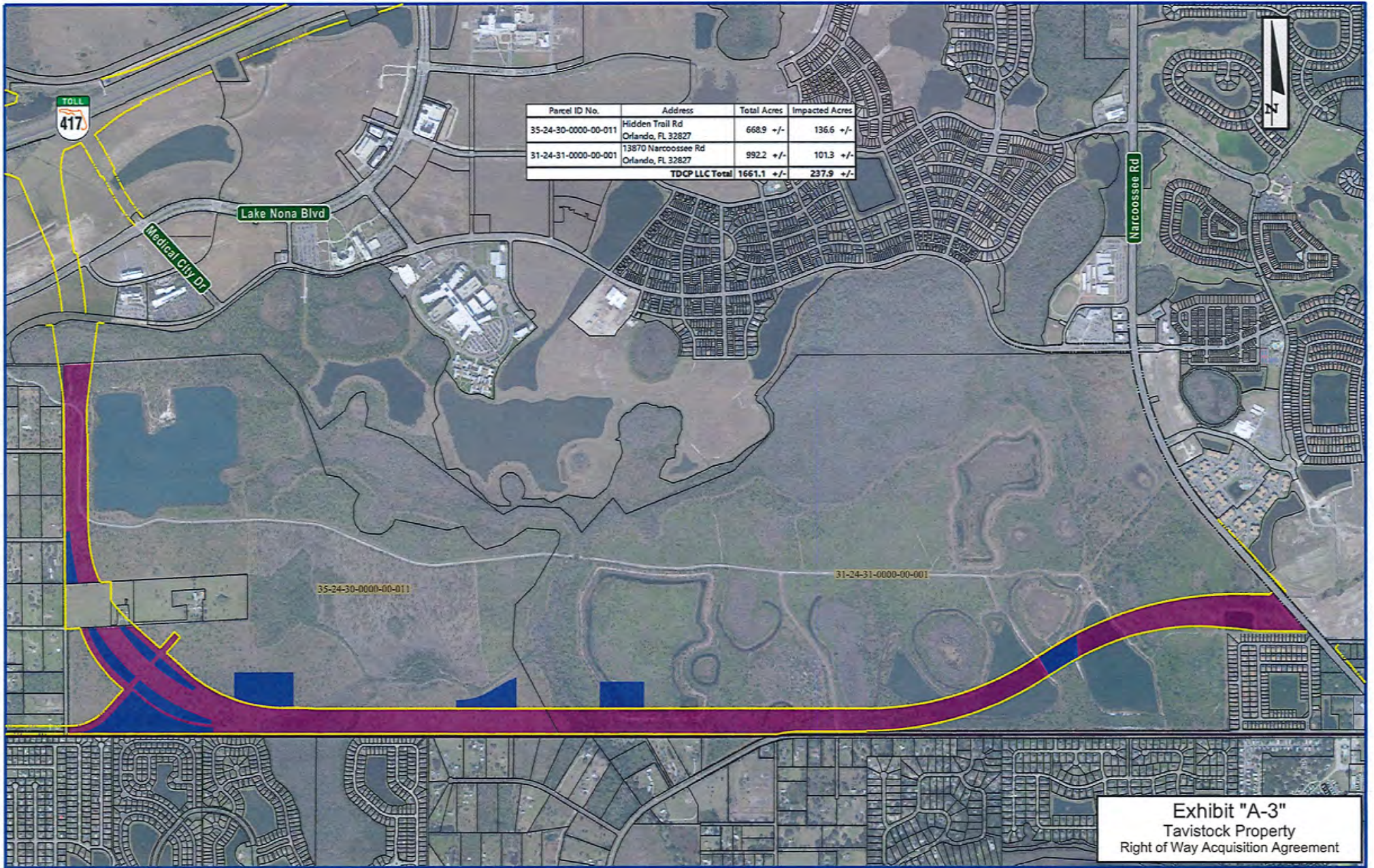


Exhibit "A-4"

**Tavistock Property
(Lands owned by Springhead North, LLC)**

[See Attached 1 Page]

Parcel ID No.	Address	Total Acres	Impacted Acres
33-24-31-0000-00-012	Clapps Sims Duda Rd Orlando, FL 32832	668.9 +/-	15.5 +/-
04-25-31-4260-0001-0010	Cyrils Dr Saint Cloud, FL 34771	190.4 +/-	24.5 +/-
Springhead North LLC Total		859.3 +/-	40.0 +/-



Split Oak Forest

Boggy Creek Rd

Narcoossee Rd

33-24-31-0000-00-012

04-25-31-4260-0001-0010

Exhibit "A-4"
Tavistock Property
Right of Way Acquisition Agreement

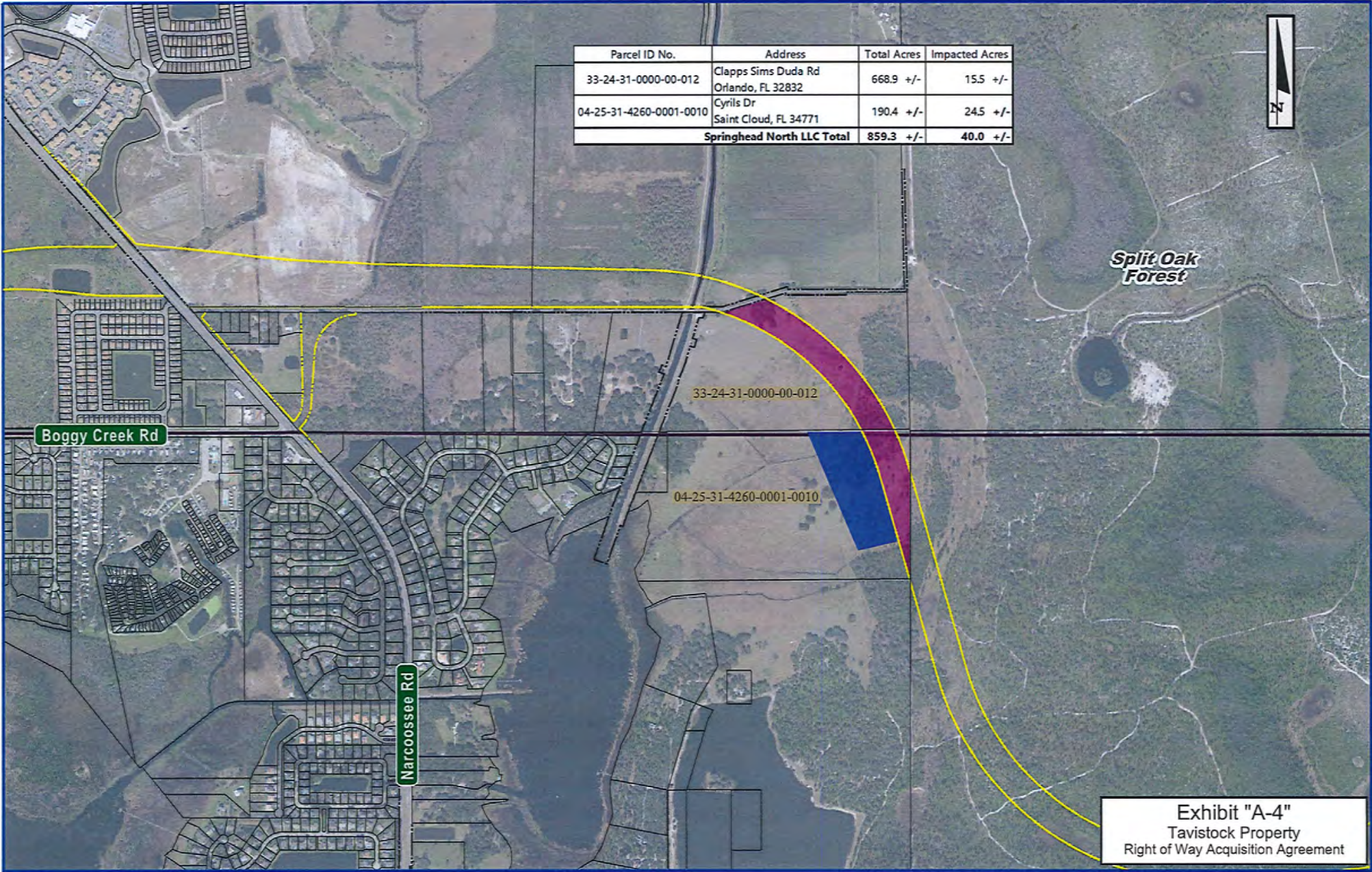


Exhibit "B"

SLR Property

[See Attached 1 Page]

Parcel ID No.	Address	Total Acres	Impacted Acres
02-25-31-0000-0010-0000	Cyrils Dr Saint Cloud, FL 34771	190.4 +/-	73.4 +/-
11-25-31-0000-0010-0000	Absher Rd Saint Cloud, FL 34771	453.9 +/-	34.7 +/-
12-25-31-0000-0010-0000	Saint Cloud, FL 34771	459.0 +/-	3.6 +/-
SLR Property Total		1103.3 +/-	111.7 +/-

Split Oak Forest

02-25-31-0000-0010-0000

Cyrils Dr

11-25-31-0000-0010-0000

12-25-31-0000-0010-0000

Exhibit "B"
SLR Property
Right of Way Acquisition Agreement

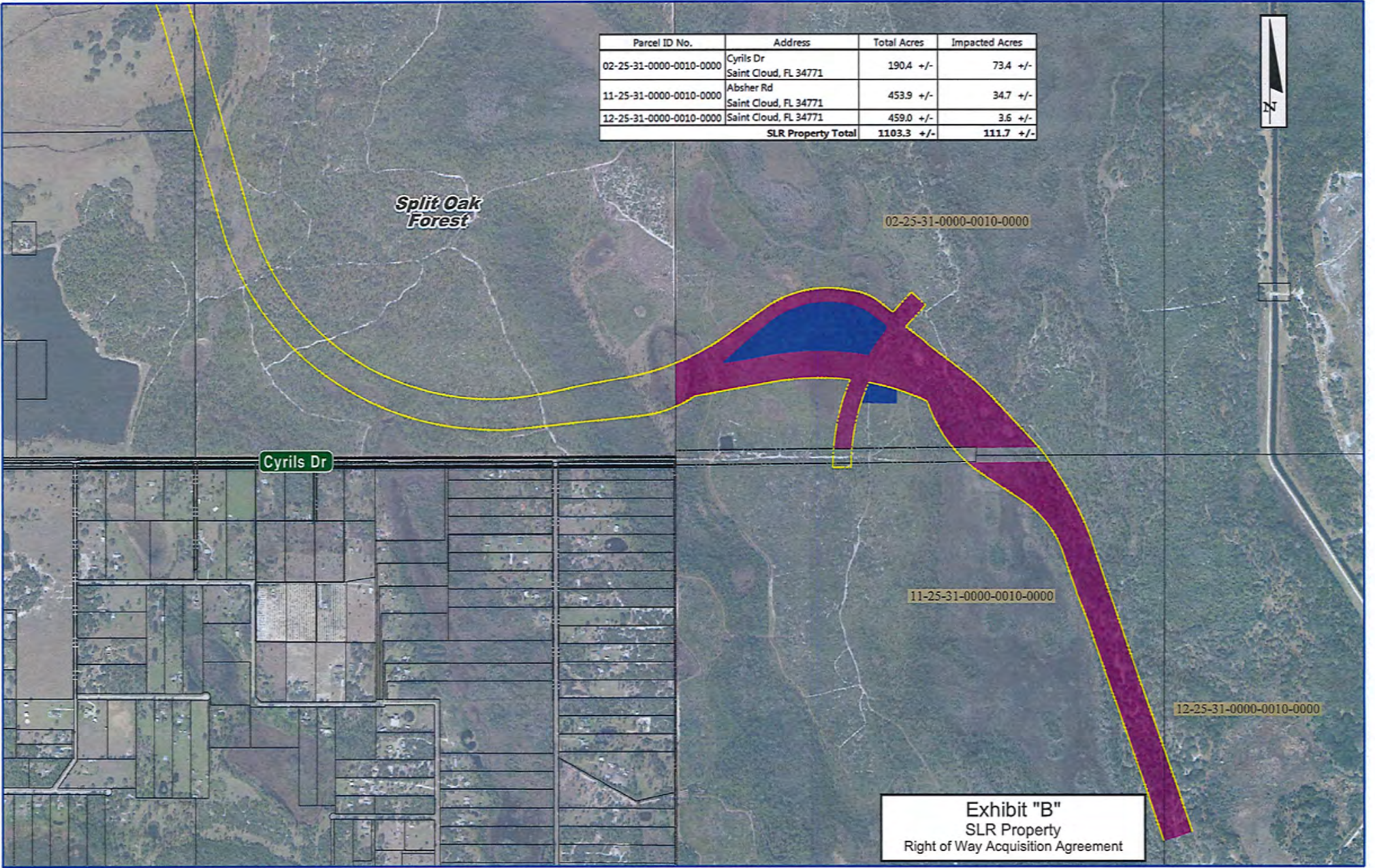


Exhibit "C"

Form Beneficial Interest Affidavit

DISCLOSURE OF INTERESTS IN REAL PROPERTY

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

FROM:

SUBJECT: Property as more particularly described in Exhibit "A" attached hereto (hereinafter the "Property")

Please be advised that the undersigned, after diligent search and inquiry, hereby states under oath, and subject to the penalties for perjury, that the name and address of each person having a legal or beneficial interest in the Property as of the ____ day of _____, 20__ is as follows:

Name	Address	Percentage of Ownership
_____	_____	

_____	_____	

I swear and affirm that the information furnished herein is accurate as of the date hereof, and I agree to promptly disclose any changes in the information contained herein, or any errors in such information.

This disclosure is made under oath and I understand I am subject to penalties for perjury for any false information contained herein.

This disclosure is made pursuant to Section 286.23, Florida Statutes, in connection with a conveyance of the Property to _____.

[SIGNATURE AND NOTARY ON NEXT PAGE]

SELLER

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF FLORIDA _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____,
20____, by _____ as _____ of _____,
a _____, on behalf of the _____. He / She is personally known to
me or has produced _____ as identification and who did/did not take an oath.

(Signature of Notary Public)

(Typed name of Notary Public)

Notary Public, State of Florida

Commission No.: _____

My commission expires: _____

EXHIBIT "D-1"
Split Oak Alignment

[See graphic on next page.]

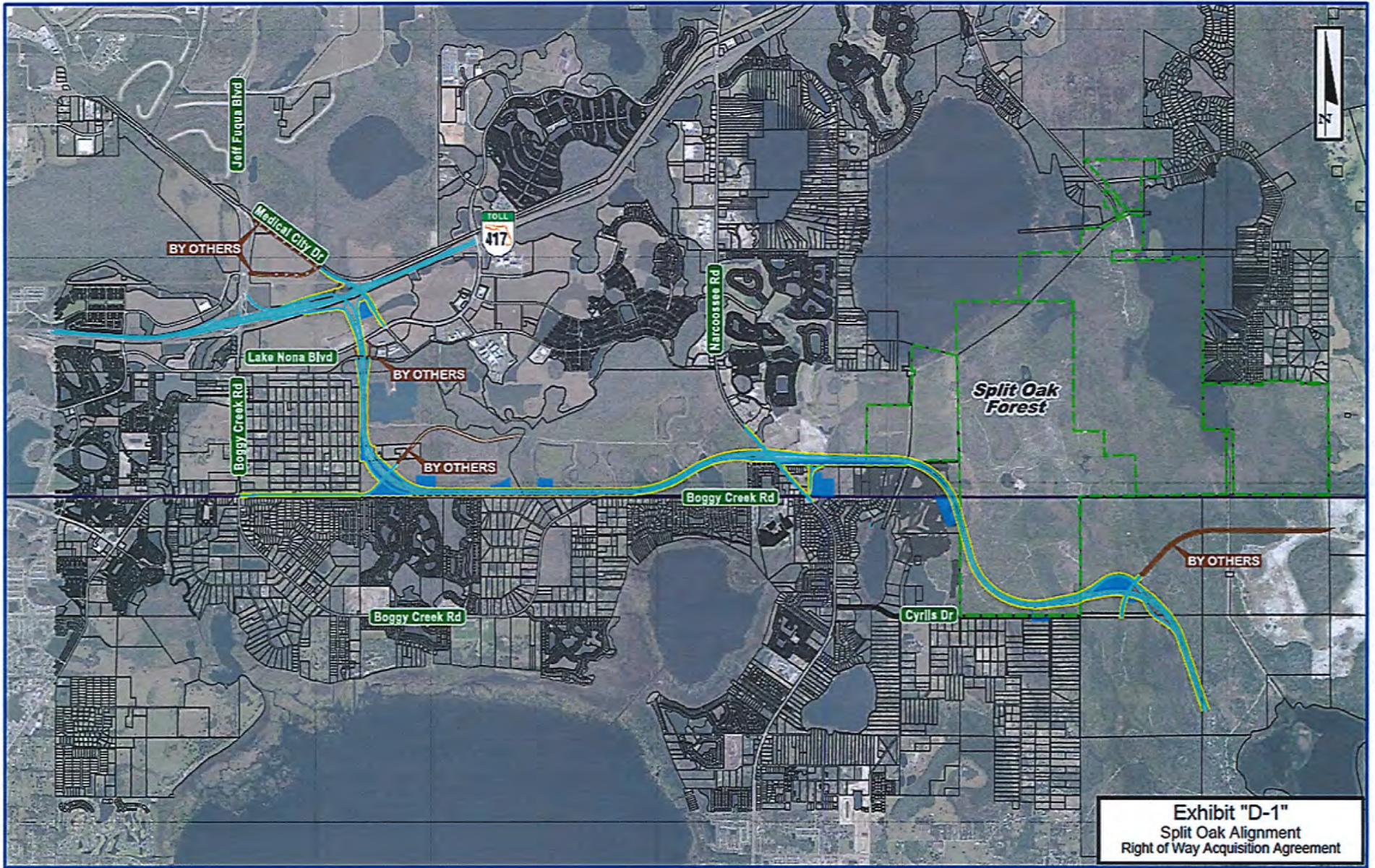


Exhibit "D-1"
Split Oak Alignment
Right of Way Acquisition Agreement

EXHIBIT "D-2"

Detail of West End of Split Oak Alignment

[See graphic on next page.]

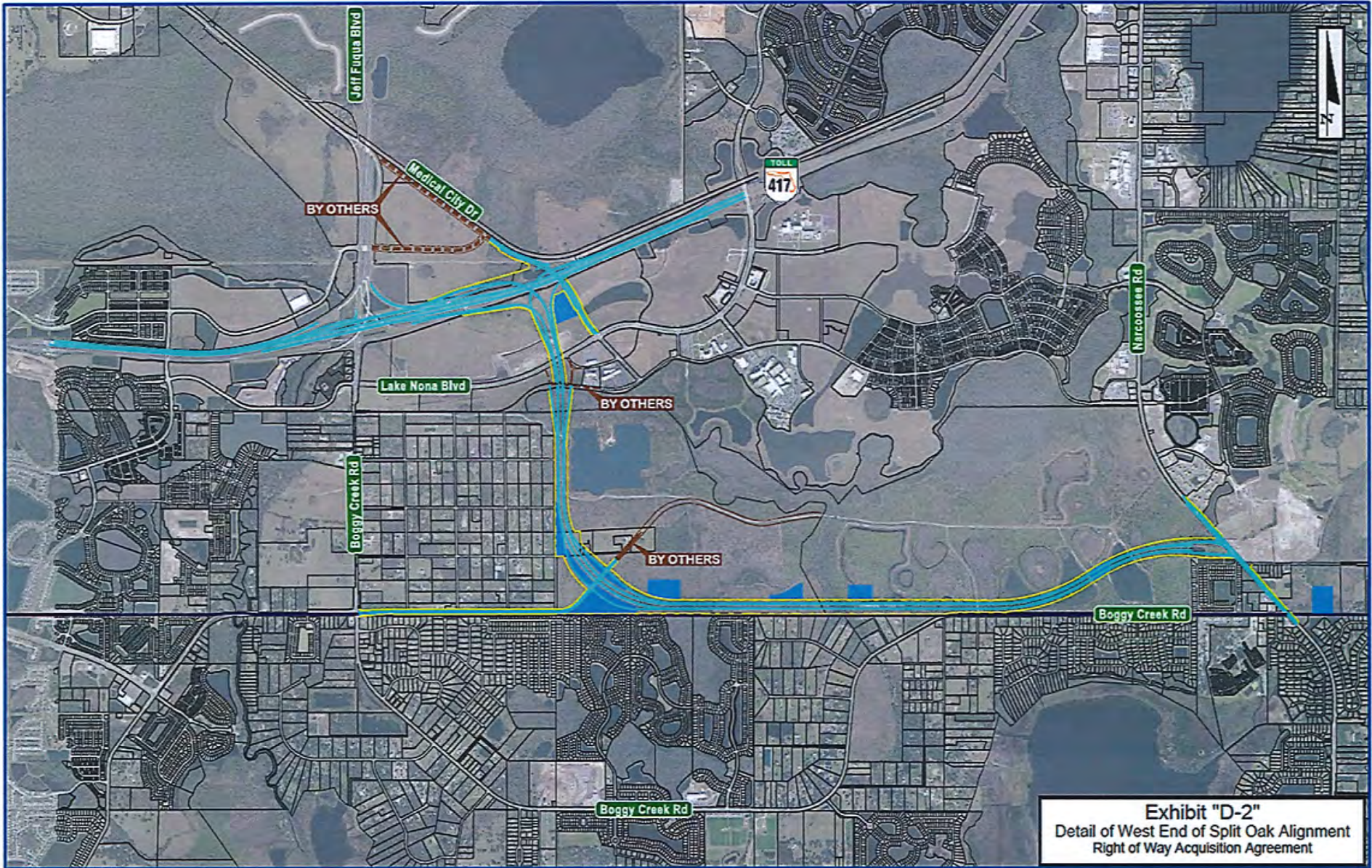


Exhibit "D-2"
Detail of West End of Split Oak Alignment
Right of Way Acquisition Agreement

EXHIBIT "D-3"

Detail of East End of Split Oak Alignment

[See graphic on next page.]

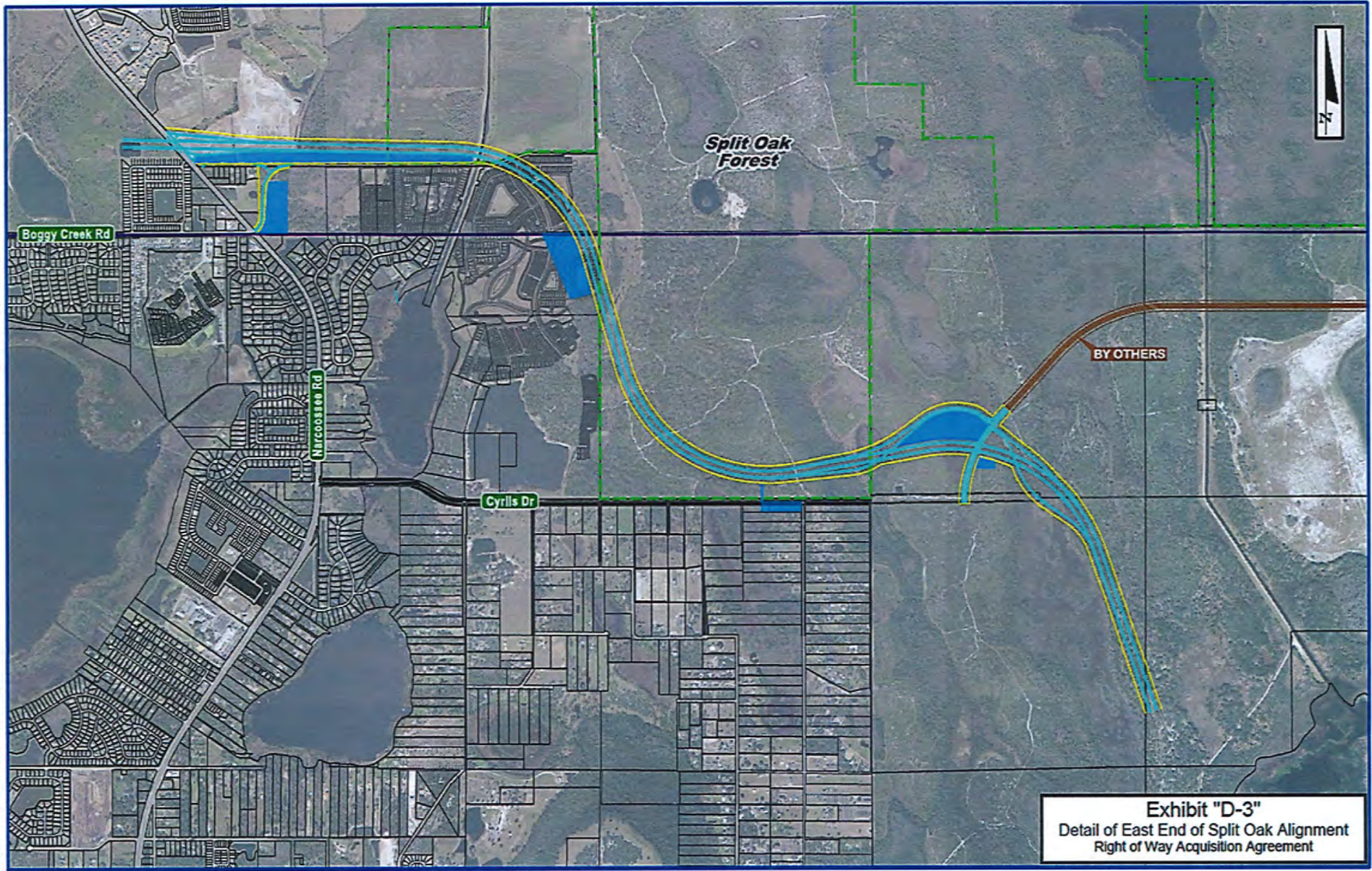


Exhibit "D-3"
Detail of East End of Split Oak Alignment
Right of Way Acquisition Agreement

EXHIBIT "D-4"

Lake Nona Revised Interchange

[See graphic on next page.]

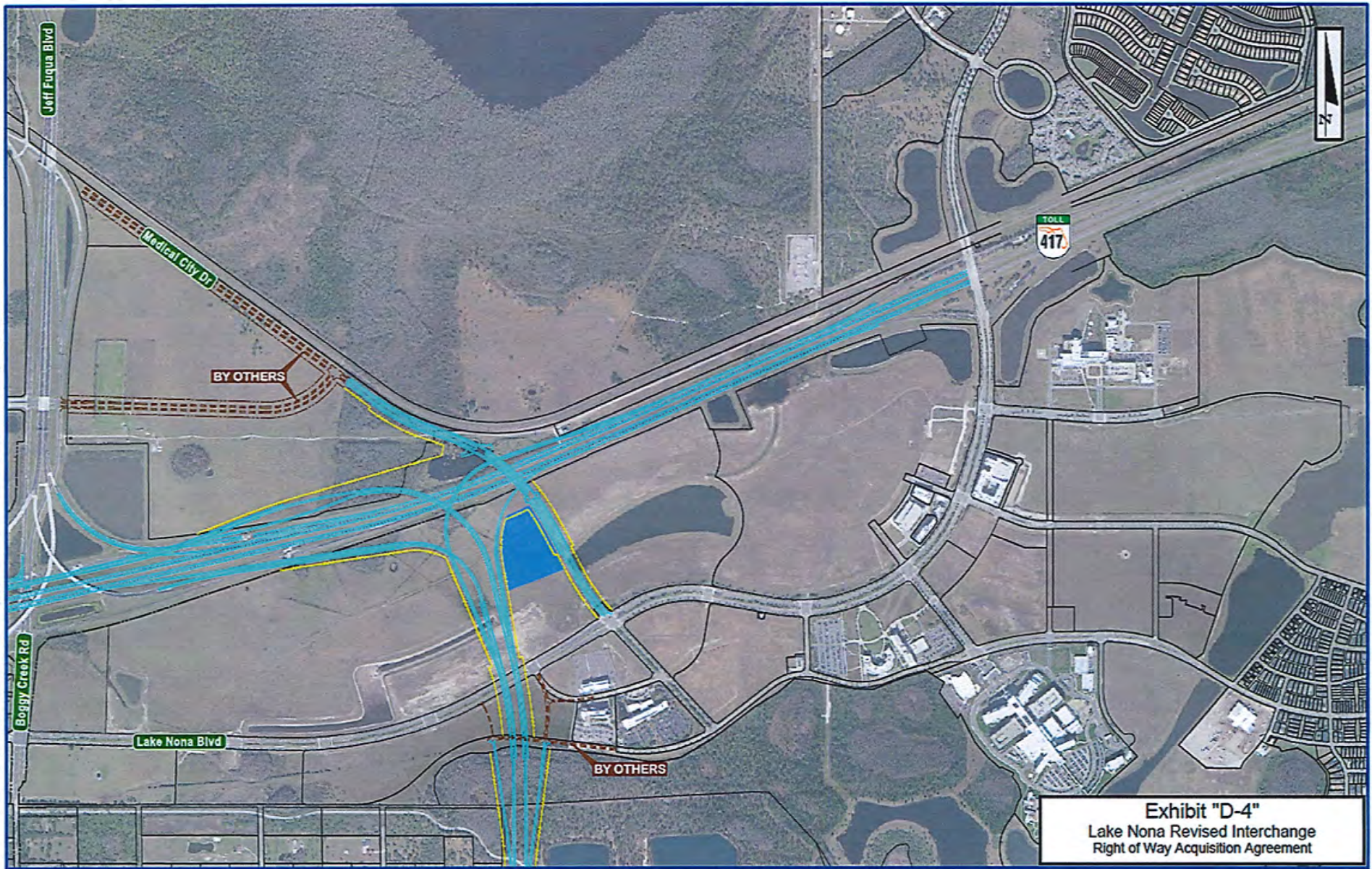


Exhibit "D-4"
Lake Nona Revised Interchange
Right of Way Acquisition Agreement

EXHIBIT "D-5"
Ultimate Local Interchange

[See graphic on next page.]

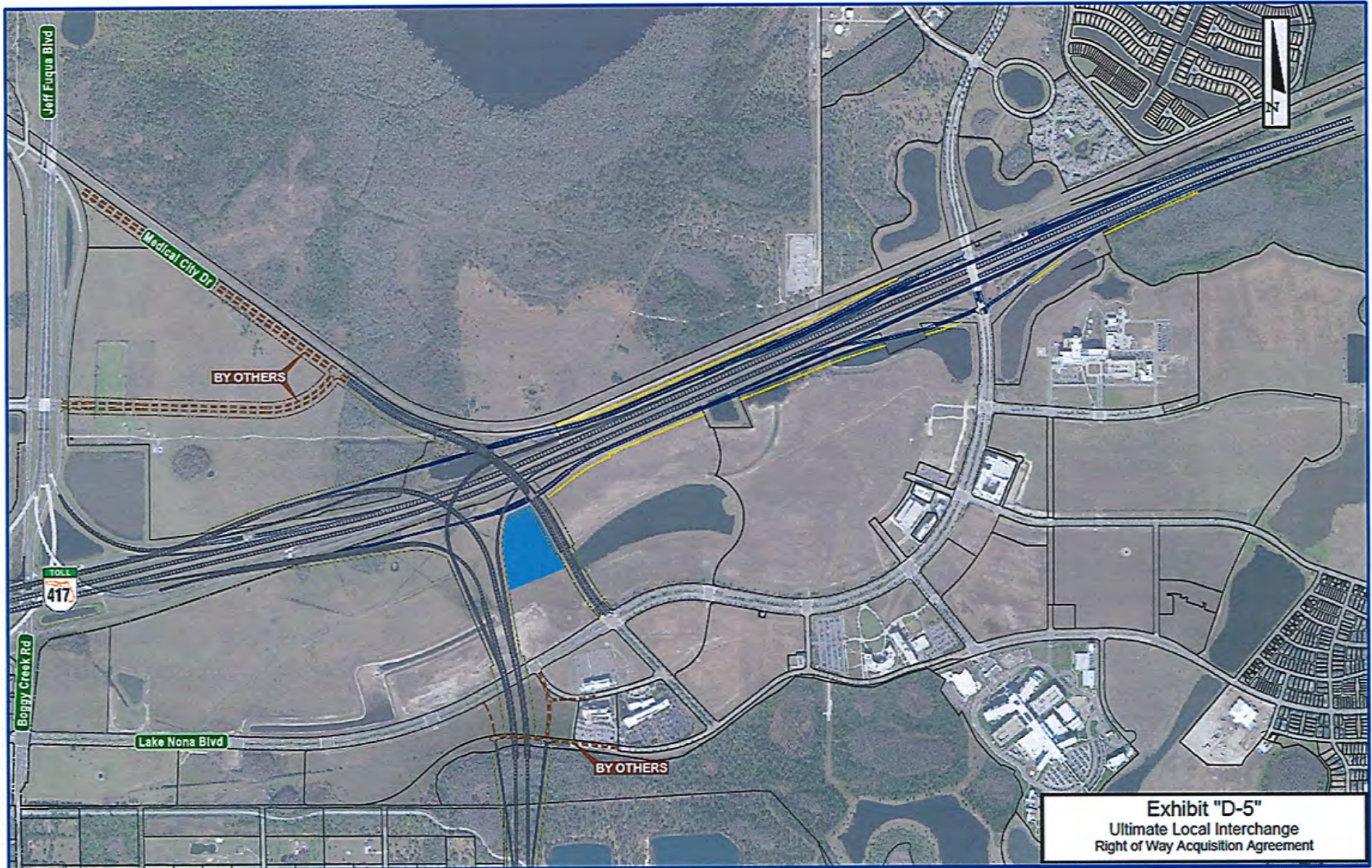


Exhibit "D-5"
Ultimate Local Interchange
Right of Way Acquisition Agreement

PROPOSED CONSERVATION LANDS AGREEMENT

Executive Summary

The proposed Conservation Lands Agreement is a contract between CFX and landowners Suburban Land Reserve, Inc. (SLR) and Tavistock East Holdings, LLC.

SLR and Tavistock own approximately 1,550 acres of land located in Osceola County and Orange County, Florida near the Split Oak Forest Wildlife and Environmental Area (Split Oak).

The proposed Conservation Lands Agreement contemplates that Tavistock and SLR will donate and convey 1,550 acres of land to CFX (or another agency designated by state or local officials) to put into conservation on behalf of the public to offset potential impacts of the Split Oak Minimization Alignment on Split Oak property.

The SLR and Tavistock land donation is contingent upon the Osceola Parkway Extension moving into production with the Split Oak Minimization Alignment that has approximately 60 acres of direct impacts and 100 acres of indirect impacts to Split Oak.

The Osceola Parkway Extension project with the Split Oak Minimization Alignment will require approvals from the CFX Board, Orange County, Osceola County, the Florida Fish and Wildlife Commission, the Florida Communities Trust and the Florida Department of Environmental Protection.

CFX agrees to support SLR and Tavistock's future efforts to seek approvals for access and trail development for hiking, bicycling, etc. on the conservation lands.

SLR and Tavistock do not maintain future mitigation rights on the conservation lands.

The conveyance of the conservation lands will be restricted for use as conservation lands only. The following things must occur before SLR and Tavistock will convey the land:

1. CFX approval of the Split Oak Minimization Alignment as the preferred alignment;
2. CFX secures final approvals for constructing and operating the Osceola Parkway Extension;
3. Resolution of any challenges or appeals brought against the designation of the Split Oak Minimization Alignment for the project;
4. CFX notifies SLR and Tavistock in writing that CFX is prepared to proceed with design for the project.

The closing for the conservation land should occur within five (5) years after the execution of the Conservation Land Agreement. If the contingencies are not satisfied in that time, parties can negotiate in good faith to establish an extended period of up to 18 months to satisfy the contingencies.

PARCELS: Split Oak Conservation Lands
PROJECT NAME: OSCEOLA PARKWAY EXTENSION

AGREEMENT TO CONVEY CONSERVATION LANDS

THIS AGREEMENT TO CONVEY CONSERVATION LANDS (“Agreement”) is made as of its Effective Date (defined below) among **SUBURBAN LAND RESERVE, INC.**, a Utah corporation, (“SLR”) and **TAVISTOCK EAST HOLDINGS, LLC**, a Florida limited liability company (“Tavistock”), and **CENTRAL FLORIDA EXPRESSWAY AUTHORITY**, a body politic and corporate and an agency of the state, under the laws of the State of Florida, with an address of 4974 Orl Tower Road, Orlando, Florida, 32807, (“CFX”). (SLR and Tavistock are referred to below collectively as the “Owner”.) (SLR, Tavistock and CFX are sometimes collectively referred to below as the “Parties” and individually as a “Party”).

RECITALS:

CFX is conducting a re-evaluation (“PD&E”) of that certain project development and environment study (“Original PD&E”) conducted under FPID 432134-1-22-01, said project being known as FM #439193-1-38-01 and FM #439193-1-48-01, regarding a proposed expansion of CFX’s limited-access expressway system consisting of an extension of the Osceola Parkway (sometimes referred to hereinafter as the “Extension” or the “Project”). The PD&E concluded that the Extension alignment alternative depicted on **Exhibit A** (the “Split Oak Alignment”), which would traverse the Split Oak Forest Wildlife and Environmental Area through Osceola County (the “Split Oak Property”), would cause potential environmental impacts on the Split Oak Property. Owner and CFX recognize the PD&E may designate the Split Oak Alignment as the preferred alignment, and have entered into this Agreement for the purpose of mitigating the impact of that alignment on Split Oak in that event. SLR is the fee simple owner of, or controls a subsidiary that is fee simple owner of, or SLR and Tavistock have enforceable and valid rights to acquire, their respective portions of approximately 1,550 acres of land located in Osceola County and Orange County, Florida, more particularly described or depicted on **Exhibit B** attached hereto and incorporated herein (collectively, the “Conservation Lands”). The Conservation Lands are adjacent to or in proximity to the Split Oak Property. Owner believes that the donation of the Conservation Lands on behalf of the public to provide additional conservation will offset potential impacts on the Split Oak Property that may result from constructing the Extension over the Split Oak Alignment should the Split Oak alignment be selected by CFX as its preferred alignment following completion of the PD&E and the Extension ultimately be constructed. Subject to the terms and conditions set forth below, Owner desires to grant to CFX or its designee or assignee (the “Nominee”), the right to acquire the Conservation Lands or direct the conveyance of an interest in the Conservation Lands to a third-party.

NOW, THEREFORE, in consideration of the mutual covenants and of this Agreement, CFX and Owner covenant and agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement (except in headings) shall have the meanings that appear where the terms are first set forth in quotation marks. In addition to all other defined terms contained in this Agreement, the terms listed below, except as the context may require otherwise, shall have the meanings provided for each:

- a. "Approvals" shall mean permits, approvals, consents, development orders, licenses, easements, agreements, acknowledgments, and other authorizations of Governmental Authorities, including but not limited to, any necessary amendments to applicable grant or other agreements relating to the Split Oak Property as may be necessary to allow portions thereof to be used for linear facility purposes.
- b. "Final Approvals" shall mean the issuance by all applicable Governmental Authorities of Approvals for design, acquisition, constructing, operating and use of the Extension and Extension Right of Way within the Split Oak Alignment, which Approvals are either (1) affirmed on administrative and judicial review by final order or judgment for which no appeal is or can be taken in accordance with applicable Law, or (2) in effect beyond the period of limitations for administrative and judicial review in accordance with applicable Law, during which period no action or other proceeding is instituted for review or challenge thereof.
- c. "Closing" shall mean the event at which the title or interest in the Conservation Lands are transferred by Owner to CFX or its Nominee in accordance with the terms and conditions of the Final Approvals.
- d. "Governmental Authority" or "Governmental Authorities" shall mean each governmental or quasi-governmental political subdivision or agency of the federal government, State of Florida or regional or local authority having jurisdiction over the Conservation Lands, the Extension or Split Oak Property, or whose approval or authorization is required in order to construct and operate the Extension within the Split Oak Alignment, including without implied limitation, Orange County, Osceola County, political subdivisions of the State of Florida, the Florida Fish and Wildlife Commission, an agency of the State of Florida ("FWC"), the Florida Communities Trust, a public body corporate and politic ("FCT"), the Florida Department of Environmental Protection, an agency of the State of Florida ("FDEP"), or the U.S. Army Corps of Engineering, a federal agency ("USACOE").
- e. "Laws" shall mean, as applicable, laws, statutes, ordinances, orders, regulations, permits, approvals, and other requirements of Governmental Authorities or quasi-governmental authorities, including without limitation courts and tribunals.

All of the defined terms contained in this Agreement, whether or not listed above in this Section may be used in the singular or the plural and, except as the context may require otherwise, shall mean when used in the plural all objects, persons, and the like included in the definition, and when used in the singular any of the objects, persons, and the like included in the definition.

- 2. **Conservation Lands.** The Conservation Lands include approximately 1,550 acres located in Orange County, Florida and Osceola County, Florida. Before Closing, CFX or the Nominee shall obtain a Survey and a certified legal description of the Conservation Lands as provided in Section 7 below, at CFX's expense. The legal description established by that Survey, subject to Owner's review and approval, shall be substituted in the instrument transferring title to the Conservation Lands at Closing. At Closing, Owner will either have acquired record fee simple title to all of the Conservation Lands, or will cause the then record fee simple owner of the Conservation Lands to transfer and convey them directly in accordance with this Agreement.

3. **Agreement to Convey Interest in Conservation Lands.** Subject to the conditions and requirements of this Agreement, Owner agrees at Closing to convey to CFX or its Nominee the right, title and/or interest in and to Conservation Lands to CFX or its Nominee as is required or allowed in accordance with the terms and conditions of any of the Final Approvals. Except as expressly set forth in this Agreement or the ROW Agreement (as defined in Section 10.a. below) there shall be no additional consideration paid for the Conservation Lands.
4. **Owner's Materials.** Within thirty (30) days of the Effective Date of this Agreement, Owner shall deliver to CFX copies of all of the following materials regarding the Conservation Lands that are listed on **Exhibit C** attached hereto and incorporated herein, to the extent they are in the possession or control of Owner (collectively, the "Owner's Materials"). Owner will deliver the Owner's Materials to CFX, without representation or warranty whatsoever, and without cost to CFX. Upon request of CFX or its Nominee, Owner will reasonably cooperate with CFX to assist in obtaining reliance letters, consents, or other approvals from the consultants preparing such studies as CFX may reasonably require so as to permit CFX to rely upon the findings of such studies should CFX or its Nominee elect to do so in its sole discretion.
5. **CFX's Right of Inspection.** CFX or any Nominee (each referred to herein as the "Inspecting Party") will have the privilege of going upon the Conservation Lands with its agents and engineers as needed to inspect, examine, survey, appraise and otherwise undertake those actions which are reasonable and necessary to determine the suitability of the Conservation Lands for the uses and activities that this Agreement permits on the Conservation Lands. The Inspecting Party and Owner shall reasonably cooperate to determine the scope, timing and location of tests needed for such inspections. The Inspecting Party shall enter the Conservation Lands at its sole risk and the Inspecting Party shall release Owner from any claims relating to the any entry thereon pursuant to the provisions of this Agreement.
 - a. **Inspections for Hazardous Substances.** An Inspecting Party may, in their sole discretion and at their sole cost and expense, conduct a Phase I Environmental Site Assessment of the Conservation Lands (a "Phase I") to determine the likelihood of the Conservation Land's containing hazardous or toxic substances, wastes, materials, pollutants or contaminants, including substances deposited by the cattle dipping vat operations referenced below.
 - i. As used herein, "Hazardous Substances" shall mean and include all hazardous and toxic substances, wastes or materials, any pollutants or contaminates (including, without limitation, asbestos and raw materials which include hazardous components), or other similar substances, or materials which are included under or regulated by any local, state, or federal Law pertaining to environmental regulation, contamination or clean-up, including, without limitation, "CERCLA", "RCRA", or state superlien or environmental clean-up statutes (all such Laws being referred to collectively as "Environmental Laws"). In the event CFX or any Nominee determines in its discretion the Phase I report is not satisfactory, CFX may terminate this Agreement, with the Parties thereby being relieved of all further obligations hereunder, excluding those obligations the Parties agree survive termination.

- ii. Should any Inspecting Party require a Phase II Environmental Site Assessment or any other environmental review more intrusive than the Phase I (a "Follow-up Assessment"), the Inspecting Party shall first provide a detailed proposal for such Follow-up Assessment to Owner for Owner's review and comment. The Owner and any Inspection Party shall cooperate in good faith to coordinate such Follow-up Assessment to minimize adverse impacts to the Conservation Lands.
- b. Prohibition Against Liens. Each Inspecting Party shall pay for all work and inspections performed on or in connection with the Conservation Lands, and shall not permit the filing of any lien against the Conservation Lands (or any portion thereof) in favor of any contractor, materialman, mechanic, surveyor, architect, engineer, laborer, or any other lienor performing services or supplying materials to the Conservation Lands on the Inspecting Party's behalf or at its request. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.
- c. Protection of Owner. Each Inspecting Party shall maintain or shall cause its contractors performing work on the Conservation Lands to maintain, a policy or policies of commercial general liability insurance, with a combined single limit of not less than \$1,000,000 and \$2,500,000 in the aggregate protecting Owner from claims, actions, losses, and liability relating to entries by or on behalf of the Inspecting Party onto the Conservation Lands. This policy shall name Owner and its officers, directors, employees, and agents as additional insureds. This policy shall be underwritten by an insurance company meeting Owner's reasonable approval. Inspecting Party or its contractors shall deliver to Owner a certificate or other evidence of such insurance before entering onto, or causing entry by another onto, the Conservation Lands. CFX, as a condition to its exercise of its right of entry, agrees to protect and indemnify Owner with respect to liens, claims, expenses, damages, losses, obligations, and liabilities resulting from the exercise by CFX, or any of its agents, of this right of entry. Nothing contained herein shall be deemed a waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes. Without waiving any right to sovereign immunity as provided in Section 768.28, Florida Statutes, CFX or any Nominee may self-insure for general liability with coverage limits as set forth in Section 768.28, Florida Statutes, and shall provide an affidavit or certificate of insurance evidencing self-insurance commercial insurance or up to sovereign immunity limits and Owner agrees to accept such insurance with regard to CFX. This subsection shall survive Closing and termination of this Agreement, whatever the reason for termination.
- d. Should CFX or any Nominee determine in its sole discretion that the Conservation Lands are not acceptable for any reason, then CFX or such Nominee shall have the right (i) to accept the condition of the Conservation Lands as-is or (ii) to terminate this Agreement by written notice to Owner. In the event of such a termination, the Parties will be relieved of their respective obligations under this Agreement other than those obligations the Parties agree survive such a termination.

6. **Evidence of Title.** CFX or its Nominee may obtain, at its expense, a commitment for a policy of Owner's Title Insurance (the "Commitment") which shall be written on a nationally recognized title insurance company chosen by CFX or its Nominee (the "Title Company").
- a. **Objection to Title Defects.** CFX or its Nominee shall, after receipt of the Commitment or the Survey (as defined below), provide written notice to Owner of any title defects, a title defect being a matter which would render title unmarketable or otherwise render the Conservation Lands unsatisfactory in the discretion of CFX or its Nominee for the purposes prescribed in this Agreement.
 - b. **Correction of Title Defects.** Owner shall have thirty (30) days from receipt of the written notice to remove such title defect(s) (if Owner in its discretion elects to undertake such removal), and if Owner is unsuccessful in removing the title defects within that time period, CFX shall have the option, as its sole and exclusive remedy, of: (i) accepting title as it then is; or (ii) terminating this Agreement, whereupon each Party shall then be released of all further obligations hereunder, excluding those obligations the Parties agree survive such a termination. Owner shall have no obligation to, and in its sole discretion may elect not to, undertake removal of any title defects identified in CFX's notice of title defects. Owner's failure to correct a defect shall not constitute a default by Owner. In the event any of the foregoing time periods extend beyond the Closing Date, the Closing Date shall extend accordingly. Any exception items set forth in the Commitment and accepted by CFX or its Nominee as set forth in this Paragraph 6.b. shall be deemed a "Permitted Exception."
 - c. After receipt of the Final Approvals, no later than thirty (30) days prior to the Closing Date CFX or its Nominee may obtain, at its cost and expense, an update of the Commitment (the "Updated Commitment") or Survey (the "Updated Survey"). If the Updated Commitment or Updated Survey reflect any items other than the Permitted Exceptions from the Commitment, such items shall be treated as title defects in the manner set forth in Paragraphs 6.a. and 6.b. above.
7. **Survey.** CFX or its Nominee may have the Conservation Lands surveyed at CFX's sole cost and expense (the "Survey"). Any Survey which CFX elects to obtain shall satisfy the requirements of Section 627.7842, Florida Statutes, and shall be performed and certified as complying with applicable Law to CFX (and/or its Nominee), Owner, their respective attorneys and to the Title Company. Any conditions appearing on the Survey which would render title unmarketable or otherwise render the Conservation Lands unsatisfactory in the discretion of CFX or its Nominee for the purposes prescribed in this Agreement, shall be treated as title defects in the manner set forth in Paragraphs 6.a. and 6.b. Upon request of CFX or the Nominee, subject to Owner's review and approval, the legal description from such Survey shall be substituted in the instrument transferring title to the Conservation Lands at Closing.
8. **Warranties and Representations.** To induce CFX to enter into this Agreement and to acquire the right to control disposition of the Conservation Lands, Owner makes the following representations and warranties as of the Effective Date which warranties shall be deemed renewed as of the Closing unless before Closing Owner notifies CFX of occurrences that do or may affect a warranty.
- a. **Pending Actions.** Owner warrants and represents that, to Owner's actual knowledge, there are no actions, suits or proceedings of any kind or nature whatsoever, legal or

equitable, affecting or relating to the Conservation Lands, or relating to or arising out of the ownership of the Conservation Lands, in any court or before or by any federal, state, county or municipal department, commission, board, bureau, or agency or other governmental instrumentality, unless such action has been commenced by CFX.

- b. Authority to Contract. Owner warrants and represents that, to Owner's actual knowledge, it has the full right, power and authority to enter into and deliver this Agreement and to consummate the conveyance of the Conservation Lands in accordance herewith, and to perform all covenants and agreements of the Owner hereunder.
- c. Contamination. Owner warrants and represents that, to the Owner's actual knowledge, except as disclosed below in this subsection, there are no Hazardous Substances on or beneath the surface of the Conservation Lands. Notwithstanding the foregoing, Owner has disclosed to CFX that a cattle dipping vat was operated on a portion of the Conservation Lands. Pursuant to Section 4 above, Owner has delivered (or will deliver) to CFX such information as Owner possesses concerning the location of the cattle dipping vat. Owner shall have no liability or obligation as a consequence of entering in to this agreement to remediate any contamination or other condition resulting from the historical use of a cattle dipping vat on the Conservation Lands. This provision shall expressly survive Closing. CFX expressly waives, disclaims, and releases all claims of every nature that might otherwise inure to CFX by reason of environmental contamination and other conditions arising from or relating to historical operations of a cattle dip vat.
- d. Third-Party Rights. Owner warrants and represents that, to Owner's actual knowledge, other than Owner, no person, firm or other legal entity has any right or option whatsoever to acquire the Conservation Lands.
- e. Compliance with Existing Agreements. Owner warrants and represents that, to Owner's actual knowledge, the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and does not constitute a violation or breach by Owner of any provision of any agreement or other instrument to which Owner is a party or to which Owner may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued to Owner.

All representations and warranties made herein are based on the actual, present knowledge of James L. Zboril on behalf of Tavistock and of David Cannon on behalf of SLR (collectively, the "Named Representatives"). Neither the actual, present conscious knowledge of any other individual or entity, nor the constructive knowledge of the Named Representatives or of any other individual or entity, shall be imputed to the Named Representatives.

9. Cooperation in Securing Approvals

- a. If the Split Oak Alignment is selected as the preferred alignment, Owner and CFX will cooperate and promptly exercise continuous and diligent good-faith efforts to

perform their respective obligations under this Agreement and secure all Approvals as may be required to effectuate the construction and operation of the Extension within the Split Oak Alignment. Owner shall from time to time at CFX's request promptly join with CFX in the execution and submission of such petitions, applications, requests, and other documents or submittals (collectively, the "Submittals") that CFX may reasonably request in connection with CFX's efforts to secure the Approvals for the Extension within the Split Oak Alignment so long as such Submittals (and any Approvals arising thereunder) do not impose obligations or liabilities against Owner. Owner shall be under no obligation to incur expense in performing its obligations under this provision. CFX is responsible for obtaining all Approvals for design, permitting, constructing, operating and use of the Extension. Owner shall coordinate such efforts in good faith with CFX so as not to impair or interfere with CFX's efforts to secure Approvals for the Extension. No such land use or use restriction sought by Owner shall impose any additional obligations, liabilities, costs or expense on CFX. The Parties shall each be responsible for their own costs incurred in seeking such Approvals, including any consultants, contractors or representatives incurred by such Party. Nothing herein shall be construed or is intended as a representation, covenant or warranty on behalf of CFX that CFX will be successful in obtaining any Approvals or any specific conditions thereof. Owner acknowledges that the Split Oak Alignment is not assured and nothing in this Agreement shall be construed or is intended as an express or implied representation, covenant or warranty by CFX that the Split Oak Alignment will be selected as the preferred alignment. Notwithstanding any other provision of this Agreement, all conditions and requirements of a Final Approval that imposes obligations, liabilities, restrictions, or requirements on Owner shall be subject to Owner's reasonable approval. CFX or its Nominee, as the case may be, shall consult Owner before agreeing to any condition or requirement of a Final Approval that imposes obligations, liabilities, restrictions, or requirements on Owner.

- b. Subject to approval of the applicable Governmental Authorities in accordance with the Final Approvals, Owner shall have the right to pursue and CFX will support, certain agreements with the Governmental Authorities as to the use of the Conservation Lands, including:
 - i. Agreement(s) that use of the Conservation Lands will be restricted pursuant to the Use Restriction set forth in Section 10.d. below.
 - ii. Subject to such reasonable guidelines as the managing agency over the Conservation Lands may from time to time adopt, the general public shall be entitled to use the Conservation Lands for the limited purposes prescribed above.
 - iii. Owner and its successors' right and easement to enter onto the Conservation Lands to construct and maintain public trails and related facilities for hiking, cycling, and other purposes consistent with the foregoing use restriction ("Trails"). Owner may connect the Trails to trails on adjoining lands owned

or developed by Owner or its affiliates (as a conservation amenity for residents of those lands), and to the gates and access points installed by Owner in accordance with subsection iv. below. The Trails and use thereof shall be subject to collective approval of Owner, CFX (or its Nominee) and the applicable Governmental Authorities with jurisdiction over the Conservation Lands.

- iv. Owner and its successors will have the right and easement to construct and install, and maintain, gates and access points through which the public may access the Conservation Lands at multiple locations on the perimeter of the Conservation Lands, including through any fencing, wall, or other barrier erected along the perimeter of the Conservation Lands, which locations are subject to the collective approval of Owner, CFX (or its Nominee) and the applicable Governmental Authorities with jurisdiction over the Conservation Lands.

10. Contingencies.

- a. Contingent on ROW Agreement. Concurrently with signing this Agreement, the Parties have also executed a certain Right-of-Way Acquisition Agreement (the "ROW Agreement") whereby Owner agrees to convey to CFX such property interests in any lands owned by Owner as required by CFX for Extension construction, operation and use of the Extension within the Split Oak Alignment. The ROW Agreement is incorporated herein by reference. In the ROW Agreement, Owner has contracted to sell to CFX, and CFX has contracted to purchase from Owner, lands in Osceola County and Orange County, Florida intended as road right-of-way and stormwater ponds (and related facilities) required for constructing and operating the Extension within the Split Oak Alignment should it be selected as the proposed alignment. The ROW Agreement refers to those lands collectively as the "Property" (which term has the same meaning in this Agreement).
 - i. Each Party's rights, interests, and obligations under this Agreement are expressly contingent on the continuance and performance of the ROW Agreement. If the ROW Agreement is terminated, this Agreement shall also automatically terminate without any further action being required by the Parties. Further, a Party's default under the ROW Agreement shall also constitute a default under this Agreement; and a Party's default under this Agreement shall also constitute a default under the ROW Agreement.
 - ii. Unless otherwise subsequently agreed in writing by the Parties, the lands conveyed under this Agreement and the ROW Agreement will close concurrently. Accordingly, notwithstanding any conflicting provision of this Agreement, the Closing under this Agreement will close at the same time and place as the closing under the ROW Agreement. Neither Party shall be obligated to close on one of the agreements without closing at the same time on the other agreement.

b. Split Oak Alignment Contingencies. Owner's obligations to convey, and CFX's obligation to close this transaction for the right to control the acquisition of the Conservation Lands under this Agreement, are expressly also contingent on satisfaction on or before five (5) years after the Effective Date (the "Split Oak Contingencies Deadline") of the following (collectively referred to as the "Split Oak Contingencies"):

- i. CFX's formally designating the Split Oak Alignment as the preferred alignment for the Extension.
- ii. CFX's securing Final Approvals (as defined below) for constructing and operating the Extension within the Split Oak Alignment (and resultant impacts on Split Oak Property) from Osceola County, Florida, Orange County, Florida, Florida Communities Trust and other applicable Governmental Authorities. For purposes of this condition, "Final Approvals" shall mean the issuance by all applicable Governmental Authorities of Approvals for constructing and operating the Extension within the Split Oak Alignment, which Approvals are either (1) affirmed on administrative and judicial review by final order or judgment for which no appeal is or can be taken in accordance with applicable Law, or (2) in effect beyond the period of limitations for administrative and judicial review in accordance with applicable Law, during which period no action or other proceeding is instituted for review or challenge thereof.
- iii. Final resolution of any challenges or appeals brought against the designation of the Split Oak Alignment for the Extension.
- iv. CFX's notifying Owners in writing that CFX is prepared to proceed with design of the Extension within the Split Oak Alignment.

If the Split Oak Alignment is not selected as the preferred alignment or any of the Split Oak Contingencies is not satisfied on or before the Split Oak Contingencies Deadline, then Owner or CFX will have the right to terminate this Agreement before the Split Oak Contingencies Deadline by delivering written notice of termination to the other Parties and the Parties will have no further rights or obligations except those the Parties expressly agree survive such a termination. Termination of this Agreement for failure of any Split Oak Contingency shall also constitute termination of the ROW Agreement.

c. Approval of Owner's and CFX Boards. Notwithstanding any apparently conflicting provision of this Agreement, although local or regional representatives of Owner may have executed this Agreement, such execution shall be conditional and shall not bind Owner until Owner's applicable governing board or body ("Owner's Board") in its sole discretion shall have ratified and approved this Agreement. If Owner's Board ratifies this Agreement, Owner shall notify CFX in writing within fifteen (15) days after the Board meeting at which this Agreement was ratified, whereupon this Agreement shall be binding on Owner in accordance with the terms hereof. Provided this Agreement is timely ratified by Owner's Board, this

Agreement shall continue in full force and effect, subject to the terms and provisions hereof. In the event Owner's Board shall fail to ratify this Agreement on or before sixty (60) days after the Effective Date, this Agreement shall be deemed rejected by Owner's Board. Within forty-five (45) days after receipt of written confirmation of all applicable Owner's Board approvals and ratifications of this Agreement, CFX shall present the Agreement for approval by the CFX Board and shall notify Owners in writing within fifteen (15) days after the Board meeting at which this Agreement was approved, whereupon this Agreement shall be binding upon all Parties. If this Agreement is rejected or deemed rejected by an Owner's Board or the CFX Board, this Agreement shall automatically be null and void and of no further force or effect and the Parties shall be released from all further obligations and liabilities hereunder.

- d. Extension of Split Oak Contingencies Deadline. If despite the Parties' good faith and diligent efforts CFX is not in a position to satisfy the Split Oak Contingencies within ninety (90) days before the Split Oak Contingencies Deadline, CFX shall have the right upon written notice to Owners to extend the Split Oak Contingencies Deadline up to, but not more than, eighteen (18) months to a date that is mutually agreeable to CFX and Owners.
- e. Use Restriction Contingency. Owner's obligation to convey the Conservation Lands to CFX or its Nominee is contingent on the Parties' mutually agreeing before Closing on a use restriction to be included in the Deed(s) that the use of the Conservation Lands shall be restricted to conservation, protection and enhancement of natural resources and for such passive, natural resource-based public outdoor uses as may be compatible with conservation, protection and enhancement of natural resources and with all Laws and Final Approvals (the "Use Restriction"). This contingency relating to the Use Restriction shall be deemed a "Split Oak Contingency".

11. Closing Date and Closing Procedures and Requirements.

- a. Closing Deadline. The Closing shall be held within thirty (30) days after satisfaction of the Split Oak Alignment Contingencies (defined below) but in any event not later than five (5) years after the Effective Date (defined below), at the offices of the Title Company, or such other location as agreed upon by the Parties, on a day and time mutually selected by the Parties (the "Closing Date"). If the Split Oak Contingencies Deadline is extended as provided above, the deadline for Closing prescribed in this paragraph shall be extended for an equal period. The Parties will effect the Closing by delivering properly executed documents and required funds to the closing agent with written escrow instructions.
- b. Nominee. It is acknowledged and agreed that the Conservation Lands are being provided and transferred to offset potential impacts of the Split Oak Alignment on the Split Oak Property and that as a condition of obtaining Final Approvals for the Split Oak Alignment the right, title or interest in the Conservation Lands may need to be transferred to another Governmental Authority or Governmental Authorities. CFX will have the right in CFX's discretion to designate one or more third-party Governmental Authorities (instead of or in addition to CFX or CFX's assignee)

(such third-party being referred to herein as a “Nominee”) to receive title to or interest in the Conservation Lands. If CFX elects to designate one or more a Nominee, then Owner will convey or transfer (or cause to be conveyed or transferred) the required interest in and to the Conservation Lands (or portion thereof) to the designated Nominee. CFX or its Nominee shall bear any additional recording and document preparation charges resulting from CFX’s designating a Nominee pursuant to this subsection. CFX shall not be required to assign, and the Nominee shall not be required to assume, any rights or interests arising from the Agreement as a condition of CFX’s exercising this right. Any Nominee shall not have any claims of any nature against Owner other than pursuant to express warranties contained in Deed(s) or documents conveying interest to the Nominee at Closing. Further, notwithstanding CFX’s designation of a Nominee, CFX shall remain liable under the Agreement for all obligations and liabilities not expressly being the responsibility of a designated Nominee. Any Nominee proposed for holding title or taking any interest in and to the Conservation Lands shall be subject to the approval of the managing agency that will oversee and operate the Conservation Lands.

- c. At the Closing, each Owner shall execute and deliver (or shall cause the then-current record owners to execute and deliver) to CFX or its Nominee a Special Warranty Deed or deeds (the “Deed(s)”) or other instrument conveying the interest in the Conservation Lands that is required under applicable Law and by the conditions of the Final Approvals. Such conveyance documents shall be in form and substance mutually acceptable to Owner and the Nominee taking title and the managing agency that will oversee and operate the Conservation Lands. Such conveyance shall be, free and clear of all liens, mortgages, outstanding general and special assessments, and any matters except the Permitted Exceptions and the Use Restriction.
- d. Deliver Possession. Owner shall surrender possession of the Conservation Lands to CFX or its Nominee at Closing. Any personal property or fixtures left by Owner after the Closing Date shall be presumed abandoned, and CFX or its Nominee will have the right to remove and destroy such property or fixtures without any responsibility or liability to Owner for any damages or claims whatsoever.
- e. Prorations. Owner shall pay all taxes, assessments and charges applicable to the Conservation Lands for all years prior to the Closing Date. At Closing, Owner will pay Owner’s prorata share of all taxes and assessments levied against the Conservation Lands for the year of Closing in compliance with the procedures of Section 196.295, Fla. Stat. Any other revenues and expenses of the Conservation Lands shall be prorated as of the day before the Closing.
- f. Costs of Closing. Owner shall pay the cost of recording the Deed(s) (or other instrument conveying interest in the Conservation Lands as required under applicable Law and all conditions of the Final Approvals) to CFX or Nominee and costs of recording documents required to clear title. CFX shall pay all costs pertaining to the Commitment, including, but not limited to, title insurance premiums for an Owner’s Policy, title search fees, and the premiums for any endorsements requested by CFX. Each Party shall pay all fees and costs for the services of the Parties’ respective

attorney. The Parties anticipate the conveyance of the Conservation Lands will be exempt from documentary stamp taxes; however, if the Parties determine documentary stamp taxes must be paid on the conveyance of the Conservation Lands, Owner shall pay the documentary stamp taxes at Closing, which obligation shall expressly survive Closing.

- g. Closing Documents. Each Owner, as applicable, shall provide CFX or its Nominee with the Deed(s) or other instrument conveying interest in the Conservation Lands as required under applicable Law and all conditions of the Final Approvals), closing statements, beneficial interest affidavit described in Section 286.23, *Florida Statutes*, as applicable, and an owner's affidavit sufficient to allow the Title Company to delete applicable standard exceptions from the title policy (including as referenced in Section 627.7842, *Florida Statutes*). Each Owner shall provide at Closing an affidavit that such Owner is not a foreign person for purposes of the Foreign Investment in Real Property Tax Act (FIRPTA), as revised by the Deficit Reduction Act of 1984 and as same may be amended from time to time, which certificates shall include the applicable Owner's taxpayer identification number and address or a withholding certificate from the Internal Revenue Service stating that Owner is exempt from withholding tax under FIRPTA on any consideration received by Owner in connection with this transaction. Each Party shall also sign and deliver such additional documents, and take such other actions, as may be reasonably necessary or appropriate to implement or perform provisions of this Agreement. Each closing document will be consistent with and will implement applicable provisions of this Agreement, and the form and content shall be subject to the reasonable approval of the Parties.

12. Maintenance. Owner will maintain the Conservation Lands substantially in the same condition they are currently in. Owner shall not offer to sell or donate the Conservation Lands to any other person or entity or enter into any verbal or written agreement, understanding, or contract relating to the sale or conveyance of the Conservation Lands. With the exception of any Use Restriction which may be imposed in accordance with the terms of this Agreement. Owner shall not encumber or place any restrictions on the Property after the Effective Date of this Agreement. Without limiting anything contained herein, Owner shall not make application for nor cause or allow any easements against the Conservation Lands or use the Conservation Lands to mitigate for impacts to wetlands and wildlife (such as gopher tortoises) from development performed on or off site.
13. Acceptance AS-IS and Release. Except as expressly set forth in this Agreement to the contrary, CFX or its Nominee is expressly acquiring interest in the Conservation Lands in its existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and, Owner has no obligation to determine or correct, or to compensate CFX or its nominee for, any such facts, circumstances, conditions, or defects. Owner has specifically bargained for the assumption by CFX and its Nominees of all responsibility thoroughly to investigate the Conservation Lands and laws and regulations applicable to it, and all risk of adverse conditions. CFX and its Nominees will be relying strictly and solely upon its inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel and officers. CFX and its Nominees assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Conservation Lands, and hereby release Owner from, and

disclaims any claims relating to, conditions on or facts or circumstances affecting, the Conservation Lands that are not addressed in express warranties and representations of this Agreement. Except as expressly set forth in this Agreement to the contrary, Owner disclaims all warranties of any kind or nature whatsoever (including, without limitation, warranties of fitness for particular purposes), whether expressed or implied including, without limitation warranties with respect to the Conservation Lands. Except as is expressly set forth in this Agreement to the contrary, CFX or its Nominees acknowledge that each is not relying on any representation of any kind or nature made by Owner or any of Owner's direct or indirect members, partners, shareholders, officers, directors, employees or agents with respect to the Conservation Lands, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made. Nothing in this Agreement shall be construed or deemed to mean that CFX is assuming any liability for the condition of the Conservation Lands nor to make CFX liable to any Nominee for the condition of the Conservation Lands / except as otherwise provided by applicable Law.

CFX shall not be required to take title to the Conservation Lands except as may be required by terms and conditions of the Final Approvals. If CFX does acquire title to the Conservation Lands, each Owner acknowledges and agrees that as of the date of Owner's execution and delivery of the Deed(s), Owner shall thereby remise, release, acquit, satisfy, and forever discharge CFX, of and from all, and all manner of action and actions, cause and causes of action, suits, sums of money, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, claims and demands whatsoever, in law or in equity, which Owner ever had, then have, or which any personal representative, successor, heir or assign of Owner, thereafter can, shall or may have, against CFX, for, upon or by reason of any matter, cause or thing whatsoever, arising out of or in any way connected with Owner's conveyance of the Property to CFX or the Project, including, without limitation, any claim for loss of access, air, light or view to Owner's remaining property, or other severance damages to Owner's remaining property, business damages, consequential damages, or any other damages, all from the beginning of the world to the day thereof. A covenant shall be contained in the deed acknowledging Owner's agreement to the foregoing, in which event if there is any conflict between the terms of the covenant and the deed and the terms of this Section, the terms of the covenant in the Deed(s) shall control.

14. **Defaults.** In the event any Party fails to comply with or perform any of the conditions to be complied with or any of the covenants, agreements or obligations to be performed by such Party, whether such failure occurs or becomes known before or after Closing, the non-defaulting Party, in its sole discretion, as its sole and exclusive remedies, shall be entitled either to enforce this Agreement by specific performance or to terminate this Agreement. Upon any such termination, this Agreement and all rights and obligations created hereunder shall be deemed null and void and of no further force or effect except matters expressly surviving in accordance with the terms of this Agreement. Notwithstanding the foregoing, Owner shall have the right to enforce CFX's express covenants in this Agreement to indemnify, defend, or hold harmless Owner; and CFX's liability arising from those covenants shall not be limited by the language of this Section that limits Owner's remedies. All such covenants shall continue in full force and effect and shall not be waived or limited by this Section. All such provisions and covenants to indemnify, defend, or hold harmless Owner, and this Section, shall survive the Closing or earlier termination of this Agreement. This provision shall survive Closing.

15. **Notices.** Any notices or communications which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, or transmitted electronically (provided the writing is hand-delivered to the recipient on the next following business day), or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered mail, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows (or to such other address as a Party may designate by notice in writing):

CFX:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 Orl Tower Road
Orlando, Florida 32807
Attn: Laura Kelley, Executive Director
Telephone: (407) 690-5381
Email: Laura.Kelley@cfxway.com

Owner:

SUBURBAN LAND RESERVE, INC.
51 South Main Street, Suite 301
Salt Lake City, Utah 84111
Attn: R. Steven Romney and David Cannon
Telephone: (801) 321-7569
Email: sromney@slreserve.com and djc@slreserve.com

With Copy To:

KIRTON MCCONKIE
50 East South Temple
Suite 400
Salt Lake City, UT 84111
Attn: Robert Hyde and Loyal Hulme, Esqs.
Telephone: (801) 323-5913
Email: rhyde@kmclaw.com and lhulme@kmclaw.com

With Copy To:

BURR & FORMAN LLP
200 S. Orange Avenue, Suite 800
Orlando, Florida 32801
Attn: James R. Pratt, Esq.
Telephone: (407) 540-6655
Email: jpratt@burr.com
Owner:

TAVISTOCK EAST HOLDINGS, LLC
6900 Tavistock Lake Boulevard, Suite 200
Orlando, Florida 32827
Attn: James L. Zboril, President
Telephone: (407) 438-0207
Email: jzboril@tavistock.com

With Copy To:

HOLLAND & KNIGHT LLP
200 South Orange Avenue, Suite 2600
Orlando, FL 32801
Attn: Sara Bernard, Esq.
Telephone: (407) 244-5162
Email: sara.bernard@hkllaw.com

Notice given by or to the attorney representing a Party under this Agreement shall be deemed to have been duly given in accordance with this Section by or to the applicable Party.

16. **ISD Exemption.** The Conservation Lands lies within the boundaries of the Sunbridge Stewardship District, a special and limited purpose independent special district established pursuant to the provisions of Chapter 189, Florida Statutes (the “ISD”). The ISD is an independent special district established for the purposes set forth in Chapter 2017-220, Laws of Florida, with the right to levy assessments in accordance with applicable Laws (whether collected by Osceola County as part of its tax rolls or by the ISD directly). Prior to Closing, Owner shall, at Owner’s cost and expense, cause the ISD to adopt an amendment to the ISD’s assessment methodology to reflect that the Conservation Lands shall be exempt from the payment of assessments so long as the real property is primarily used for the conservation purposes prescribed in the Deed(s) (the “ISD Exemption”).

17. **General Provisions.** No failure of any Party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. This Agreement contains the entire agreement of the Parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect. Any amendment to this Agreement shall not be binding upon any of the Parties hereto unless such amendment is in writing and executed by all Parties. The provisions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective heirs, administrators, executors, personal representatives, successors and assigns. Time is of the essence of this Agreement. Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday, or Legal Holiday, such time for performance shall be extended to the next business day. The headings inserted at the beginning of each Section of this Agreement are for convenience only, and do not add to or subtract from the meaning of the contents of each Section. The Parties do hereby covenant and agree that such documents as may be legally necessary or otherwise appropriate to carry out the terms of this Agreement shall be

executed and delivered by each party at Closing. This Agreement shall be interpreted under the laws of the State of Florida. The Parties agree that venue for any legal action authorized hereunder shall be in the courts of Orange County, Florida.

18. **Survival of Provisions**. All covenants, representations and warranties set forth in this Agreement shall survive the Closing and shall survive the execution or delivery of any and all deeds and other documents at any time executed or delivered under, pursuant to or by reason of this Agreement, and shall survive the payment of all monies made under, pursuant to or by reason of this Agreement.
19. **Severability**. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, applicable Laws. If any provision of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby but rather shall be enforced to the greatest extent permitted by law.
20. **Attorneys' Fees**. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the predominantly prevailing Party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses, and costs of collection, whether suit be brought or not, and whether in settlement, in any declaratory action, in mediation, arbitration or bankruptcy, at trial or on appeal.
21. **Radon Gas**. Radon is naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
22. **Liability of SLR and Tavistock**. Neither of SLR and Tavistock shall be liable under this Agreement except for the application of this Agreement to the portions of the Conservation Lands they respectively either own, control, or have the legal right to acquire. They are not jointly and severally liable under this Agreement. If at any time (including without implied limitation at Closing) only one or the other of SLR or Tavistock owns or has the continuing right to acquire, the Conservation Lands, then this Agreement shall remain in effect and enforceable only against whichever of them owns or has the right to acquire the Conservation Lands. The foregoing provision shall expressly survive Closing.
23. **Counterparts**. This Agreement may be executed in multiple counterparts. The signature of any party to a counterpart shall be deemed to be the signature to, and may be appended to, any other counterpart. A party shall be bound by this Contract by executing a counterpart hereof, then transmitting the executed counterpart to the other parties via email in .pdf or similar format.

24. **Recording.** CFX agrees that it will not record, or permit to be recorded, this Agreement or any memorandum hereof; violation of this covenant by CFX shall constitute a default, and at Owner's option, this Agreement shall become null and void and all of the rights of CFX hereunder shall terminate.
25. **Further Assurances.** Owner and CFX will, without additional consideration, sign, acknowledge, and deliver any other documents and take any other action necessary or appropriate and reasonably requested by the other to carry out the intent and purposes of this Agreement.
26. **Assignment of Agreement.** CFX may assign this Agreement to another Governmental Authority, without the consent of Owner, so long as the assignee jointly assumes and is obligated with CFX for all rights and obligations of CFX hereunder. CFX shall promptly notify Owner in the event of such an assignment, and shall provide to Owner a true and correct copy of the written assignment. CFX may not assign this Agreement to a non-Governmental Authority unless CFX first obtains Owner's prior written consent, not to be unreasonably withheld, conditioned or delayed; provided such assignment is in accordance with applicable Law and conditions of the Final Approvals. Notwithstanding any assignment by CFX, CFX shall remain liable and obligated, jointly and severally with the assignee, for the performance of and liability for all obligations and liabilities of CFX under or relating to this Agreement. The foregoing provision shall expressly survive Closing.
27. **Effective Date.** When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the latter of the following dates: (a) the date the Owner signs this Agreement; or (b) the date CFX signs this Agreement.
28. **Indemnifications Regarding Brokers, Finders, Etc.** Each Owner represents and warrants to CFX and CFX likewise represents and warrants to Owners, that they have neither dealt with, nor negotiated with, any broker, sales person or finder in connection with the conveyance of the Conservation Lands or any interest therein, and each Party hereto agree to indemnify and hold the other Party harmless from any and all claims, demands, causes of action or other liabilities, and all costs and expenses (including reasonable attorneys' fees) incurred in defending against any claims arising from or pertaining to any other brokerage commission, fees, costs, or other expenses which may be claimed by any broker, sales person or entity arising out of any actions of CFX (as to the indemnity obligations of CFX) or arising out of any actions of Owner (as to the indemnity obligations of Owner).
29. **Schedules and Exhibits.** The following Schedules and Exhibits referenced elsewhere in this Agreement are attached hereto and incorporated by reference:

Exhibit A Split Oak Alignment;
Exhibit B Conservation Lands; and
Exhibit C Owner's Materials.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in their respective names as of the date first above written.

WITNESSES:

“AUTHORITY”

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

Print Name: _____

By: _____

Title: _____

Print Name: _____

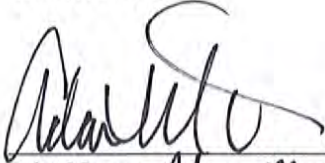
Date: _____

APPROVED AS TO FORM FOR EXECUTION
BY A SIGNATORY OF THE CENTRAL
FLORIDA EXPRESSWAY AUTHORITY
Legal Counsel:

By: _____

Date: _____

WITNESSES:



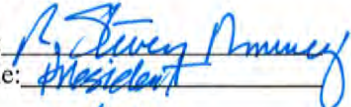
Print Name: Adam Manekley



Print Name: JANET P. CHRISTENSEN

“SLR”

SUBURBAN LAND RESERVE, INC., a Utah corporation

By: 
Title: President

Date: 10/25/19

WITNESSES:



Print Name: Robert Adams



Print Name: Kristin Tilton

"TAVISTOCK"

**TAVISTOCK EAST HOLDINGS, LLC, a
Florida limited liability company**



By: James Znowil

As its: President

Date: 10/25/19

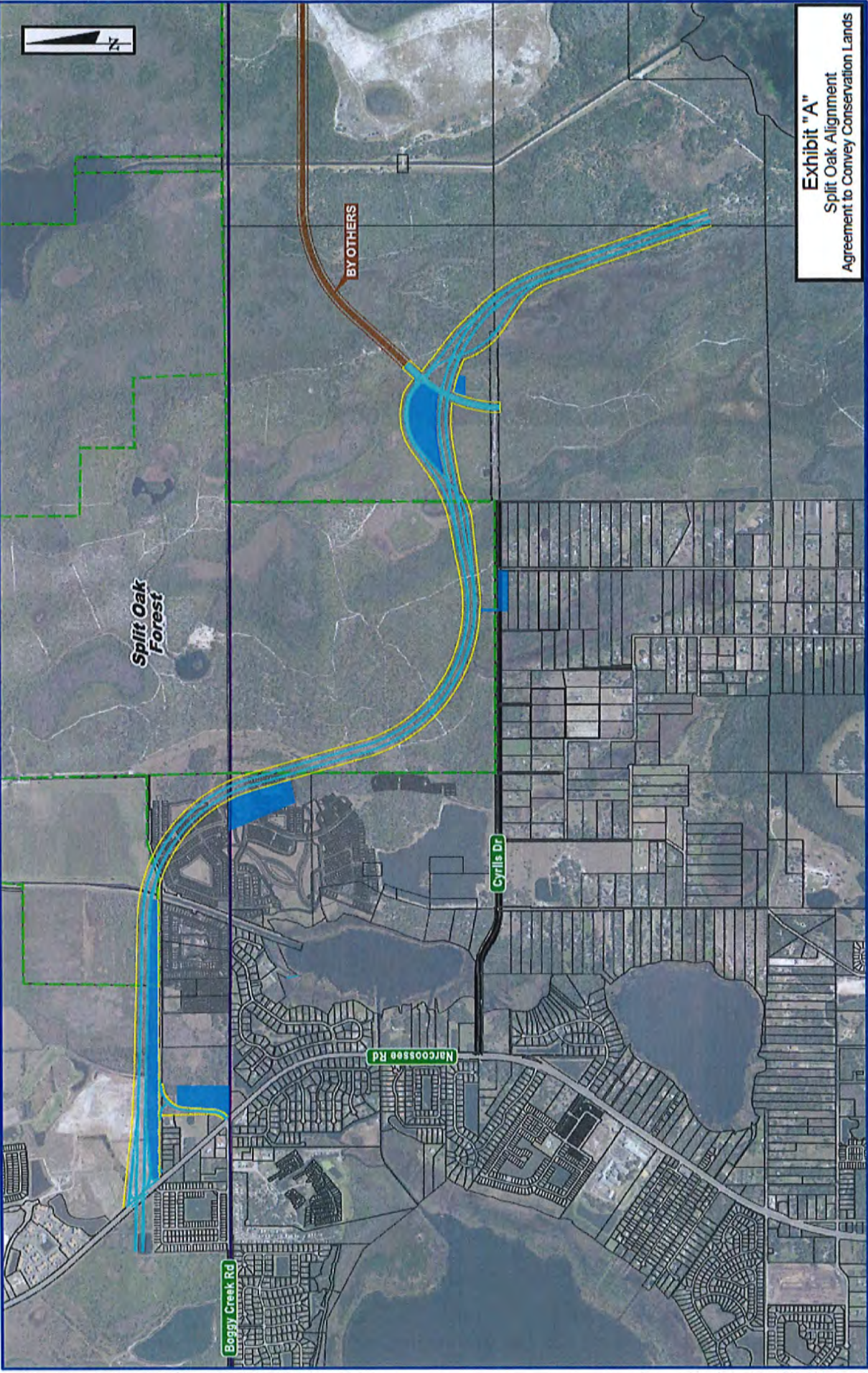


Exhibit "A"
Split Oak Alignment
Agreement to Convey Conservation Lands

EXHIBIT "B"
 Conservation Lands
 Agreement to Convey Conservation Lands (page 1 of 2)



Source: Eric D. Hinkle, Sr. & Associates, Inc. (ES&A) for the Florida Department of Natural Resources (FL DNR), and the U.S. Department of Agriculture (USDA), using Aerial Photographs (AP) and the GIS User Community.

BDA BREEDLOVE, DENNIS & ASSOCIATES, INC.
 Environmental Consultants
 300 W. Carlton Ave., Winter Park, FL 32789 • 407-677-1882

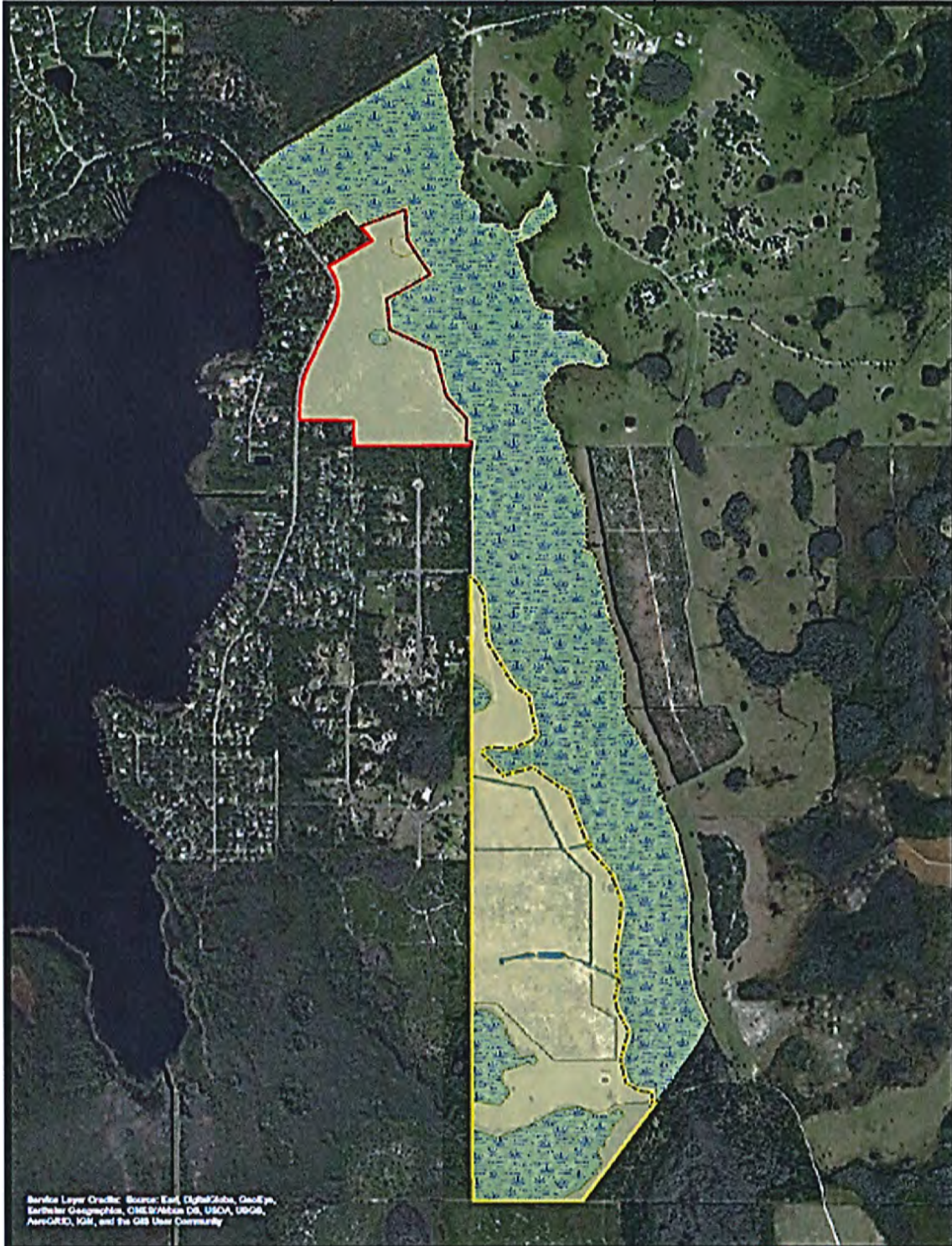
Legend

- Parcel 1 (Osceola County)**
- Uplands (219.02 ac)
 - Wetlands (326.47 ac)
- Parcel 2 (Osceola County)**
- Surface Waters (1.83 ac)
 - Uplands (34.02 ac)
 - Wetlands (0.81 ac)

Source: Breedlove, Dennis & Associates, Inc.

**EXHIBIT "B" Conservation Lands
 UPLAND AND WETLAND AREAS
 IN THE DONATION LANDS,
 OSCEOLA COUNTY, FLORIDA**

EXHIBIT "B"
Conservation Lands
 Agreement to Convey Conservation Lands (page 2 of 2)



Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Legend

- | | | |
|-----------------------|---------------------------------------|--------------------------|
| Roberts Island Slough | Roberts Island Slough (Orange County) | CS-2 (Orange County) |
| CS-1 | Uplands (42.18 ac) | Uplands (239.97 ac) |
| CS-2 | Wetlands (507.69 ac) | Wetlands (64.63 ac) |
| | CS-1 (Orange County) | Surface Waters (6.23 ac) |
| | Uplands (101.65 ac) | |
| | Wetlands (1.13 ac) | |



EXHIBIT "B" Conservation Lands*
 UPLAND AND WETLAND AREAS IN THE DONATION LANDS,
 ORANGE COUNTY, FLORIDA.

BDA BIRZBAUGH, DIXON & ASSOCIATES, P.C.
 Environmental Consultants
 300 W. Central Ave., Suite 1000, Ft. Worth, TX 76102 • 817-497-7800

Exhibit C

Owner's Materials

Orange County Lands

- 1) Maps
 - a) Zoning Map – 12/3/09
 - b) FLUCC Soils Map – 12/3/09
 - c) FLUM – 12/3/09
 - d) FEMA Flood Map – 12/3/09
 - e) Quad Map – 12/3/09
- 2) Studies
 - a) Phase 1 & Limited Phase II Environmental Site Assessment, EP3 – 11/19/09
 - b) Phase 1 Cultural Resources Survey, Southeastern Archaeological Research, Inc., - December 2009
 - c) Ecological Constraints Review, BDA – 11/24/09
 - d) Due Diligence Level Geotechnical Engineering Report, Devo Engineering, November 2009
- 3) Survey
 - a) Alta Boundary Survey, DWMA – 12/1/09
- 4) Permits
 - a) Conservation Area Determination, CAD-13-10-058 (expires 3/21/2020)
- 5) Agreements
 - a) Lake Mary Jane Alliance Agreement – 11/28/2016
- 6) Roadways
 - a) Sunbridge Parkway

Osceola County Lands

- 1) Entitlements
 - a) Concept Plan CP18-000002 Approval Letter – 12/18/18
 - b) Habitat Conservation Management Plan, Osceola County, HCP-19-0001 – May 2019
 - c) Habitat Conservation Management Plan, Osceola County, HCP-18-00001 – May 2018
 - d) Northeast District Element, Osceola County – 8/16/2010
 - e) Northeast District Ordinance, Osceola County – 9/6/10
 - f) Conceptual Master Plan – 9/8/10
 - i) Table of Contents
 - ii) Chapter 1 – Introduction
 - iii) Chapter 2 – Planning Context
 - iv) Chapter 3 – Master Plan
 - v) Chapter 4 – Implementation
 - vi) Technical Appendix 1 – Economic Analysis
 - vii) Technical Appendix 2 – Transportation Analysis
 - viii) Technical Appendix 3 – Infrastructure Analysis
 - ix) Technical Appendix 4 – Educational Analysis
 - x) Technical Appendix 5 – Ecological Analysis
 - xi) Technical Appendix 6 – Parks Analysis
 - xii) Technical Appendix 7 – Public Involvement Summary

- 2) Studies
 - a) Phase 1 Environmental Site Assessment, Professional Services Industries, Inc., PSI – 11/8/18
 - b) Osceola Parkway Extension Analysis, BDA – 4/29/19
 - c) Ecological Constraints Report, BDA – 5/7/18
 - d) Sunbridge Phase 1 and Northeast District Habitat Conservation and Management Plan, Osceola County – 7/19/18
- 3) Survey
 - a) NED Boundary Survey, DWMA – 12/15
 - b) Concept Plan Phase 1 Sketch of Description, DWMA – March 2017
- 4) Permits
 - a) NED Phase 1 Jurisdictional Determination, ACOE, SAJ 2016-01807 – August 2017
 - b) Sunbridge Utility Site Individual Permit, ACOE, SAJ 2017-01897 – May 2018
 - c) Formal Wetland Determination, SFWMD, No. 49-00019-F - 8/12/16
 - d) West Canal Conceptual Environmental Resource Permit, SFWMD, No. 49-02650-P – July 2018
 - e) East Canal Conceptual Environmental Resource Permit, SFWMD, No. 49-100647-P – October 2018
 - f) Cyrils Drive Phase 1 Construction Environmental Resource Permit, SFWMD, 49-02681-P – February 2018
 - g) West Canal Conceptual Environmental Resource Permit, SFWMD, No. 49-02650-P – August 2019
- 5) ISD
 - a) Sunbridge Independent Special District Act, House Bill #1333,
 - b) Sunridge ISD legal description map

F. 3.

**THERE ARE NO
BACKUP MATERIALS
FOR THIS ITEM**

F. 4.

**THERE ARE NO
BACKUP MATERIALS
FOR THIS ITEM**